TEXAS SESSION LAWS
2015

GENERAL AND SPECIAL
Eighty-Fourth Legislature, Regular Session

POWERS AND DUTIES OF THE HEALTH AND HUMAN SERVICES COMMISSION AND OTHER STATE AGENCIES, AND THE LICENSING OF CERTAIN HEALTH PROFESSIONALS; CLARIFYING CERTAIN STATUTORY PROVISIONS; AUTHORIZING THE IMPOSITION OF FEES

CHAPTER 1

S.B. No. 219

AN ACT

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

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. FAMILY CODE

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) consider the motion, supporting documents, professional statements of counsel, and witness testimony; and

(2) make its own observation of the child.

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

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

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

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

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

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

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

(2) proceed under Section 55.33.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) if the child is in detention:

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

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

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

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

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

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

(2) the child:

(A) is not:

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

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

(iii) ordered by a court to receive treatment on an outpatient basis; or

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

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

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

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

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

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

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

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

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

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

the child is not responsible for the child's conduct as a result of mental illness or *an intellectual disability* [~~mental retardation~~].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 55.55. REPORT THAT CHILD *DOES NOT HAVE MENTAL ILLNESS OR INTELLECTUAL DISABILITY* [~~IS NOT MENTALLY ILL OR MENTALLY RE-~~

~~TARDED~~]; HEARING ON OBJECTION. (a) If a report submitted under Section 55.54(b) states that a child does not have a mental illness or *an intellectual disability* [~~mental retardation~~], the juvenile court shall discharge the child unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) if the child is in detention:

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

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

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

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

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

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

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

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

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

(1) a parent of the child;

(2) the child through a representative authorized by the court;

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

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

(5) a governmental entity;

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

(7) a licensed child placing agency;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) registered with the paternity registry maintained by the [~~bureau of~~] vital statistics *unit*; or

(B) signed an acknowledgment of paternity of a child born in this state; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) shall:

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

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

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

(iii) the parties to the suit;

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

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

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

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

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

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

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

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

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

(3) is entitled to:

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

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

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

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

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

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

(G) attend all legal proceedings in the suit.

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

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

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

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

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

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

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

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

(2) the birth date of the adopted child;

(3) the docket number of the adoption suit;

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

(5) the date of the adoption order;

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

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

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

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

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

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

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

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

Sec. 108.005. ADOPTION RECORDS RECEIVED BY [~~BUREAU OF~~] VITAL STATISTICS *UNIT*.

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

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

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

(a) The *Department of State Health Services* [~~bureau of vital statistics~~] may charge a

reasonable fee to cover the cost of determining and sending information concerning the identity of the court with continuing, exclusive jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) died;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) an acknowledgment of paternity;

(2) a denial of paternity; or

(3) a rescission of an acknowledgment of paternity or denial of paternity.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) acknowledgment of paternity;

(2) denial of paternity; and

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

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

Sec. 160.313. RELEASE OF INFORMATION. The [~~bureau of~~] vital statistics *unit* may release information relating to the acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to the courts and Title IV–D agency of this or another state.

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

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

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

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

(b) The Title IV–D agency and the [~~bureau of~~] vital statistics *unit* shall review the memorandum semiannually and renew or modify the memorandum as necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) has not been found.

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

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

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

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

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

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

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

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

Sec. 160.763. HEALTH CARE FACILITY REPORTING REQUIREMENT. (a) The *executive commissioner of the Health and Human Services Commission* [~~Texas Department of Health~~] by rule shall develop and implement a confidential reporting system that requires each health care facility in this state at which assisted reproduction procedures are performed under gestational agreements to report statistics related to those procedures.

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

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

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

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

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

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

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

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

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

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

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

(1) that the parent has:

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

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

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

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

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

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

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

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of

the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

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

(J) been the major cause of:

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

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

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

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

(i) Section 19.02 (murder);

(ii) Section 19.03 (capital murder);

(iii) Section 19.04 (manslaughter);

(iv) Section 21.11 (indecency with a child);

(v) Section 22.01 (assault);

(vi) Section 22.011 (sexual assault);

(vii) Section 22.02 (aggravated assault);

(viii) Section 22.021 (aggravated sexual assault);

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

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

(xi) Section 25.02 (prohibited sexual conduct);

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

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

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

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

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

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

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

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

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

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

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child

who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;

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

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

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

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

(i) conviction of an offense; and

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

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

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

(T) been convicted of:

(i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;

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

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

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

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

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

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

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

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

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

(3) the department has been the temporary or sole managing conservator of the

child of the parent for at least six months preceding the date of the hearing on the termination held in accordance with Subsection (c);

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

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

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

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

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

(c) The affidavit may contain:

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

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

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

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

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

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

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

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

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

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

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

(b) In a proceeding to terminate parental rights in which the alleged or probable father has not been personally served with citation or signed an affidavit of relinquishment or an affidavit of waiver of interest, the court may not terminate the parental

rights of the alleged or probable father, whether known or unknown, unless a certificate from the [~~bureau of~~] vital statistics *unit* signed by the registrar states that a diligent search has been made of the paternity registry maintained by the *unit* [~~bureau~~] and that a filing or registration has not been found pertaining to the father of the child in question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 162.0065. EDITING ADOPTION RECORDS IN DEPARTMENT PLACEMENT. Notwithstanding any other provision of this chapter, in an adoption in which a child is

placed for adoption by the Department of *Family and* Protective [~~and Regulatory~~] Services, the department is not required to edit records to protect the identity of birth parents and other persons whose identity is confidential if the department determines that information is already known to the adoptive parents or is readily available through other sources, including the court records of a suit to terminate the parent-child relationship under Chapter 161.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 162.103. FINANCIAL RESPONSIBILITY FOR CHILD. (a) Financial responsibility for a child placed as provided in the compact is determined, in the first instance, as provided in Article V of the compact. After partial or complete default of performance under the provisions of Article V assigning financial responsibility, the *commissioner of*

the Department of Family and Protective Services [~~executive director~~] may bring suit under Chapter 154 and may file a complaint with the appropriate prosecuting attorney, claiming a violation of Section 25.05, Penal Code.

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

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

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

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

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

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

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

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

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

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

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

INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

ARTICLE I. FINDINGS

The legislature finds that:

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

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

ARTICLE II. PURPOSES

The purposes of the compact are to:

(a) authorize the Department of *Family and* Protective [~~and Regulatory~~] Services, with the concurrence of the Health and Human Services Commission, to enter into interstate agreements with agencies of other states for the protection of children on

behalf of whom adoption assistance is being provided by the Department of *Family and* Protective [~~and Regulatory~~] Services; and

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

ARTICLE III. DEFINITIONS

In this compact:

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

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

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

ARTICLE IV. COMPACTS AUTHORIZED

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

ARTICLE V. CONTENTS OF COMPACTS

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

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

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

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

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

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

ARTICLE VI. OPTIONAL CONTENTS OF COMPACTS

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

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

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

ARTICLE VII. MEDICAL ASSISTANCE

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

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

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

(c) The state medical assistance agency shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the Department of *Family and* Protective [~~and Regulatory~~] Services for the coverage or benefits, if any, not provided by the residence state. The adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed for those amounts. Services or benefit amounts covered under any insurance or other third-party medical contract or arrangement held by the child or the adoptive parents may not be reimbursed. The state medical assistance agency shall adopt rules implementing this subsection. The additional coverage and benefit amounts provided under this subsection are for services for which there is no federal contribution or services that, if federally aided, are not provided by the residence state. The rules shall include procedures for obtaining prior approval for services in cases in which prior approval is required for the assistance.

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

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

ARTICLE VIII. FEDERAL PARTICIPATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) administer the provisions of this subchapter; and

(2) ensure that each registry respects the right to privacy and confidentiality of an adoptee, birth parent, and biological sibling who does not desire to disclose the person's identity.

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

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

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

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

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

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

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

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

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

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

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

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

(2) arranged with the assistance of the agency.

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

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

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

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

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

SECTION 1.122. Section 261.101(b–1), Family Code, is amended to read as follows:

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

(1) another child; or

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

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

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

(1) any local or state law enforcement agency;

(2) the department; *or*

(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred[~~; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) the adequacy of the home environment;

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

(7) all other pertinent data.

SECTION 1.130. The heading to Section 261.3015, Family Code, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The Texas School for the Blind and Visually Impaired and the Texas School for the

Deaf shall adopt policies relating to the investigation and resolution of reports received as provided by this subchapter. The *executive commissioner* [~~Health and Human Services Commission~~] shall review and approve the policies to ensure that the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf adopt those policies in a manner consistent with the minimum standards adopted by the *executive commissioner* [~~Health and Human Services Commission~~] under Section 261.407.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If a person entitled to possession of the child is not immediately available to take possession of the child, the law enforcement officer shall deliver the child to the Department of *Family and* Protective [~~and Regulatory~~] Services. Until a person entitled to possession of the child takes possession of the child, the department may, without a court

order, retain possession of the child not longer than five days after the date the child is delivered to the department. While the department retains possession of a child under this subsection, the department may place the child in foster [~~home~~] care. If a parent or other person entitled to possession of the child does not take possession of the child before the sixth day after the date the child is delivered to the department, the department shall proceed under this chapter as if the law enforcement officer took possession of the child under Section 262.104.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) An authorized representative of the Department of *Family and* Protective [~~and Regulatory~~] Services, a law enforcement officer, or a juvenile probation officer may take temporary possession of a child without a court order on discovery of a child in a situation of danger to the child's physical health or safety when the sole purpose is to deliver

the child without unnecessary delay to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child.

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

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

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

(a–3) The court may, for good cause shown, postpone the full adversary hearing for not more than seven days from the date of the attorney's appointment to provide the attorney time to respond to the petition and prepare for the hearing. The court may shorten or lengthen the extension granted under this subsection if the parent and the appointed attorney agree in writing. If the court postpones the full adversary hearing, the court shall extend a *temporary order,* temporary restraining order, *or attachment* issued by the court *under Section 262.102(a)* for the protection of the child until the date of the rescheduled full adversary hearing.

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

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

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

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

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

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

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

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);

(C) Section 19.04 (manslaughter);

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

(E) Section 22.011 (sexual assault);

(F) Section 22.02 (aggravated assault);

(G) Section 22.021 (aggravated sexual assault);

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

(I) Section 22.041 (abandoning or endangering child);

(J) Section 25.02 (prohibited sexual conduct);

(K) Section 43.25 (sexual performance by a child);

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

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

(N) Section 43.05(a)(2) (compelling prostitution); or

(O) Section 20A.02(a)(7) or (8) (trafficking of persons);

(4) the parent voluntarily left the child alone or in the possession of another person not the parent of the child for at least six months without expressing an intent to return and without providing adequate support for the child;

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

(6) the parent has been convicted for:

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

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

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

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

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

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

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

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

(A) an emergency medical services provider;

(B) a hospital; or

(C) a child-placing agency licensed by the Department of *Family and* Protective [~~and Regulatory~~] Services under Chapter 42, Human Resources Code, that:

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

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

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

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

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

Sec. 262.304. FILING PETITION AFTER ACCEPTING POSSESSION OF ABANDONED CHILD. A child for whom the Department of *Family and* Protective [~~and Regulatory~~] Services assumes care, control, and custody under Section 262.303 shall be

treated as a child taken into possession without a court order, and the department shall take action as required by Section 262.105 with regard to the child.

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

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

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

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

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

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

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

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

(1) the conservatorship appointment and substitute care; and

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

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

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

SECTION 1.173. Section 263.101, Family Code, is amended to read as follows:

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

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

(a) The service plan must:

(1) be specific;

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

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

(4) state appropriate deadlines;

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

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

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

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

(6) state steps that are necessary to:

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

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

(C) otherwise provide a permanent safe placement for the child;

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

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

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

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

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

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

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

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

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

(d) The original service plan takes effect when:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The permanency progress report must:

(1) recommend that the suit be dismissed; or

(2) recommend that the suit continue, and:

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

(B) provide:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) At each permanency hearing the court shall:

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

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

(A) attempting to locate all necessary persons;

(B) requesting service of citation; and

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

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

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

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

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

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

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

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

(10) review the medical care provided to the child as required by Section 266.007;

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

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

(A) has been provided appropriate psychosocial therapies, behavior strategies, and other non-pharmacological interventions; and

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

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

(A) the child continues to need substitute care;

(B) the child's current placement is appropriate for meeting the child's needs, including with respect to a child who has been placed outside of the state, whether that placement continues to be in the best interest of the child; and

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

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

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

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

(17) [~~(15)~~] if the child is committed to the Texas Juvenile Justice Department or released under supervision by the Texas Juvenile Justice Department, determine whether the child's needs for treatment, rehabilitation, and education are being met; and

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

(A) the dismissal date;

(B) the date of the next permanency hearing; and

(C) the date the suit is set for trial.

SECTION 1.181. Section 263.307(b), Family Code, is amended to read as follows:

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

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

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

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

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

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

(6) the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home;

(7) whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home;

(8) whether there is a history of substance abuse by the child's family or others who have access to the child's home;

(9) whether the perpetrator of the harm to the child is identified;

(10) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision;

(11) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time;

(12) whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with:

(A) minimally adequate health and nutritional care;

(B) care, nurturance, and appropriate discipline consistent with the child's physical and psychological development;

(C) guidance and supervision consistent with the child's safety;

(D) a safe physical home environment;

(E) protection from repeated exposure to violence even though the violence may not be directed at the child; and

(F) an understanding of the child's needs and capabilities; and

(13) whether an adequate social support system consisting of an extended family and friends is available to the child.

SECTION 1.182. Sections 263.502(a) and (c), Family Code, are amended to read as follows:

(a) Not later than the 10th day before the date set for a placement review hearing, the department [~~or other authorized agency~~] shall file a placement review report with the court and provide a copy to each person entitled to notice under Section 263.501(d).

(c) The placement review report must identify the department's permanency goal for the child and must:

(1) evaluate whether the child's current placement is appropriate for meeting the child's needs;

(2) evaluate whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;

(3) contain a transition plan for a child who is at least 16 years of age that identifies the services and specific tasks that are needed to assist the child in making the transition from substitute care to adult living and describes the services that are being provided through the Transitional Living Services Program operated by the department;

(4) evaluate whether the child's current educational placement is appropriate for meeting the child's academic needs;

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

(6) describe the efforts of the department [~~or authorized agency~~] to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption, including efforts to provide adoption promotion and support services as defined by 42 U.S.C. Section 629a and other efforts consistent with the federal Adoption and Safe Families Act of 1997 (Pub. L. No. 105–89);

(7) for a child for whom the department has been named managing conservator in a final order that does not include termination of parental rights, describe the efforts of the department to find a permanent placement for the child, including efforts to:

(A) work with the caregiver with whom the child is placed to determine whether that caregiver is willing to become a permanent placement for the child;

(B) locate a relative or other suitable individual to serve as permanent managing conservator of the child; and

(C) evaluate any change in a parent's circumstances to determine whether:

(i) the child can be returned to the parent; or

(ii) parental rights should be terminated;

(8) with respect to a child committed to the Texas Juvenile Justice Department or released under supervision by the Texas Juvenile Justice Department:

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

(B) describe, using information provided by the Texas Juvenile Justice Department, the child's progress in any rehabilitation program administered by the Texas Juvenile Justice Department; and

(C) recommend other plans or services to meet the child's needs; and

(9) identify any placement changes that have occurred since the most recent court hearing concerning the child and describe any barriers to sustaining the child's placement, including any reason for which a substitute care provider has requested a placement change.

SECTION 1.183. Section 263.503(a), Family Code, as amended by Chapters 204 (H.B. 915) and 688 (H.B. 2619), Acts of the 83rd Legislature, Regular Session, 2013, is reenacted and amended to read as follows:

(a) At each placement review hearing, the court shall determine whether:

(1) the child's current placement is necessary, safe, and appropriate for meeting the child's needs, including with respect to a child placed outside of the state, whether the placement continues to be appropriate and in the best interest of the child;

(2) efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;

(3) the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living are available in the community;

(4) the child is receiving appropriate medical care;

(5) the child has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on the medical care provided;

(6) *for* a child who is receiving psychotropic medication, *the child*:

(A) has been provided appropriate psychosocial therapies, behavior strategies, and other non-pharmacological interventions; and

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

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

(8) the department [~~or authorized agency~~] has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption;

(9) for a child for whom the department has been named managing conservator in a final order that does not include termination of parental rights, a permanent placement, including appointing a relative as permanent managing conservator or returning the child to a parent, is appropriate for the child;

(10) for a child whose permanency goal is another planned, permanent living arrangement, the department has:

(A) documented a compelling reason why adoption, permanent managing conservatorship with a relative or other suitable individual, or returning the child to a parent is not in the child's best interest; and

(B) identified a family or other caring adult who has made a permanent commitment to the child;

(11) the department [~~or authorized agency~~] has made reasonable efforts to finalize the permanency plan that is in effect for the child; [~~and~~]

(12) if the child is committed to the Texas Juvenile Justice Department or released under supervision by the Texas Juvenile Justice Department, the child's needs for treatment, rehabilitation, and education are being met;

(13) [~~(10)~~] an education decision-maker for the child has been identified; and

(14) [~~(11)~~] the child's education needs and goals have been identified and addressed.

SECTION 1.184. Section 264.0091, Family Code, is amended to read as follows:

Sec. 264.0091. USE OF TELECONFERENCING AND VIDEOCONFERENCING TECHNOLOGY. Subject to the availability of funds, the department, in cooperation with district and county courts, shall expand the use of teleconferencing and videoconferencing to facilitate participation by medical experts, children, and other individuals in court proceedings, including children for whom the department [~~, an authorized agency,~~] or a licensed child-placing agency has been appointed managing conservator and who are committed to the Texas *Juvenile Justice Department* [~~Youth Commission~~].

SECTION 1.185. Section 264.010(d), Family Code, is amended to read as follows:

(d) A child abuse prevention and protection plan must:

(1) specify the manner of communication between entities who are parties to the plan, including the department, the *commission* [~~Texas Department of Human Services~~], local law enforcement agencies, the county and district attorneys, members of the medical and social service community, foster parents, and child advocacy groups; and

(2) provide other information concerning the prevention and investigation of child abuse in the area for which the plan is adopted.

SECTION 1.186. Section 264.0111(e), Family Code, is amended to read as follows:

(e) The *executive commissioner* [~~department~~] may adopt rules to implement this section.

SECTION 1.187. Section 264.0145(b), Family Code, is amended to read as follows:

(b) The *executive commissioner* [~~department~~] by rule shall establish guidelines that prioritize requests to release case records, including those made by an adult previously in the department's managing conservatorship.

SECTION 1.188. Sections 264.101(b) and (d), Family Code, are amended to read as follows:

(b) The department may not pay the cost of protective foster care for a child for whom the department has been named managing conservator under an order rendered solely under Section *161.001(b)(1)(J)* [~~161.001(1)(J)~~].

(d) The executive commissioner [~~of the Health and Human Services Commission~~] may adopt rules that establish criteria and guidelines for the payment of foster care, including medical care, for a child and for providing care for a child after the child becomes 18 years of age if the child meets the requirements for continued foster care under Subsection (a–1).

SECTION 1.189. Sections 264.107(a) and (b), Family Code, are amended to read as follows:

(a) The department shall use a system for the placement of children in contract residential care, including foster care, that conforms to the levels of care adopted [~~and maintained~~] by the *executive commissioner* [~~Health and Human Services Commission~~].

(b) The department shall use the standard application *provided by the Health and Human Services Commission* for the placement of children in contract residential care [~~as adopted and maintained by the Health and Human Services Commission~~].

SECTION 1.190. Section 264.1075(b), Family Code, is amended to read as follows:

(b) As soon as possible after a child begins receiving foster care under this subchapter, the department shall assess whether the child has a developmental *or intellectual* disability [~~or mental retardation~~]. The commission shall establish the procedures that the department must use in making an assessment under this subsection. The procedures may include screening or participation by:

(1) a person who has experience in childhood developmental *or intellectual* disabilities [~~or mental retardation~~];

(2) a local *intellectual and developmental disability* [~~mental retardation~~] authority; or

(3) a provider in a county with a local child welfare board.

SECTION 1.191. Section 264.108(f), Family Code, is amended to read as follows:

(f) The *executive commissioner* [~~department~~] by rule shall define what constitutes a delay under Subsections (b) and (d).

SECTION 1.192. Sections 264.110(b) and (g), Family Code, are amended to read as follows:

(b) A person registered under this section must satisfy requirements adopted by rule by the *executive commissioner* [~~department~~].

(g) The department may refuse to place a child with a person registered under this section only for a reason permitted under criteria adopted *by the executive commissioner* by [~~department~~] rule.

SECTION 1.193. Section 264.112(a), Family Code, is amended to read as follows:

(a) The department shall report the status for children in substitute care to the *executive commissioner* [~~Board of Protective and Regulatory Services~~] at least once every 12 months.

SECTION 1.194. Section 264.121(a), Family Code, is amended to read as follows:

(a) The department shall address the unique challenges facing foster children in the conservatorship of the department who must transition to independent living by:

(1) expanding efforts to improve transition planning and increasing the availability of transitional family group decision-making to all youth age 14 or older in the department's permanent managing conservatorship, including enrolling the youth in the Preparation for Adult Living Program before the age of 16;

(2) coordinating with the *commission* [~~Health and Human Services Commission~~] to obtain authority, to the extent allowed by federal law, the state Medicaid plan, the Title IV–E state plan, and any waiver or amendment to either plan, necessary to:

(A) extend foster care eligibility and transition services for youth up to age 21 and develop policy to permit eligible youth to return to foster care as necessary to achieve the goals of the Transitional Living Services Program; and

(B) extend Medicaid coverage for foster care youth and former foster care youth up to age 21 with a single application at the time the youth leaves foster care; and

(3) entering into cooperative agreements with the Texas Workforce Commission and local workforce development boards to further the objectives of the Preparation for Adult Living Program. The department, the Texas Workforce Commission, and the local workforce development boards shall ensure that services are prioritized and targeted to meet the needs of foster care and former foster care children and that such services will include, where feasible, referrals for short-term stays for youth needing housing.

SECTION 1.195. Section 264.124(b), Family Code, as added by Chapter 423 (S.B. 430), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

(b) The department, in accordance with *department rules* [~~executive commissioner rule~~], shall implement a process to verify that each foster parent who is seeking monetary

assistance from the department for day care for a foster child has attempted to find appropriate day-care services for the foster child through community services, including Head Start programs, prekindergarten classes, and early education programs offered in public schools. The department shall specify the documentation the foster parent must provide to the department to demonstrate compliance with the requirements established under this subsection.

SECTION 1.196. Section 264.205(b), Family Code, is amended to read as follows:

(b) A swift adoption team shall consist of department personnel who shall operate under policies adopted by rule by the *executive commissioner* [~~department~~]. The department shall set priorities for the allocation of department resources to enable a swift adoption team to operate successfully under the policies adopted under this subsection.

SECTION 1.197. Section 264.506(b), Family Code, is amended to read as follows:

(b) To achieve its purpose, a review team shall:

(1) adapt and implement, according to local needs and resources, the model protocols developed by the department and the committee;

(2) meet on a regular basis to review child fatality cases and recommend methods to improve coordination of services and investigations between agencies that are represented on the team;

(3) collect and maintain data as required by the committee; and

(4) submit to the [~~bureau of~~] vital statistics *unit* data reports on deaths reviewed as specified by the committee.

SECTION 1.198. Section 264.507, Family Code, is amended to read as follows:

Sec. 264.507. DUTIES OF PRESIDING OFFICER. The presiding officer of a review team shall:

(1) send notices to the review team members of a meeting to review a child fatality;

(2) provide a list to the review team members of each child fatality to be reviewed at the meeting;

(3) submit data reports to the [~~bureau of~~] vital statistics *unit* not later than the 30th day after the date on which the review took place; and

(4) ensure that the review team operates according to the protocols developed by the department and the committee, as adapted by the review team.

SECTION 1.199. Section 264.514(a), Family Code, is amended to read as follows:

(a) A medical examiner or justice of the peace notified of a death of a child under Section 264.513 shall hold an inquest under Chapter 49, Code of Criminal Procedure, to determine whether the death is unexpected or the result of abuse or neglect. An inquest is not required under this subchapter if the child's death is expected and is due to a congenital or neoplastic disease. A death caused by an infectious disease may be considered an expected death if:

(1) the disease was not acquired as a result of trauma or poisoning;

(2) the infectious organism is identified using standard medical procedures; and

(3) the death is not reportable to the [~~Texas~~] Department of *State* Health *Services* under Chapter 81, Health and Safety Code.

SECTION 1.200. Section 264.614(d), Family Code, is amended to read as follows:

(d) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules necessary to implement this section.

SECTION 1.201. Section 264.753, Family Code, is amended to read as follows:

Sec. 264.753. EXPEDITED PLACEMENT. The department [~~or other authorized entity~~] shall expedite the completion of the background and criminal history check, the home study, and any other administrative procedure to ensure that the child is placed with a qualified relative or caregiver as soon as possible after the date the caregiver is identified.

SECTION 1.202. Section 264.755(d), Family Code, is amended to read as follows:

(d) The department, in accordance with *department rules* [~~executive commissioner rule~~], shall implement a process to verify that each relative and designated caregiver who is seeking monetary assistance or additional support services from the department for day care as defined by Section 264.124 for a child under this section has attempted to find appropriate day-care services for the child through community services, including Head Start programs, prekindergarten classes, and early education programs offered in public schools. The department shall specify the documentation the relative or designated caregiver must provide to the department to demonstrate compliance with the requirements established under this subsection. The department may not provide monetary assistance or additional support services to the relative or designated caregiver for the day care unless the department receives the required verification.

SECTION 1.203. The following provisions of the Family Code are repealed:

(1) Section 101.002;

(2) Section 161.002(c);

(3) Section 162.305;

(4) Sections 261.001(3) and (8);

(5) Section 262.008(c);

(6) Section 263.1015;

(7) Section 264.007;

(8) Section 264.105;

(9) Section 264.106;

(10) Section 264.1063;

(11) Section 264.107(f);

(12) Section 264.206;

(13) Sections 264.501(2) and (5); and

(14) Subchapter H, Chapter 264.

ARTICLE 2. GOVERNMENT CODE

SECTION 2.001. Section 403.1066(c), Government Code, is amended to read as follows:

(c) The available earnings of the fund may be appropriated to the [~~Texas~~] Department of *State* Health *Services* for the purpose of providing services at *a public health hospital as defined by Section 13.033, Health and Safety Code,* [~~the Texas Center for Infectious Disease~~] and grants, loans, or loan guarantees to public or nonprofit community hospitals with 125 beds or fewer located in an urban area of the state.

SECTION 2.002. Section 411.110(a), Government Code, is amended to read as follows:

(a) The Department of State Health Services is entitled to obtain from the department criminal history record information maintained by the department that relates to:

(1) a person who is:

(A) an applicant for a license or certificate under the Emergency *Health Care* [~~Medical Services~~] Act (Chapter 773, Health and Safety Code);

(B) an owner or manager of an applicant for an emergency medical services provider license under that Act; or

(C) the holder of a license or certificate under that Act;

(2) an applicant for a license or a license holder under Subchapter N, Chapter 431, Health and Safety Code;

(3) an applicant for a license, the owner or manager of an applicant for a massage establishment license, or a license holder under Chapter 455, Occupations Code;

(4) an applicant for employment at or current employee of:

(A) *a public health hospital as defined by Section 13.033, Health and Safety Code* [~~the Texas Center for Infectious Disease~~]; or

(B) the South Texas Health Care System; or

(5) an applicant for employment at, current employee of, or person who contracts or may contract to provide goods or services with:

(A) the vital statistics unit of the Department of State Health Services; or

(B) the Council on Sex Offender Treatment or other division or component of the Department of State Health Services that monitors sexually violent predators as described by Section 841.003(a), Health and Safety Code.

SECTION 2.003. Section 411.1131, Government Code, is amended to read as follows:

Sec. 411.1131. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: *DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES* [~~TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING~~]. (a) The *Department of Assistive and Rehabilitative Services* [~~Texas Commission for the Deaf and Hard of Hearing~~] is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is an applicant for a staff position at an outdoor training program for children who are deaf or hard of hearing conducted by a private entity through a contract with the *Department of Assistive and Rehabilitative Services* [~~commission~~] in accordance with Section 81.013, Human Resources Code.

(b) Criminal history record information obtained by the *Department of Assistive and Rehabilitative Services* [~~Texas Commission for the Deaf and Hard of Hearing~~] under Subsection (a) may be used only to evaluate an applicant for a staff position at an outdoor training program for children who are deaf or hard of hearing. The *Department of Assistive and Rehabilitative Services* [~~Texas Commission for the Deaf and Hard of Hearing~~] may release or disclose the information to a private entity described by Subsection (a) for that purpose.

(c) The *Department of Assistive and Rehabilitative Services* [~~Texas Commission for the Deaf and Hard of Hearing~~] may not release or disclose information obtained under Subsection (a), except on court order or with the consent of the person who is the subject of the criminal history record information, and shall destroy all criminal history record information obtained under Subsection (a) after the information is used for its authorized purpose.

SECTION 2.004. Section 411.114(a)(3), Government Code, is amended to read as follows:

(3) The Department of Family and Protective Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;

(B) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;

(C) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;

(D) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected;

(E) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America;

(F) a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information;

(G) a child who is related to the caretaker, as determined under Section 42.002,

Human Resources Code, and who resides in or is present in a child-care facility or family home, other than a child described by Subdivision (2)(C), or any other person who has unsupervised access to a child in the care of a child-care facility or family home;

(H) an applicant for a position with the Department of Family and Protective Services, other than a position described by Subdivision (2)(D), regardless of the duties of the position;

(I) a volunteer or applicant volunteer with the Department of Family and Protective Services, other than a registered volunteer, regardless of the duties to be performed;

(J) a person providing or applying to provide in-home, adoptive, or foster care for children to the extent necessary to comply with Subchapter B, Chapter 162, Family Code;

(K) a Department of Family and Protective Services employee, other than an employee described by Subdivision (2)(H), regardless of the duties of the employee's position;

(L) a relative of a child in the care of the Department of Family and Protective Services, to the extent necessary to comply with Section 162.007, Family Code;

(M) a person, other than an alleged perpetrator in a report described in Subdivision (2)(I), living in the residence in which the alleged victim of the report resides;

(N) [~~a contractor or an employee of a contractor who delivers services to a ward of the Department of Family and Protective Services under a contract with the estate of the ward;~~

[~~(O) a person who seeks unsupervised visits with a ward of the Department of Family and Protective Services, including a relative of the ward;~~

[~~(P)~~] an employee, volunteer, or applicant volunteer of a children's advocacy center under Subchapter E, Chapter 264, Family Code, including a member of the governing board of a center;

(O) [~~(Q)~~] an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with an entity or person that contracts with the Department of Family and Protective Services and has access to confidential information in the department's records, if the employee, applicant, volunteer, or applicant volunteer has or will have access to that confidential information;

(P) [~~(R)~~] an employee of or volunteer at, or an applicant for employment with or to be a volunteer at, an entity that provides supervised independent living services to a young adult receiving extended foster care services from the Department of Family and Protective Services;

(Q) [~~(S)~~] a person 14 years of age or older who will be regularly or frequently working or staying in a host home that is providing supervised independent living services to a young adult receiving extended foster care services from the Department of Family and Protective Services; or

(R) [~~(T)~~] a person who volunteers to supervise visitation under Subchapter B, Chapter 263, Family Code.

SECTION 2.005. Sections 411.1386(a–1) and (a–3), Government Code, are amended to read as follows:

(a–1) The Department of Aging and Disability Services shall obtain from the Department of Public Safety criminal history record information maintained by the Department of Public Safety that relates to each individual who is or will be providing guardianship services to a ward of or referred by the Department of Aging and Disability Services, including:

(1) an employee of or an applicant selected for an employment position with the Department of Aging and Disability Services;

(2) a volunteer or an applicant selected to volunteer with the Department of Aging and Disability Services;

(3) an employee of or an applicant selected for an employment position with a business entity or other person that contracts with the Department of Aging and Disability Services to provide guardianship services to a ward referred by the department; [~~and~~]

(4) a volunteer or an applicant selected to volunteer with a business entity or person described by Subdivision (3)*; and*

(5) a contractor or an employee of a contractor who provides services to a ward of the Department of Aging and Disability Services under a contract with the estate of the ward.

(a–3) The information in Subsection (a–1) regarding employees, *contractors,* or volunteers providing guardianship services must be obtained annually.

SECTION 2.006. Section 411.13861, Government Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) The Department of Aging and Disability Services is entitled to obtain from the Department of Public Safety criminal history record information maintained by the Department of Public Safety that relates to a person*:*

(1) required to undergo a background and criminal history check under Chapter 248A, Health and Safety Code*; or*

(2) who seeks unsupervised visits with a ward of the department, including a relative of the ward.

(e) In this section, "ward" has the meaning assigned by Section 1002.030, Estates Code.

SECTION 2.007. Section 531.001, Government Code, is amended by amending Subdivisions (4–a) and (6) and adding Subdivision (4–b) to read as follows:

(4–a) "Home telemonitoring service" means a health service that requires scheduled remote monitoring of data related to a patient's health and transmission of the data to a licensed home *and community support services* [~~health~~] agency or a hospital, as those terms are defined by Section 531.02164(a).

(4–b) "Medicaid" means the medical assistance program established under Chapter 32, Human Resources Code.

(6) "Section 1915(c) waiver program" means a federally funded [~~Medicaid~~] program of the state *under Medicaid* that is authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)).

SECTION 2.008. Section 531.0055(b), Government Code, is amended to read as follows:

(b) The commission shall:

(1) supervise the administration and operation of [~~the~~] Medicaid [~~program~~], including the administration and operation of the Medicaid managed care system in accordance with Section 531.021;

(2) perform information systems planning and management for health and human services agencies under Section 531.0273, with:

(A) the provision of information technology services at health and human services agencies considered to be a centralized administrative support service either performed by commission personnel or performed under a contract with the commission; and

(B) an emphasis on research and implementation on a demonstration or pilot basis of appropriate and efficient uses of new and existing technology to improve the operation of health and human services agencies and delivery of health and human services;

(3) monitor and ensure the effective use of all federal funds received by a health and human services agency in accordance with Section 531.028 and the General Appropriations Act;

(4) implement Texas Integrated Enrollment Services as required by Subchapter F, except that notwithstanding Subchapter F, determining eligibility for benefits under the following programs is the responsibility of and must be centralized by the commission:

(A) the child health plan program;

(B) the financial assistance program under Chapter 31, Human Resources Code;

(C) *Medicaid* [~~the medical assistance program under Chapter 32, Human Resources Code~~];

(D) the *supplemental nutrition* [~~nutritional~~] assistance *program* [~~programs~~] under Chapter 33, Human Resources Code;

(E) long-term care services, as defined by Section 22.0011, Human Resources Code;

(F) community-based support services identified or provided in accordance with Section 531.02481; and

(G) other health and human services programs, as appropriate; and

(5) implement programs intended to prevent family violence and provide services to victims of family violence.

SECTION 2.009. Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.00551 to read as follows:

Sec. 531.00551. PROCEDURES FOR ADOPTING RULES AND POLICIES. (a) The executive commissioner shall develop procedures for adopting rules for the health and human services agencies. The procedures must specify the manner in which the health and human services agencies may participate in the rulemaking process.

(b) A health and human services agency shall assist the executive commissioner in the development of policies and guidelines needed for the administration of the agency's functions and shall submit any proposed policies and guidelines to the executive commissioner. The agency may implement a proposed policy or guideline only if the executive commissioner approves the policy or guideline.

SECTION 2.010. Section 531.006, Government Code, is amended to read as follows:

Sec. 531.006. ELIGIBILITY. (a) A person is not eligible for appointment as *executive* commissioner if the person or the person's spouse is an employee, officer, or paid consultant of a trade association in a field under the commission's jurisdiction.

(b) A person who is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation in or on behalf of a profession related to a field under the commission's jurisdiction may not serve as *executive* commissioner.

(c) A person is not eligible for appointment as *executive* commissioner if the person has a financial interest in a corporation, organization, or association under contract with:

(1) the [~~Texas~~] Department of *State Health Services, if the contract involves mental health services;*

(2) the Department of Aging and Disability Services [~~Mental Health and Mental Retardation~~], *if the contract involves intellectual and developmental disability services;*

(3) a local mental health or *intellectual and developmental disability* [~~mental retardation~~] authority;[~~,~~] or

(4) a community center.

SECTION 2.011. Section 531.007, Government Code, is amended to read as follows:

Sec. 531.007. TERM. The *executive* commissioner serves a two-year term expiring February 1 of each odd-numbered year.

SECTION 2.012. Section 531.008(c), Government Code, is amended to read as follows:

(c) The executive commissioner shall establish the following divisions and offices within the commission:

(1) the eligibility services division to make eligibility determinations for services provided through the commission or a health and human services agency related to:

(A) the child health plan program;

(B) the financial assistance program under Chapter 31, Human Resources Code;

(C) *Medicaid* [~~the medical assistance program under Chapter 32, Human Resources Code~~];

(D) the *supplemental nutrition* [~~nutritional~~] assistance *program* [~~programs~~] under Chapter 33, Human Resources Code;

(E) long-term care services, as defined by Section 22.0011, Human Resources Code;

(F) community-based support services identified or provided in accordance with Section 531.02481; and

(G) other health and human services programs, as appropriate;

(2) the office of inspector general to perform fraud and abuse investigation and enforcement functions as provided by Subchapter C and other law;

(3) the office of the ombudsman to:

(A) provide dispute resolution services for the commission and the health and human services agencies; and

(B) perform consumer protection functions related to health and human services;

(4) a purchasing division as provided by Section 531.017; and

(5) an internal audit division to conduct a program of internal auditing in accordance with [~~Government Code,~~] Chapter 2102.

SECTION 2.013. Section 531.0081, Government Code, is amended to read as follows:

Sec. 531.0081. [~~OFFICE OF~~] MEDICAL TECHNOLOGY. [~~(a) In this section, "office" means the office of medical technology.~~]

(b) The commission shall [~~establish the office of medical technology within the commission. The office shall~~] explore and evaluate new developments in medical technology and propose implementing the technology in *Medicaid* [~~the medical assistance program under Chapter 32, Human Resources Code~~], if appropriate and cost-effective.

(c) *Commission* [~~Office~~] staff *implementing this section* must have skills and experience in research regarding health care technology.

SECTION 2.014. Section 531.0082(d), Government Code, is amended to read as follows:

(d) Not later than the 30th day following the end of each calendar quarter, the data analysis unit shall provide an update on the unit's activities and findings to the governor, the lieutenant governor, the speaker of the house of representatives, the chair of the Senate Finance Committee, the chair of the House Appropriations Committee, and the chairs of the standing committees of the senate and house of representatives having jurisdiction over [~~the~~] Medicaid [~~program~~].

SECTION 2.015. Sections 531.009(a), (b), (c), (d), (e), and (g), Government Code, are amended to read as follows:

(a) The *executive* commissioner shall employ a medical director to provide medical expertise to the *executive* commissioner and the commission and may employ other personnel necessary to administer the commission's duties.

(b) The *executive* commissioner [~~or the commissioner's designated representative~~] shall develop an intra-agency career ladder program, one part of which must require the intra-agency posting of all non-entry-level positions concurrently with any public posting.

(c) The *executive* commissioner [~~or the commissioner's designated representative~~] shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this subsection.

(d) The *executive* commissioner shall provide to commission employees as often as is necessary information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state employees.

(e) The *executive* commissioner [~~or the commissioner's designated representative~~] shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin.

(g) The policy statement described by Subsection (e) must:

(1) be updated annually;

(2) be reviewed by the *Texas Workforce Commission civil rights division* [~~state Commission on Human Rights~~] for compliance with Subsection (f)(1); and

(3) be filed with the governor's office.

SECTION 2.016. Section 531.011(d), Government Code, is amended to read as follows:

(d) The *executive* commissioner by rule shall establish methods by which the public, consumers, and service recipients can be notified of the mailing addresses and telephone numbers of appropriate agency personnel for the purpose of directing complaints to the commission. The commission may provide for that notification:

(1) on each registration form, application, or written contract for services of a person regulated by the commission;

(2) on a sign prominently displayed in the place of business of each person regulated by the commission; or

(3) in a bill for service provided by a person regulated by the commission.

SECTION 2.017. Section 531.012, Government Code, is amended to read as follows:

Sec. 531.012. ADVISORY COMMITTEES. The *executive* commissioner may appoint advisory committees as needed.

SECTION 2.018. Section 531.020, Government Code, is amended to read as follows:

Sec. 531.020. OFFICE OF COMMUNITY *ACCESS AND SERVICES* [~~COLLABORATION~~]. The executive commissioner shall establish within the commission an office of community *access and services* [~~collaboration~~]. The office is responsible for:

(1) collaborating with community, state, and federal stakeholders to improve the elements of the health care system that are involved in the delivery of Medicaid services; and

(2) sharing with Medicaid providers, including hospitals, any best practices, resources, or other information regarding improvements to the health care system.

SECTION 2.019. Section 531.021, Government Code, is amended to read as follows:

Sec. 531.021. ADMINISTRATION OF MEDICAID [~~PROGRAM~~]. (a) The commission is the state agency designated to administer federal *Medicaid* [~~medical assistance~~] funds.

(b) The commission shall:

(1) plan and direct [~~the~~] Medicaid [~~program~~] in each agency that operates a portion of [~~the~~] Medicaid [~~program~~], including the management of the Medicaid managed care system and the development, procurement, management, and monitoring of contracts necessary to implement the Medicaid managed care system; *and*

(2) [~~adopt reasonable rules and standards governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program; and~~

[~~(3)~~] establish requirements for and define the scope of the ongoing evaluation of the Medicaid managed care system conducted in conjunction with the *Department of State Health Services* [~~Texas Health Care Information Council~~] under Section 108.0065, Health and Safety Code.

(b–1) The executive commissioner shall adopt reasonable rules and standards governing the determination of fees, charges, and rates for Medicaid payments.

(c) The *executive commissioner* [~~commission~~] in *the* [~~its~~] adoption of reasonable rules and standards under Subsection *(b–1)* [~~(b)(2)~~] shall include financial performance standards that, in the event of a proposed rate reduction, provide private *ICF–IID* [~~ICF–MR~~] facilities and home and community-based services providers with flexibility in determining how to use *Medicaid* [~~medical assistance~~] payments to provide services in the most cost-effective manner while continuing to meet the state and federal requirements of [~~the~~] Medicaid [~~program~~].

(d) In adopting rules and standards required by Subsection *(b–1)* [~~(b)(2)~~], the *executive commissioner* [~~commission~~] may provide for payment of fees, charges, and rates in accordance with:

(1) formulas, procedures, or methodologies prescribed by the commission's rules;

(2) applicable state or federal law, policies, rules, regulations, or guidelines;

(3) economic conditions that substantially and materially affect provider participation in [~~the~~] Medicaid [~~program~~], as determined by the *executive* commissioner; or

(4) available levels of appropriated state and federal funds.

(e) Notwithstanding any other provision of Chapter 32, Human Resources Code, Chapter 533, or this chapter, the commission may adjust the fees, charges, and rates paid to Medicaid providers as necessary to achieve the objectives of [~~the~~] Medicaid [~~program~~] in a manner consistent with the considerations described by Subsection (d).

(f) In adopting rates for *Medicaid* [~~medical assistance~~] payments under Subsection *(b–1)* [~~(b)(2)~~], the executive commissioner may adopt reimbursement rates for appropriate nursing services provided to recipients with certain health conditions if those services are determined to provide a cost-effective alternative to hospitalization. A physician must certify that the nursing services are medically appropriate for the recipient for those services to qualify for reimbursement under this subsection.

(g) In adopting rates for *Medicaid* [~~medical assistance~~] payments under Subsection *(b–1)* [~~(b)(2)~~], the executive commissioner may adopt cost-effective reimbursement rates for group appointments with *Medicaid* [~~medical assistance~~] providers for certain diseases and medical conditions specified by rules of the executive commissioner.

SECTION 2.020. Sections 531.0211(a) and (c), Government Code, are amended to read as follows:

(a) In adopting rules to implement a managed care Medicaid program, the *executive commissioner* [~~commission~~] shall establish guidelines for, and require managed care organizations to provide, education programs for providers and clients using a variety of techniques and mediums.

(c) A client education program must present information in a manner that is easy to understand. A program must include information on:

(1) a client's rights and responsibilities under the bill of rights and the bill of responsibilities prescribed by Section 531.0212;

(2) how to access health care services;

(3) how to access complaint procedures and the client's right to bypass the managed care organization's internal complaint system and use the notice and appeal procedures otherwise required by [~~the~~] Medicaid [~~program~~];

(4) Medicaid policies, procedures, eligibility standards, and benefits;

(5) the policies and procedures of the managed care organization; and

(6) the importance of prevention, early intervention, and appropriate use of services.

SECTION 2.021. Sections 531.02111(a) and (b), Government Code, are amended to read as follows:

(a) The commission shall prepare a biennial Medicaid financial report covering each

state agency that *operates* [~~administers~~] any part of [~~the state~~] Medicaid [~~program~~] and each *component* of [~~the~~] Medicaid [~~programs~~] operated [~~or administered~~] by those agencies.

(b) The report must include:

(1) for each state agency described by Subsection (a):

(A) a description of each of the *components of* Medicaid [~~programs administered or~~] operated by the agency; and

(B) an accounting of all funds related to [~~the state~~] Medicaid [~~program~~] received and disbursed by the agency during the period covered by the report, including:

(i) the amount of any federal *Medicaid* [~~medical assistance~~] funds allocated to the agency for the support of each of the Medicaid *components* [~~programs~~] operated [~~or administered~~] by the agency;

(ii) the amount of any funds appropriated by the legislature to the agency for each of those *components* [~~programs~~]; and

(iii) the amount of *Medicaid* [~~medical assistance~~] payments and related expenditures made by or in connection with each of those *components* [~~programs~~]; and

(2) for each Medicaid *component* [~~program~~] identified in the report:

(A) the amount and source of funds or other revenue received by or made available to the agency for the *component* [~~program~~]; and

(B) the information required by Section 531.02112(b).

SECTION 2.022. Sections 531.02112(a) and (b), Government Code, are amended to read as follows:

(a) The commission shall prepare a report, on a quarterly basis, regarding the Medicaid expenditures of each state agency that [~~administers or~~] operates a *component of* Medicaid [~~program~~].

(b) The report must identify each agency's expenditures by Medicaid *component* [~~program~~] and must include for each *component* [~~program~~]:

(1) the amount spent on each type of service or benefit provided by or under the *component* [~~program~~];

(2) the amount spent on [~~program~~] operations *for that component*, including eligibility determination, claims processing, and case management; and

(3) the amount spent on any other administrative costs.

SECTION 2.023. Sections 531.02115(a) and (c), Government Code, are amended to read as follows:

(a) A provider participating in [~~the~~] Medicaid or *the* child health plan program, including a provider participating in the network of a managed care organization that contracts with the commission to provide services under [~~the~~] Medicaid or *the* child health plan program, may not engage in any marketing activity, including any dissemination of material or other attempt to communicate, that:

(1) involves unsolicited personal contact, including by door-to-door solicitation, solicitation at a child-care facility or other type of facility, direct mail, or telephone, with a Medicaid client or a parent whose child is enrolled in [~~the~~] Medicaid or *the* child health plan program;

(2) is directed at the client or parent solely because the client or the parent's child is receiving benefits under [~~the~~] Medicaid or *the* child health plan program; and

(3) is intended to influence the client's or parent's choice of provider.

(c) Nothing in this section prohibits:

(1) a provider participating in [~~the~~] Medicaid or *the* child health plan program from:

(A) engaging in a marketing activity, including any dissemination of material or

other attempt to communicate, that is intended to influence the choice of provider by a Medicaid client or a parent whose child is enrolled in [~~the~~] Medicaid or *the* child health plan program, if the marketing activity:

(i) is conducted at a community-sponsored educational event, health fair, outreach activity, or other similar community or nonprofit event in which the provider participates and does not involve unsolicited personal contact or promotion of the provider's practice; or

(ii) involves only the general dissemination of information, including by television, radio, newspaper, or billboard advertisement, and does not involve unsolicited personal contact;

(B) as permitted under the provider's contract, engaging in the dissemination of material or another attempt to communicate with a Medicaid client or a parent whose child is enrolled in [~~the~~] Medicaid or *the* child health plan program, including communication in person or by direct mail or telephone, for the purpose of:

(i) providing an appointment reminder;

(ii) distributing promotional health materials;

(iii) providing information about the types of services offered by the provider; or

(iv) coordinating patient care; or

(C) engaging in a marketing activity that has been submitted for review and obtained a notice of prior authorization from the commission under Subsection (d); or

(2) a provider participating in the [~~Medicaid~~] STAR + PLUS *Medicaid managed care* program from, as permitted under the provider's contract, engaging in a marketing activity, including any dissemination of material or other attempt to communicate, that is intended to educate a Medicaid client about available long-term care services and supports.

SECTION 2.024. Sections 531.0212(a) and (c), Government Code, are amended to read as follows:

(a) The *executive commissioner* [~~commission~~] by rule shall adopt a bill of rights and a bill of responsibilities for each person enrolled in [~~the~~] Medicaid [~~program~~].

(c) The bill of responsibilities must address a client's responsibility to:

(1) learn and understand each right the client has under [~~the~~] Medicaid [~~program~~];

(2) abide by the health plan and Medicaid policies and procedures;

(3) share information relating to the client's health status with the primary care provider and become fully informed about service and treatment options; and

(4) actively participate in decisions relating to service and treatment options, make personal choices, and take action to maintain the client's health.

SECTION 2.025. Section 531.0213(d), Government Code, is amended to read as follows:

(d) As a part of the support and information services required by this section, the commission or nonprofit organization shall:

(1) operate a statewide toll-free assistance telephone number that includes TDD lines and assistance for persons who speak Spanish;

(2) intervene promptly with the state Medicaid office, managed care organizations and providers, [~~the Texas Department of Health,~~] and any other appropriate entity on behalf of a person who has an urgent need for medical services;

(3) assist a person who is experiencing barriers in the Medicaid application and enrollment process and refer the person for further assistance if appropriate;

(4) educate persons so that they:

(A) understand the concept of managed care;

(B) understand their rights under [~~the~~] Medicaid [~~program~~], including grievance and appeal procedures; and

(C) are able to advocate for themselves;

(5) collect and maintain statistical information on a regional basis regarding calls received by the assistance lines and publish quarterly reports that:

(A) list the number of calls received by region;

(B) identify trends in delivery and access problems;

(C) identify recurring barriers in the Medicaid system; and

(D) indicate other problems identified with Medicaid managed care; and

(6) assist the state Medicaid office *and*[~~,~~] managed care organizations and providers[~~, and the Texas Department of Health~~] in identifying and correcting problems, including site visits to affected regions if necessary.

SECTION 2.026. Sections 531.0214(a), (c), and (e), Government Code, are amended to read as follows:

(a) The commission and each health and human services agency that administers a part of [~~the state~~] Medicaid [~~program~~] shall jointly develop a system to coordinate and integrate state Medicaid databases to:

(1) facilitate the comprehensive analysis of Medicaid data; and

(2) detect fraud perpetrated by a program provider or client.

(c) On the request of the *executive* commissioner, a state agency that administers any part of [~~the state~~] Medicaid [~~program~~] shall assist the commission in developing the system required by this section.

(e) The commission shall ensure that the database system is used each month to match [~~bureau of~~] vital statistics *unit* death records with a list of persons eligible for *Medicaid* [~~medical assistance under Chapter 32, Human Resources Code~~], and that each person who is deceased is promptly removed from the list of persons eligible for *Medicaid* [~~medical assistance~~].

SECTION 2.027. Section 531.02141(a), Government Code, is amended to read as follows:

(a) The commission shall make every effort to improve data analysis and integrate available information associated with [~~the~~] Medicaid [~~program~~]. The commission shall use the decision support system in the commission's center for strategic decision support for this purpose and shall modify or redesign the system to allow for the data collected by [~~the~~] Medicaid [~~program~~] to be used more systematically and effectively for Medicaid [~~program~~] evaluation and policy development. The commission shall develop or redesign the system as necessary to ensure that the system:

(1) incorporates program enrollment, utilization, and provider data that are currently collected;

(2) allows data manipulation and quick analysis to address a large variety of questions concerning enrollment and utilization patterns and trends within the program;

(3) is able to obtain consistent and accurate answers to questions;

(4) allows for analysis of multiple issues within the program to determine whether any programmatic or policy issues overlap or are in conflict;

(5) includes predefined data reports on utilization of high-cost services that allow program management to analyze and determine the reasons for an increase or decrease in utilization and immediately proceed with policy changes, if appropriate;

(6) includes any encounter data with respect to recipients that a managed care organization that contracts with the commission under Chapter 533 receives from a health care provider under the organization's provider network; and

(7) links Medicaid and non-Medicaid data sets, including data sets related to [~~the~~]

Medicaid [~~program~~], the Temporary Assistance for Needy Families program, the Special Supplemental Nutrition Program for Women, Infants, and Children, vital statistics, and other public health programs.

SECTION 2.028. Section 531.0215, Government Code, is amended to read as follows:

Sec. 531.0215. COMPILATION OF STATISTICS RELATING TO FRAUD. The commission and each health and human services agency that administers a part of [~~the state~~] Medicaid [~~program~~] shall maintain statistics on the number, type, and disposition of fraudulent claims for benefits submitted under the part of the program the agency administers.

SECTION 2.029. Sections 531.0216(a), (d), and (f), Government Code, are amended to read as follows:

(a) The *executive commissioner* [~~commission~~] by rule shall develop and implement a system to reimburse providers of services under [~~the state~~] Medicaid [~~program~~] for services performed using telemedicine medical services or telehealth services.

(d) Subject to Section 153.004, Occupations Code, the *executive commissioner* [~~commission~~] may adopt rules as necessary to implement this section. In the rules adopted under this section, the *executive commissioner* [~~commission~~] shall:

(1) refer to the site where the patient is physically located as the patient site; and

(2) refer to the site where the physician or health professional providing the telemedicine medical service or telehealth service is physically located as the distant site.

(f) Not later than December 1 of each even-numbered year, the commission shall report to the speaker of the house of representatives and the lieutenant governor on the effects of telemedicine medical services, telehealth services, and home telemonitoring services on [~~the~~] Medicaid [~~program~~] in the state, including the number of physicians, health professionals, and licensed health care facilities using telemedicine medical services, telehealth services, or home telemonitoring services, the geographic and demographic disposition of the physicians and health professionals, the number of patients receiving telemedicine medical services, telehealth services, and home telemonitoring services, the types of services being provided, and the cost of utilization of telemedicine medical services, telehealth services, and home telemonitoring services to *Medicaid* [~~the program~~].

SECTION 2.030. Section 531.02161, Government Code, is amended to read as follows:

Sec. 531.02161. TELEMEDICINE, TELEHEALTH, AND HOME TELEMONITORING TECHNOLOGY STANDARDS. (b) The *executive commissioner* [~~commission and the Telecommunications Infrastructure Fund Board~~] by [~~joint~~] rule shall establish and adopt minimum standards for an operating system used in the provision of telemedicine medical services, telehealth services, or home telemonitoring services by a health care facility participating in [~~the state~~] Medicaid [~~program~~], including standards for electronic transmission, software, and hardware.

(c) In developing standards under this section, the *executive commissioner* [~~commission and the Telecommunications Infrastructure Fund Board~~] shall address:

(1) authentication and authorization of users;

(2) authentication of the origin of information;

(3) the prevention of unauthorized access to the system or information;

(4) system security, including the integrity of information that is collected, program integrity, and system integrity;

(5) maintenance of documentation about system and information usage;

(6) information storage, maintenance, and transmission; and

(7) synchronization and verification of patient profile data.

SECTION 2.031. Section 531.02162(b), Government Code, is amended to read as follows:

(b) The *executive commissioner* [~~commission~~] by rule shall establish policies that permit reimbursement under [~~the state~~] Medicaid and *the child* [~~children's~~] health *plan* [~~insurance~~] program for services provided through telemedicine medical services and telehealth services to children with special health care needs.

SECTION 2.032. Sections 531.02163(a), (c), and (d), Government Code, are amended to read as follows:

(a) In this section, "health professional" means an individual who:

(1) is licensed or certified in this state to perform health care services; and

(2) is not a physician, registered nurse, advanced practice *registered* nurse, or physician assistant.

(c) Notwithstanding Section 531.0217, the commission may provide reimbursement under [~~the state~~] Medicaid [~~program~~] for a telemedicine medical service initiated by a trained health professional who complies with the minimum standards adopted under this section.

(d) The commission shall provide reimbursement under [~~the state~~] Medicaid [~~program~~] to a physician for overseeing a telemedicine consultation at a telemedicine distant site if the telepresenter at the patient site is another physician or is an advanced practice *registered* nurse, registered nurse, or physician assistant acting under physician delegation and supervision throughout the consultation.

SECTION 2.033. Section 531.02164, Government Code, is amended to read as follows:

Sec. 531.02164. MEDICAID SERVICES PROVIDED THROUGH HOME TELEMONITORING SERVICES. (a) In this section:

(1) "Home *and community support services* [~~health~~] agency" means a *person* [~~facility~~] licensed under Chapter 142, Health and Safety Code, to provide home health, *hospice, or personal assistance* services as defined by Section 142.001, Health and Safety Code.

(2) "Hospital" means a hospital licensed under Chapter 241, Health and Safety Code.

(b) If the commission determines that establishing a statewide program that permits reimbursement under [~~the state~~] Medicaid [~~program~~] for home telemonitoring services would be cost-effective and feasible, the executive commissioner by rule shall establish the program as provided under this section.

(c) The program required under this section must:

(1) provide that home telemonitoring services are available only to persons who:

(A) are diagnosed with one or more of the following conditions:

(i) pregnancy;

(ii) diabetes;

(iii) heart disease;

(iv) cancer;

(v) chronic obstructive pulmonary disease;

(vi) hypertension;

(vii) congestive heart failure;

(viii) mental illness or serious emotional disturbance;

(ix) asthma;

(x) myocardial infarction; or

(xi) stroke; and

(B) exhibit two or more of the following risk factors:

(i) two or more hospitalizations in the prior 12–month period;

(ii) frequent or recurrent emergency room admissions;

(iii) a documented history of poor adherence to ordered medication regimens;

(iv) a documented history of falls in the prior six-month period;

(v) limited or absent informal support systems;

(vi) living alone or being home alone for extended periods of time; and

(vii) a documented history of care access challenges;

(2) ensure that clinical information gathered by a home *and community support services* [~~health~~] agency or hospital while providing home telemonitoring services is shared with the patient's physician; and

(3) ensure that the program does not duplicate disease management program services provided under Section 32.057, Human Resources Code.

(d) If, after implementation, the commission determines that the program established under this section is not cost-effective, the commission may discontinue the program and stop providing reimbursement under [~~the state~~] Medicaid [~~program~~] for home telemonitoring services, notwithstanding Section 531.0216 or any other law.

(e) The commission shall determine whether the provision of home telemonitoring services to persons who are eligible to receive benefits under both [~~the~~] Medicaid and *the* Medicare *program* [~~programs~~] achieves cost savings for the Medicare program.

SECTION 2.034. Sections 531.0217(b), (c–1), (c–3), (d), (h), (i), (i–1), and (j), Government Code, are amended to read as follows:

(b) The *executive commissioner* [~~commission~~] by rule shall require each health and human services agency that administers a part of [~~the~~] Medicaid [~~program~~] to provide Medicaid reimbursement for a telemedicine medical service initiated or provided by a physician.

(c–1) Notwithstanding Subsection (b) or (c), the commission shall provide for reimbursement under [~~the~~] Medicaid [~~program~~] for an office visit provided through telemedicine by a physician who is assessing and evaluating the patient from a distant site if:

(1) a health professional acting under the delegation and supervision of that physician is present with the patient at the time of the visit; and

(2) the medical condition, illness, or injury for which the patient is receiving the service is not likely, within a reasonable degree of medical certainty, to undergo material deterioration within the 30–day period following the date of the visit.

(c–3) In adopting rules *developed* under Subsection (c–2), the *executive commissioner* [~~commission~~] shall confer with the Centers for Medicare and Medicaid Services on the legality of allocating reimbursement or establishing a facility fee as described in that subsection. Rules adopted by the *executive commissioner* [~~commission~~] under this subsection or Subsection (c–2) must reflect a policy to build capacity in medically underserved areas of this state.

(d) The commission shall require reimbursement for a telemedicine medical service at the same rate as [~~the~~] Medicaid [~~program~~] reimburses for a comparable in-person medical service. A request for reimbursement may not be denied solely because an in-person medical service between a physician and a patient did not occur.

(h) The commission in consultation with the Texas *Medical Board* [~~State Board of Medical Examiners~~] shall monitor and regulate the use of telemedicine medical services to ensure compliance with this section. In addition to any other method of enforcement, the commission may use a corrective action plan to ensure compliance with this section.

(i) The Texas *Medical Board* [~~State Board of Medical Examiners~~], in consultation with the commission, as appropriate, may adopt rules as necessary to:

(1) ensure that appropriate care, including quality of care, is provided to patients who receive telemedicine medical services;

(2) prevent abuse and fraud through the use of telemedicine medical services, including rules relating to filing of claims and records required to be maintained in connection with telemedicine; and

(3) define those situations when a face-to-face consultation with a physician is required after a telemedicine medical service.

(i–1) The Texas *Medical Board* [~~State Board of Medical Examiners~~], in consultation with the commission and the Department of State Health Services, as appropriate, shall adopt rules to establish supervisory requirements for a physician delegating a service to be performed by an individual who is not a physician, registered nurse, advanced practice *registered* nurse, or physician assistant, including a health professional who is authorized to be a telepresenter under Section 531.02163. This section may not be construed as authorizing the Texas *Medical Board* [~~State Board of Medical Examiners~~] to regulate another licensed or certified health care provider.

(j) The *executive* commissioner shall establish an advisory committee to coordinate state telemedicine efforts and assist the commission in:

(1) evaluating policies for telemedicine medical services under Section 531.0216 and this section;

(2) monitoring the types of programs receiving reimbursement under this section; and

(3) coordinating the activities of state agencies interested in the use of telemedicine medical services.

SECTION 2.035. Sections 531.02172(b) and (c), Government Code, are amended to read as follows:

(b) The advisory committee must include:

(1) representatives of health and human services agencies and other state agencies concerned with the use of telemedical and telehealth consultations and home telemonitoring services in [~~the~~] Medicaid [~~program~~] and the state child health plan program, including representatives of:

(A) the commission;

(B) the Department of State Health Services;

(C) the *Office* [~~Texas Department~~] of Rural Affairs;

(D) the Texas Department of Insurance;

(E) the Texas Medical Board;

(F) the Texas Board of Nursing; and

(G) the Texas State Board of Pharmacy;

(2) representatives of health science centers in this state;

(3) experts on telemedicine, telemedical consultation, and telemedicine medical services or telehealth services;

(4) representatives of consumers of health services provided through telemedical consultations and telemedicine medical services or telehealth services; and

(5) representatives of providers of telemedicine medical services, telehealth services, and home telemonitoring services.

(c) A member of the advisory committee serves at the will of the *executive* commissioner.

SECTION 2.036. Section 531.02173, Government Code, is amended to read as follows:

Sec. 531.02173. ALIGNMENT OF MEDICAID TELEMEDICINE REIMBURSEMENT POLICIES WITH MEDICARE REIMBURSEMENT POLICIES. (a) The commission shall periodically review policies regarding reimbursement under [~~the~~] Medicaid [~~program~~] for telemedicine medical services to identify variations between permissible reimbursement under that program and reimbursement available to providers under the Medicare program.

(b) To the extent practicable, and notwithstanding any other state law, after [~~conducting~~] a review *conducted* under Subsection (a) the *executive commissioner* [~~commission~~] may modify rules and procedures applicable to reimbursement under [~~the~~] Medicaid [~~program~~] for telemedicine medical services as necessary to provide for a reimbursement system that is comparable to the reimbursement system for those services under the Medicare program.

(c) The commission *and executive commissioner* shall perform *the* [~~its~~] duties under this section with assistance from the telemedicine and telehealth advisory committee established under Section 531.02172.

SECTION 2.037. Section 531.02174, Government Code, is amended to read as follows:

Sec. 531.02174. ADDITIONAL AUTHORITY REGARDING TELEMEDICINE MEDICAL SERVICES. (a) In addition to the authority granted by other law regarding telemedicine medical services, the *executive commissioner* [~~commission~~] may review rules and procedures applicable to reimbursement of telemedicine medical services provided through any government-funded health program subject to the commission's oversight.

(b) The *executive commissioner* [~~commission~~] may modify rules and procedures described by Subsection (a) as necessary to ensure that reimbursement for telemedicine medical services is provided in a cost-effective manner and only in circumstances in which the provision of those services is clinically effective.

(c) This section does not affect the commission's authority or duties under other law regarding reimbursement of telemedicine medical services under [~~the~~] Medicaid [~~program~~].

SECTION 2.038. Sections 531.02175(b) and (c), Government Code, are amended to read as follows:

(b) Subject to the requirements of this subsection, the executive commissioner by rule may require the commission and each health and human services agency that administers a part of [~~the~~] Medicaid [~~program~~] to provide Medicaid reimbursement for a medical consultation that is provided by a physician or other health care professional using the Internet as a cost-effective alternative to an in-person consultation. The executive commissioner may require the commission or a health and human services agency to provide the reimbursement described by this subsection only if the Centers for Medicare and Medicaid Services develop an appropriate Current Procedural Terminology code for medical services provided using the Internet.

(c) The executive commissioner may develop and implement a pilot program in one or more sites chosen by the executive commissioner under which Medicaid reimbursements are paid for medical consultations provided by physicians or other health care professionals using the Internet. The pilot program must be designed to test whether an Internet medical consultation is a cost-effective alternative to an in-person consultation under [~~the~~] Medicaid [~~program~~]. The executive commissioner may modify the pilot program as necessary throughout its implementation to maximize the potential cost-effectiveness of Internet medical consultations. If the executive commissioner determines from the pilot program that Internet medical consultations are cost-effective, the executive commissioner may expand the pilot program to additional sites or may implement Medicaid reimbursements for Internet medical consultations statewide.

SECTION 2.039. Section 531.02176, Government Code, is amended to read as follows:

Sec. 531.02176. EXPIRATION OF MEDICAID REIMBURSEMENT FOR PROVISION OF HOME TELEMONITORING SERVICES. Notwithstanding any other law, the commission may not reimburse providers under [~~the~~] Medicaid [~~program~~] for the provision of home telemonitoring services on or after September 1, 2015.

SECTION 2.040. Section 531.0218(b), Government Code, is amended to read as follows:

(b) Subsection (a) does not apply to functions of a Section 1915(c) waiver program that is operated in conjunction with a federally funded [~~Medicaid~~] program of the state *under*

Medicaid that is authorized under Section 1915(b) of the federal Social Security Act (42 U.S.C. Section 1396n(b)).

SECTION 2.041. Sections 531.022(a), (b), (d), and (e), Government Code, are amended to read as follows:

(a) The *executive* commissioner shall develop a coordinated, six-year strategic plan for health and human services in this state and shall update the plan biennially.

(b) The *executive* commissioner shall submit each biennial update of the plan to the governor, the lieutenant governor, and the speaker of the house of representatives not later than October 1 of each even-numbered year.

(d) In developing a plan and plan updates under this section, the *executive* commissioner shall consider:

(1) existing strategic plans of health and human services agencies;

(2) health and human services priorities and plans submitted by governmental entities under Subsection (e);

(3) facilitation of pending reorganizations or consolidations of health and human services agencies and programs;

(4) public comment, including comment documented through public hearings conducted under Section 531.036; and

(5) budgetary issues, including projected agency needs and projected availability of funds.

(e) The *executive* commissioner shall identify the governmental entities that coordinate the delivery of health and human services in regions, counties, and municipalities and request that each entity:

(1) identify the health and human services priorities in the entity's jurisdiction and the most effective ways to deliver and coordinate services in that jurisdiction;

(2) develop a coordinated plan for the delivery of health and human services in the jurisdiction, including transition services that prepare special education students for adulthood; and

(3) make the information requested under Subdivisions (1) and (2) available to the commission.

SECTION 2.042. Sections 531.0223(b), (e), and (o), Government Code, are amended to read as follows:

(b) The executive commissioner shall appoint an advisory committee to develop a strategic plan for eliminating the disparities between the Texas–Mexico border region and other areas of the state in:

(1) capitation rates under Medicaid managed care and the child health plan program for services provided to persons younger than 19 years of age;

(2) fee-for-service per capita expenditures under [~~the~~] Medicaid [~~program~~] and the child health plan program for inpatient and outpatient hospital services for services provided to persons younger than 19 years of age; and

(3) total professional services expenditures per Medicaid recipient younger than 19 years of age or per child enrolled in the child health plan program.

(e) The executive commissioner shall appoint nine members to the advisory committee in a manner that ensures that the committee:

(1) represents the spectrum of geographic areas included in the Texas–Mexico border region;

(2) includes persons who are knowledgeable regarding [~~the~~] Medicaid [~~program~~], including Medicaid managed care, and the child health plan program; and

(3) represents the interests of physicians, hospitals, patients, managed care organizations, state agencies involved in the management and delivery of medical resources of any kind, affected communities, and other areas of the state.

(o) The commission shall:

(1) measure changes occurring from September 1, 2002, to August 31, 2014, in the number of health care providers participating in [~~the~~] Medicaid [~~program~~] or the child health plan program in the Texas–Mexico border region and resulting effects on consumer access to health care and consumer utilization;

(2) determine:

(A) the effects, if any, of the changes in rates and expenditures required by Subsection (k); and

(B) if funding available and used for changes in rates and expenditures was sufficient to produce measurable effects;

(3) make a recommendation regarding whether Medicaid rate increases should be expanded to include Medicaid services provided to adults in the Texas–Mexico border region; and

(4) not later than December 1, 2014, submit a report to the legislature.

SECTION 2.043. Section 531.0224, Government Code, is amended to read as follows:

Sec. 531.0224. PLANNING AND POLICY DIRECTION OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM. *(a)* The commission shall:

(1) plan and direct the financial assistance program under Chapter 31, Human Resources Code, including the procurement, management, and monitoring of contracts necessary to implement the program; *and*

(2) [~~adopt rules and standards governing the financial assistance program under Chapter 31, Human Resources Code; and~~

[~~(3)~~] establish requirements for and define the scope of the ongoing evaluation of the financial assistance program under Chapter 31, Human Resources Code.

(b) The executive commissioner shall adopt rules and standards governing the financial assistance program under Chapter 31, Human Resources Code.

SECTION 2.044. Section 531.0226(a), Government Code, is amended to read as follows:

(a) If feasible and cost-effective, the commission may apply for a waiver from the federal Centers for Medicare and Medicaid Services or another appropriate federal agency to more efficiently leverage the use of state and local funds in order to maximize the receipt of federal Medicaid matching funds by providing benefits under [~~the~~] Medicaid [~~program~~] to individuals who:

(1) meet established income and other eligibility criteria; and

(2) are eligible to receive services through the county for chronic health conditions.

SECTION 2.045. Sections 531.0235(a) and (c), Government Code, are amended to read as follows:

(a) The *executive* commissioner shall direct and require the Texas [~~Planning~~] Council for Developmental Disabilities and the Office for the Prevention of Developmental Disabilities to prepare a joint biennial report on the state of services to persons with disabilities in this state. The Texas [~~Planning~~] Council for Developmental Disabilities will serve as the lead agency in convening working meetings and in coordinating and completing the report. Not later than December 1 of each even-numbered year, the agencies shall submit the report to the *executive* commissioner, governor, lieutenant governor, and speaker of the house of representatives.

(c) The commission[~~, Texas Department of Human Services,~~] and other health and human services agencies shall cooperate with the agencies required to prepare the report under Subsection (a).

SECTION 2.046. Section 531.024(a–1), Government Code, is amended to read as follows:

(a–1) To the extent permitted under applicable federal law and notwithstanding any

provision of Chapter 191 or 192, Health and Safety Code, the commission and other health and human services agencies shall share data to facilitate patient care coordination, quality improvement, and cost savings in [~~the~~] Medicaid [~~program~~], *the* child health plan program, and other health and human services programs funded using money appropriated from the general revenue fund.

SECTION 2.047. Section 531.0241, Government Code, is amended to read as follows:

Sec. 531.0241. STREAMLINING DELIVERY OF SERVICES. To integrate and streamline service delivery and facilitate access to services, the *executive* commissioner may request a health and human services agency to take a specific action and may recommend the manner in which the streamlining is to be accomplished, including requesting each health and human services agency to:

(1) simplify agency procedures;

(2) automate agency procedures;

(3) coordinate service planning and management tasks between and among health and human services agencies;

(4) reallocate staff resources;

(5) [~~adopt rules;~~

[~~(6) amend,~~] waive[~~, or repeal~~] existing rules; or

(6) [~~(7)~~] take other necessary actions.

SECTION 2.048. Section 531.02411, Government Code, is amended to read as follows:

Sec. 531.02411. STREAMLINING ADMINISTRATIVE PROCESSES. The commission shall make every effort using the commission's existing resources to reduce the paperwork and other administrative burdens placed on Medicaid recipients and providers and other participants in [~~the~~] Medicaid [~~program~~] and shall use technology and efficient business practices to decrease those burdens. In addition, the commission shall make every effort to improve the business practices associated with the administration of [~~the~~] Medicaid [~~program~~] by any method the commission determines is cost-effective, including:

(1) expanding the utilization of the electronic claims payment system;

(2) developing an Internet portal system for prior authorization requests;

(3) encouraging Medicaid providers to submit their program participation applications electronically;

(4) ensuring that the Medicaid provider application is easy to locate on the Internet so that providers may conveniently apply to the program;

(5) working with federal partners to take advantage of every opportunity to maximize additional federal funding for technology in [~~the~~] Medicaid [~~program~~]; and

(6) encouraging the increased use of medical technology by providers, including increasing their use of:

(A) electronic communications between patients and their physicians or other health care providers;

(B) electronic prescribing tools that provide up-to-date payer formulary information at the time a physician or other health care practitioner writes a prescription and that support the electronic transmission of a prescription;

(C) ambulatory computerized order entry systems that facilitate physician and other health care practitioner orders at the point of care for medications and laboratory and radiological tests;

(D) inpatient computerized order entry systems to reduce errors, improve health care quality, and lower costs in a hospital setting;

(E) regional data-sharing to coordinate patient care across a community for patients who are treated by multiple providers; and

(F) electronic intensive care unit technology to allow physicians to fully monitor hospital patients remotely.

SECTION 2.049. Section 531.024115, Government Code, is amended to read as follows:

Sec. 531.024115. SERVICE DELIVERY AREA ALIGNMENT. Notwithstanding Section 533.0025(e) or any other law, to the extent possible, the commission shall align service delivery areas under [~~the~~] Medicaid and *the* child health plan *program* [~~programs~~].

SECTION 2.050. Section 531.02412, Government Code, is amended to read as follows:

Sec. 531.02412. SERVICE DELIVERY AUDIT MECHANISMS. (a) The commission shall make every effort to ensure the integrity of [~~the~~] Medicaid [~~program~~]. To ensure that integrity, the commission shall:

(1) perform risk assessments of every element of the [~~Medicaid~~] program and audit those elements of the program that are determined to present the greatest risks;

(2) ensure that sufficient oversight is in place for the Medicaid medical transportation program;

(3) ensure that a quality review assessment of the Medicaid medical transportation program occurs; and

(4) evaluate [~~the~~] Medicaid [~~program~~] with respect to use of the metrics developed through the Texas Health Steps performance improvement plan to guide changes and improvements to the program.

SECTION 2.051. Sections 531.02413(a–1) and (b), Government Code, are amended to read as follows:

(a–1) If cost-effective and feasible, the commission shall contract to expand the Medicaid billing coordination system described by Subsection (a) to process claims for all other health care services provided through [~~the~~] Medicaid [~~program~~] in the manner claims for acute care services are processed by the system under Subsection (a). This subsection does not apply to claims for health care services provided through [~~the~~] Medicaid [~~program~~] if, before September 1, 2009, those claims were being processed by an alternative billing coordination system.

(b) If cost-effective, the executive commissioner shall adopt rules for the purpose of enabling the system described by Subsection (a) to identify an entity with primary responsibility for paying a claim that is processed by the system under Subsection (a) and establish reporting requirements for any entity that may have a contractual responsibility to pay for the types of services that are provided under [~~the~~] Medicaid [~~program~~] and the claims for which are processed by the system under Subsection (a).

SECTION 2.052. Section 531.024131(a), Government Code, is amended to read as follows:

(a) If cost-effective, the commission may:

(1) contract to expand all or part of the billing coordination system established under Section 531.02413 to process claims for services provided through other benefits programs administered by the commission or a health and human services agency;

(2) expand any other billing coordination tools and resources used to process claims for health care services provided through [~~the~~] Medicaid [~~program~~] to process claims for services provided through other benefits programs administered by the commission or a health and human services agency; and

(3) expand the scope of persons about whom information is collected under Section 32.042, Human Resources Code, to include recipients of services provided through other benefits programs administered by the commission or a health and human services agency.

SECTION 2.053. Section 531.02414(a)(1), Government Code, is amended to read as follows:

(1) "Medical transportation program" means the program that provides nonemer-

gency transportation services to and from covered health care services, based on medical necessity, to recipients under [~~the~~] Medicaid [~~program~~], the children with special health care needs program, and the transportation for indigent cancer patients program, who have no other means of transportation.

SECTION 2.054. The heading to Section 531.024161, Government Code, is amended to read as follows:

Sec. 531.024161. REIMBURSEMENT CLAIMS FOR CERTAIN MEDICAID OR *CHILD HEALTH PLAN* [~~CHIP~~] SERVICES INVOLVING SUPERVISED PROVIDERS.

SECTION 2.055. Section 531.024161(a), Government Code, is amended to read as follows:

(a) If a provider, including a nurse practitioner or physician assistant, under [~~the~~] Medicaid or *the* child health plan program provides a referral for or orders health care services for a recipient or enrollee, as applicable, at the direction or under the supervision of another provider, and the referral or order is based on the supervised provider's evaluation of the recipient or enrollee, the names and associated national provider identifier numbers of the supervised provider and the supervising provider must be included on any claim for reimbursement submitted by a provider based on the referral or order. For purposes of this section, "national provider identifier" means the national provider identifier required under Section 1128J(e), Social Security Act (42 U.S.C. Section 1320a–7k(e)).

SECTION 2.056. Section 531.02418, Government Code, is amended to read as follows:

Sec. 531.02418. MEDICAID AND CHILD HEALTH PLAN PROGRAM ELIGIBILITY DETERMINATIONS FOR CERTAIN INDIVIDUALS. (a) The commission shall enter into a memorandum of understanding with the Texas *Juvenile Justice Department* [~~Youth Commission~~] to ensure that each individual who is committed, *placed, or detained* under Title 3, Family Code, is assessed by the commission for eligibility for *Medicaid* [~~the medical assistance program under Chapter 32, Human Resources Code,~~] and the child health plan program before that individual's release from commitment, [~~.~~

[~~(b) The commission shall enter into a memorandum of understanding with the Texas Juvenile Probation Commission to ensure that each individual who is placed or detained under Title 3, Family Code, is assessed by the commission for eligibility for the medical assistance program under Chapter 32, Human Resources Code, and the child health plan program before the individual's release from~~] placement, or detention. Local juvenile probation departments are subject to the requirements of the memorandum.

(c) *The* [~~Each~~] memorandum of understanding entered into as required by this section must specify:

(1) the information that must be provided to the commission;

(2) the process by which and time frame within which the information must be provided; and

(3) the roles and responsibilities of all parties to the memorandum, which must include a requirement that the commission pursue the actions needed to complete eligibility applications as necessary.

(d) *The* [~~Each~~] memorandum of understanding required by Subsection (a) [~~or (b)~~] must be tailored to achieve the goal of ensuring that an individual described by Subsection (a) [~~or (b)~~] who is determined eligible by the commission for coverage under *Medicaid* [~~the medical assistance program under Chapter 32, Human Resources Code,~~] or the child health plan program[~~,~~] is enrolled in the program for which the individual is eligible and may begin receiving services through the program as soon as possible after the eligibility determination is made and, if possible, to achieve the goal of ensuring that the individual may begin receiving those services on the date of the individual's release from placement, detention, or commitment.

(e) The executive commissioner may adopt rules as necessary to implement this section.

SECTION 2.057. Section 531.024181(a), Government Code, is amended to read as follows:

(a) This section applies only with respect to the following benefits programs:

(1) the child health plan program under Chapter 62, Health and Safety Code;

(2) the financial assistance program under Chapter 31, Human Resources Code;

(3) *Medicaid* [~~the medical assistance program under Chapter 32, Human Resources Code~~]; and

(4) the *supplemental nutrition* [~~nutritional~~] assistance program under Chapter 33, Human Resources Code.

SECTION 2.058. Section 531.024182(b), Government Code, is amended to read as follows:

(b) If, at the time of application for benefits, a person stated that the person is a sponsored alien, the commission may, to the extent allowed by federal law, verify information relating to the sponsorship, using an automated system or systems where available, after the person is determined eligible for and begins receiving benefits under any of the following benefits programs:

(1) the child health plan program under Chapter 62, Health and Safety Code;

(2) the financial assistance program under Chapter 31, Human Resources Code;

(3) *Medicaid* [~~the medical assistance program under Chapter 32, Human Resources Code~~]; or

(4) the *supplemental nutrition* [~~nutritional~~] assistance program under Chapter 33, Human Resources Code.

SECTION 2.059. Sections 531.0244(c) and (g), Government Code, are amended to read as follows:

(c) For purposes of developing the strategies required by Subsection (b)(4), a person with a mental illness who is admitted to a facility of the [~~Texas~~] Department of *State Health Services* [~~Mental Health and Mental Retardation~~] for inpatient mental health services three or more times during a 180–day period is presumed to be in imminent risk of requiring placement in an institution. The strategies must be developed in a manner that presumes the person's eligibility for and the appropriateness of intensive community-based services and support.

(g) Not later than December 1 of each even-numbered year, the *executive* commissioner shall submit to the governor and the legislature a report on the status of the implementation of the plan required by Subsection (a). The report must include recommendations on any statutory or other action necessary to implement the plan.

SECTION 2.060. Sections 531.02441(a), (b), (c), (d), (e), (g), and (i), Government Code, are amended to read as follows:

(a) The *executive* commissioner shall establish an interagency task force to assist the commission and appropriate health and human services agencies in developing a comprehensive, effectively working plan to ensure appropriate care settings for persons with disabilities.

(b) The *executive* commissioner shall determine the number of members of the task force. The *executive* commissioner shall appoint as members of the task force:

(1) representatives of appropriate health and human services agencies, including the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services and the [~~Texas~~] Department of *State Health Services* [~~Mental Health and Mental Retardation~~];

(2) representatives of related work groups, including representatives of the work *group* [~~groups~~] established under *Section* [~~Sections 22.034 and~~] 22.035, Human Resources Code;

(3) representatives of consumer and family advocacy groups; and

(4) representatives of service providers for persons with disabilities.

(c) The *executive* commissioner shall designate a member of the task force to serve as presiding officer. The members of the task force shall elect any other necessary officers.

(d) The task force shall meet at the call of the *executive* commissioner.

(e) A member of the task force serves at the will of the *executive* commissioner.

(g) The task force shall study and make recommendations to the commission on[:

[~~(1)~~] developing the comprehensive, effectively working plan required by Section 531.0244(a) to ensure appropriate care settings for persons with disabilities[~~; and~~

[~~(2) identifying appropriate components of the pilot program established under Section 22.037, Human Resources Code, for coordination and integration among the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, and the Department of Protective and Regulatory Services~~].

(i) Not later than September 1 of each year, the task force shall submit a report to the *executive* commissioner on its findings and recommendations required by Subsection (g).

SECTION 2.061. Section 531.02442, Government Code, is amended to read as follows:

Sec. 531.02442. COMMUNITY LIVING OPTIONS INFORMATION PROCESS FOR CERTAIN PERSONS WITH *AN INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~]. (a) In this section:

(1) *"Department" means the Department of Aging and Disability Services.*

(1-a) "Institution" means:

(A) a residential care facility operated or maintained by the *department* [~~Texas Department of Mental Health and Mental Retardation~~] to provide 24-hour services, including residential services, to persons with *an intellectual disability* [~~mental retardation~~]; or

(B) an *ICF-IID* [~~ICF-MR~~], as defined by Section 531.002, Health and Safety Code.

(2) "Legally authorized representative" has the meaning assigned by Section 241.151, Health and Safety Code.

(3) "Local *intellectual and developmental disability* [~~mental retardation~~] authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(b) In addition to providing information regarding care and support options as required by Section 531.042, the *department* [~~Texas Department of Mental Health and Mental Retardation~~] shall implement a community living options information process in each institution to inform persons with *an intellectual disability* [~~mental retardation~~] who reside in the institution and their legally authorized representatives of alternative community living options.

(c) The department shall provide the information required by Subsection (b) through the community living options information process at least annually. The department shall also provide the information at any other time on request by a person with *an intellectual disability* [~~mental retardation~~] who resides in an institution or the person's legally authorized representative.

(d) If a person with *an intellectual disability* [~~mental retardation~~] residing in an institution or the person's legally authorized representative indicates a desire to pursue an alternative community living option after receiving the information provided under this section, the department shall refer the person or the person's legally authorized representative to the local *intellectual and developmental disability* [~~mental retardation~~] authority. The local *intellectual and developmental disability* [~~mental retardation~~] authority shall place the person in an alternative community living option, subject to the availability of funds, or on a waiting list for those options if the options are not available to the person for any reason on or before the 30th day after the date the person or the person's legally authorized representative is referred to the local *intellectual and developmental disability* [~~mental retardation~~] authority.

(e) The department shall document in the records of each person with *an intellectual disability* [~~mental retardation~~] who resides in an institution the information provided to the person or the person's legally authorized representative through the community living options information process and the results of that process.

SECTION 2.062. Section 531.02443, Government Code, is amended to read as follows:

Sec. 531.02443. IMPLEMENTATION OF COMMUNITY LIVING OPTIONS INFORMATION PROCESS AT STATE INSTITUTIONS FOR CERTAIN ADULT RESIDENTS. (a) In this section:

(1) "Adult resident" means a person with *an intellectual disability* [~~mental retardation~~] who:

(A) is at least 22 years of age; and

(B) resides in a state *supported living center* [~~school~~].

(2) "Department" means the Department of Aging and Disability Services.

(3) "Legally authorized representative" has the meaning assigned by Section 241.151, Health and Safety Code.

(4) "Local *intellectual and developmental disability* [~~mental retardation~~] authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(5) "State *supported living center* [~~school~~]" has the meaning assigned by Section 531.002, Health and Safety Code.

(b) This section applies only to the community living options information process for an adult resident.

(c) The department shall contract with local *intellectual and developmental disability* [~~mental retardation~~] authorities to implement the community living options information process required by Section 531.02442 for an adult resident.

(d) The contract with the local *intellectual and developmental disability* [~~mental retardation~~] authority must:

(1) delegate to the local *intellectual and developmental disability* [~~mental retardation~~] authority the department's duties under Section 531.02442 with regard to the implementation of the community living options information process at a state *supported living center* [~~school~~];

(2) include performance measures designed to assist the department in evaluating the effectiveness of a local *intellectual and developmental disability* [~~mental retardation~~] authority in implementing the community living options information process; and

(3) ensure that the local *intellectual and developmental disability* [~~mental retardation~~] authority provides service coordination and relocation services to an adult resident who chooses, is eligible for, and is recommended by the interdisciplinary team for a community living option to facilitate a timely, appropriate, and successful transition from the state *supported living center* [~~school~~] to the community living option.

(e) The department, with the advice and assistance of the interagency task force on ensuring appropriate care settings for persons with disabilities and representatives of family members or legally authorized representatives of adult residents, persons with *an intellectual disability* [~~mental retardation~~], state *supported living centers* [~~schools~~], and local *intellectual and developmental disability* [~~mental retardation~~] authorities, shall:

(1) develop an effective community living options information process;

(2) create uniform procedures for the implementation of the community living options information process; and

(3) minimize any potential conflict of interest regarding the community living options information process between a state *supported living center* [~~school~~] and an adult resident, an adult resident's legally authorized representative, or a local *intellectual and developmental disability* [~~mental retardation~~] authority.

(f) A state *supported living center* [~~school~~] shall:

(1) allow a local *intellectual and developmental disability* [~~mental retardation~~] authority to participate in the interdisciplinary planning process involving the consideration of community living options for an adult resident;

(2) to the extent not otherwise prohibited by state or federal confidentiality laws, provide a local *intellectual and developmental disability* [~~mental retardation~~] authority with access to an adult resident and an adult resident's records to assist the authority in implementing the community living options information process; and

(3) provide the adult resident or the adult resident's legally authorized representative with accurate information regarding the risks of moving the adult resident to a community living option.

SECTION 2.063. Section 531.02444, Government Code, as amended by Chapter 34 (S.B. 187), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

Sec. 531.02444. MEDICAID BUY–IN PROGRAMS FOR CERTAIN PERSONS WITH DISABILITIES. (a) The executive commissioner shall develop and implement:

(1) a Medicaid buy-in program for persons with disabilities as authorized by the Ticket to Work and Work Incentives Improvement Act of 1999 (Pub. L. No. 106–170) or the Balanced Budget Act of 1997 (Pub. L. No. 105–33); and

(2) as authorized by the Deficit Reduction Act of 2005 (Pub. L. No. 109–171), a Medicaid buy-in program for [~~disabled~~] children *with disabilities that is* described by 42 U.S.C. Section 1396a(cc)(1) whose family incomes do not exceed 300 percent of the applicable federal poverty level.

(b) The executive commissioner shall adopt rules in accordance with federal law that provide for:

(1) eligibility requirements for each program described by Subsection (a); and

(2) requirements for participants in the program to pay premiums or cost-sharing payments, subject to Subsection (c).

(c) Rules adopted by the executive commissioner under Subsection (b) with respect to the program for [~~disabled~~] children *with disabilities* described by Subsection (a)(2) must require a participant to pay monthly premiums according to a sliding scale that is based on family income, subject to the requirements of 42 U.S.C. Sections 1396o(i)(2) and (3).

SECTION 2.064. Section 531.0246, Government Code, is amended to read as follows:

Sec. 531.0246. REGIONAL MANAGEMENT OF HEALTH AND HUMAN SERVICES AGENCIES. *(a) The* [~~Subject to Section 531.0055(c), the~~] commission may require a health and human services agency, under the direction of the commission, to:

(1) [~~locate all or a portion of the agency's employees and programs in the same building as another health and human services agency or at a location near or adjacent to the location of another health and human services agency;~~

[~~(2)~~] ensure that the agency's location is accessible to [~~disabled~~] employees *with disabilities* and agency clients *with disabilities*; and

(2) [~~(3)~~] consolidate agency support services, including clerical and administrative support services and information resources support services, with support services provided to or by another health and human services agency.

(b) The executive commissioner may require a health and human services agency, under the direction of the executive commissioner, to locate all or a portion of the agency's employees and programs in the same building as another health and human services agency or at a location near or adjacent to the location of another health and human services agency.

SECTION 2.065. Section 531.0247, Government Code, is amended to read as follows:

Sec. 531.0247. ANNUAL BUSINESS PLAN. *The* [~~Subject to Section 531.0055(c), the~~] commission shall develop and implement an annual business services plan for each health and human services region that establishes performance objectives for all health and human services agencies providing services in the region and measures agency effectiveness and efficiency in achieving those objectives.

SECTION 2.066. Section 531.0248(d), Government Code, is amended to read as follows:

(d) In implementing this section, the commission shall consider models used in other service delivery systems, including the mental health and *intellectual disability* [~~mental retardation~~] service delivery *systems* [~~system~~].

SECTION 2.067. Sections 531.02481(a), (e), and (f), Government Code, are amended to read as follows:

(a) The commission[~~, the Texas Department of Human Services,~~] and the *Department of Aging and Disability Services* [~~Texas Department on Aging~~] shall assist communities in this state in developing comprehensive, community-based support and service delivery systems for long-term care services. At the request of a community-based organization or combination of community-based organizations, the commission may provide a grant to the organization or combination of organizations in accordance with Subsection (g). At the request of a community, the commission shall provide resources and assistance to the community to enable the community to:

(1) identify and overcome institutional barriers to developing more comprehensive community support systems, including barriers that result from the policies and procedures of state health and human services agencies;

(2) develop a system of blended funds, consistent with the requirements of federal law and the General Appropriations Act, to allow the community to customize services to fit individual community needs; and

(3) develop a local system of access and assistance to aid clients in accessing the full range of long-term care services.

(e) The *executive* commissioner shall assure the maintenance of no fewer than 28 area agencies on aging in order to assure the continuation of a local system of access and assistance that is sensitive to the aging population.

(f) A community-based organization or a combination of organizations may make a proposal under this section. A community-based organization includes:

(1) an area agency on aging;

(2) an independent living center;

(3) a municipality, county, or other local government;

(4) a nonprofit or for-profit organization; or

(5) a community mental health and *intellectual disability* [~~mental retardation~~] center.

SECTION 2.068. Section 531.02491, Government Code, is amended to read as follows:

Sec. 531.02491. JOINT TRAINING FOR CERTAIN CASEWORKERS. (a) The *executive* commissioner shall provide for joint training for health and human services caseworkers whose clients are children, including caseworkers employed by:

(1) the *commission* [~~Texas Department of Health~~];

(2) the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services; [~~and~~]

(3) the [~~Texas~~] Department of *State Health Services;*

(4) [~~Mental Health and Mental Retardation,~~] a local mental health authority*; and*[~~; or~~]

(5) a local *intellectual and developmental disability* [~~mental retardation~~] authority.

(b) Training provided under this section must be designed to increase a caseworker's knowledge and awareness of the services available to children at each health and human services agency or local mental health or *intellectual and developmental disability* [~~mental retardation~~] authority, including long-term care programs and services available under a Section 1915(c) waiver program.

SECTION 2.069. Section 531.02492, Government Code, is amended to read as follows:

Sec. 531.02492. DELIVERY OF HEALTH AND HUMAN SERVICES TO YOUNG TEXANS. [~~(a) The executive head of each health and human services agency shall~~

~~report annually to the governing body of that agency on that agency's efforts to provide health and human services to children younger than six years of age, including the development of any new programs or the enhancement of existing programs. The agency shall submit a copy of the report to the commission.~~]

(b) The commission shall electronically publish on the commission's Internet website a biennial report and, on or before the date the report is due, shall notify the governor, the lieutenant governor, the speaker of the house of representatives, the comptroller, the Legislative Budget Board, and the appropriate legislative committees that the report is available on the commission's Internet website. The report must address the efforts of the health and human services agencies to provide health and human services to children younger than six years of age. The report may contain recommendations by the commission to better coordinate state agency programs relating to the delivery of health and human services to children younger than six years of age and may propose joint agency collaborative programs.

[~~(c) The commissioner shall adopt rules relating to the reports required by Subsection (a), including rules specifying when and in what manner a health and human services agency must report and the information to be included in the report. Each agency shall follow the rules adopted by the commissioner under this section.~~]

SECTION 2.070. Section 531.0271, Government Code, is amended to read as follows:

Sec. 531.0271. HEALTH AND HUMAN SERVICES AGENCIES OPERATING BUDGETS. The commission may, within the limits established by and subject to the General Appropriations Act, transfer amounts appropriated to health and human services agencies among the agencies to:

(1) enhance the receipt of federal money under the federal *money* [~~funds~~] management system established under Section 531.028;

(2) achieve efficiencies in the administrative support functions of the agencies; and

(3) perform the functions assigned to the *executive* commissioner under Section 531.0055.

SECTION 2.071. Section 531.0273, Government Code, is amended to read as follows:

Sec. 531.0273. INFORMATION RESOURCES PLANNING AND MANAGEMENT[; ~~ADVISORY COMMITTEE~~]. (a) The commission is responsible for strategic planning for information resources at each health and human services agency and shall direct the management of information resources at each health and human services agency. The commission shall:

(1) develop a coordinated strategic plan for information resources management that:

(A) covers a five-year period;

(B) defines objectives for information resources management at each health and human services agency;

(C) prioritizes information resources projects and implementation of new technology for all health and human services agencies;

(D) integrates planning and development of each information resources system used by a health and human services agency into a coordinated information resources management planning and development system established by the commission;

(E) establishes standards for information resources system security and that promotes the ability of information resources systems to operate with each other;

(F) achieves economies of scale and related benefits in purchasing for health and human services information resources systems; and

(G) is consistent with the state strategic plan for information resources developed under Chapter 2054;

(2) establish information resources management policies, procedures, and technical standards and ensure compliance with those policies, procedures, and standards; and

(3) review and approve the information resources deployment review and biennial operating plan of each health and human services agency.

(c) A health and human services agency may not submit its plans to the Department of Information Resources or the Legislative Budget Board under Subchapter E, Chapter 2054, until those plans are approved by the commission.

~~[(d) The commission shall appoint an advisory committee composed of:~~

~~[(1) information resources managers for state agencies and for private employers; and~~

~~[(2) the directors, executive directors, and commissioners of health and human services agencies.~~

~~[(e) The advisory committee appointed under Subsection (d) shall advise the commission with respect to the implementation of the commission's duties under Subsection (a)(1) and:~~

~~[(1) shall advise the commission about:~~

~~[(A) overall goals and objectives for information resources management for all health and human services agencies;~~

~~[(B) coordination of agency information resources management plans;~~

~~[(C) development of short-term and long-term strategies for:~~

~~[(i) implementing information resources management policies, procedures, and technical standards; and~~

~~[(ii) ensuring compatibility of information resources systems across health and human services agencies as technology changes;~~

~~[(D) information resources training and skill development for health and human services agency employees and policies to facilitate recruitment and retention of trained employees;~~

~~[(E) standards for determining:~~

~~[(i) the circumstances in which obtaining information resources services under contract is appropriate;~~

~~[(ii) the information resources services functions that must be performed by health and human services agency information resources services employees; and~~

~~[(iii) the information resources services skills that must be maintained by health and human services agency information resources services employees;~~

~~[(F) optimization of the use of information resources technology that is in place at health and human services agencies; and~~

~~[(G) existing and potential future information resources technologies and practices and the usefulness of those technologies and practices to health and human services agencies; and~~

~~[(2) shall review and make recommendations to the commission relating to the consolidation and improved efficiency of information resources management functions, including:~~

~~[(A) cooperative leasing of information resources systems equipment;~~

~~[(B) consolidation of data centers;~~

~~[(C) improved network operations;~~

~~[(D) technical support functions, including help desk services, call centers, and data warehouses;~~

~~[(E) administrative applications;~~

~~[(F) purchases of standard software;~~

~~[(G) joint training efforts;~~

~~[(H) recruitment and retention of trained agency employees;~~

[~~(I) video conferencing; and~~

[~~(J) other related opportunities for improved efficiency.~~

[~~(f) A member of the advisory committee may not receive compensation, but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the committee, as provided by the General Appropriations Act.~~

[~~(g) The advisory committee is not subject to Chapter 2110.~~]

SECTION 2.072. Section 531.028(b), Government Code, is amended to read as follows:

(b) The *executive* commissioner shall establish a federal money management system to coordinate and monitor the use of federal money that is received by health and human services agencies to ensure that the money is spent in the most efficient manner and shall:

(1) establish priorities for use of federal money by all health and human services agencies, in coordination with the coordinated strategic plan established under Section 531.022 and the budget prepared under Section 531.026;

(2) coordinate and monitor the use of federal money for health and human services to ensure that the money is spent in the most cost-effective manner throughout the health and human services system;

(3) review and approve all federal funding plans for health and human services in this state;

(4) estimate available federal money, including earned federal money, and monitor unspent money;

(5) ensure that the state meets federal requirements relating to receipt of federal money for health and human services, including requirements relating to state matching money and maintenance of effort;

(6) transfer appropriated amounts as described by Section 531.0271; and

(7) ensure that each governmental entity identified under Section 531.022(e) has access to complete and timely information about all sources of federal money for health and human services programs and that technical assistance is available to governmental entities seeking grants of federal money to provide health and human services.

SECTION 2.073. Section 531.031, Government Code, is amended to read as follows:

Sec. 531.031. MANAGEMENT INFORMATION AND COST ACCOUNTING SYSTEM. The *executive* commissioner shall establish a management information system and a cost accounting system for all health and human services that is compatible with and meets the requirements of the uniform statewide accounting project.

SECTION 2.074. (a) Section 531.0312(b), Government Code, as amended by Chapters 50 (S.B. 397) and 1460 (H.B. 2641), Acts of the 76th Legislature, Regular Session, 1999, and Chapter 937 (H.B. 3560), Acts of the 80th Legislature, Regular Session, 2007, is reenacted to read as follows:

(b) The commission shall cooperate with the Records Management Interagency Coordinating Council and the comptroller to establish a single method of categorizing information about health and human services to be used by the Records Management Interagency Coordinating Council and the Texas Information and Referral Network. The network, in cooperation with the council and the comptroller, shall ensure that:

(1) information relating to health and human services is included in each residential telephone directory published by a for-profit publisher and distributed to the public at minimal or no cost; and

(2) the single method of categorizing information about health and human services is used in a residential telephone directory described by Subdivision (1).

(b) Section 531.0312(c), Government Code, as added by Chapter 1460 (H.B. 2641), Acts of the 76th Legislature, Regular Session, 1999, is reenacted to incorporate amend-

ments made to Section 531.0312(b), Government Code, by Chapter 50 (S.B. 397), Acts of the 76th Legislature, Regular Session, 1999, and amended to read as follows:

(c) A health and human services agency or a public or private entity receiving state-appropriated funds to provide health and human services shall provide the Texas Information and Referral Network and the Records Management Interagency Coordinating Council with information about the health and human services provided by the agency or entity for inclusion in the statewide information and referral network, residential telephone directories described by Subsection (b), and any other materials produced under the direction of the network or the council. The agency or entity shall provide the information in the format required by the Texas Information and Referral Network or the Records Management Interagency Coordinating Council [~~a form determined by the commissioner~~] and shall update the information at least quarterly or as required by the network or the council.

(c) Section 531.0312(d), Government Code, is amended to read as follows:

(d) The Texas Department of Housing and Community Affairs shall provide the Texas Information and Referral Network with information regarding the department's housing and community affairs programs for inclusion in the statewide information and referral network. The department shall provide the information in a form determined by the *commission* [~~commissioner~~] and shall update the information at least quarterly.

SECTION 2.075. Section 531.0317(c), Government Code, is amended to read as follows:

(c) The Internet site must:

(1) contain information that is:

(A) in a concise and easily understandable and accessible format; and

(B) organized by the type of service provided rather than by the agency or provider delivering the service;

(2) contain eligibility criteria for each agency program;

(3) contain application forms for each of the public assistance programs administered by health and human services agencies, including application forms for:

(A) financial assistance under Chapter 31, Human Resources Code;

(B) *Medicaid* [~~medical assistance under Chapter 32, Human Resources Code~~]; and

(C) nutritional assistance under Chapter 33, Human Resources Code;

(4) to avoid duplication of functions and efforts, provide a link that provides access to a site maintained by the Texas Information and Referral Network under Section 531.0313;

(5) contain the telephone number and, to the extent available, the electronic mail address for each health and human services agency and local provider of health and human services;

(6) be designed in a manner that allows a member of the public to send questions about each agency's programs or services electronically and receive responses to the questions from the agency electronically; and

(7) be updated at least quarterly.

SECTION 2.076. Sections 531.0318(b) and (c), Government Code, are amended to read as follows:

(b) The information for consumers required by this section must:

(1) be presented in a manner that is easily accessible to, and understandable by, a consumer; and

(2) allow a consumer to make informed choices concerning long-term care services and include:

(A) an explanation of the manner in which long-term care service delivery is

administered in different counties through different programs operated by the commission and by the Department of Aging and Disability Services, so that an individual can easily understand the service options available in the area in which that individual lives; and

(B) for the [~~Medicaid~~] Star + Plus *Medicaid managed care* [~~pilot~~] program, information that allows a consumer to evaluate the performance of each participating plan issuer, including for each issuer, in an accessible format such as a table:

(i) the enrollment in each county;

(ii) additional "value-added" services provided;

(iii) a summary of the financial statistical report required under Subchapter A, Chapter 533;

(iv) complaint information;

(v) any sanction or penalty imposed by any state agency, including a sanction or penalty imposed by the commission or the Texas Department of Insurance;

(vi) information concerning consumer satisfaction; and

(vii) other data, including relevant data from reports of external quality review organizations, that may be used by the consumer to evaluate the quality of the services provided.

(c) In addition to providing the information required by this section through the Internet, the commission or the Department of Aging and Disability Services shall, on request by a consumer without Internet access, provide the consumer with a printed copy of the information from the website. The commission or department may charge a reasonable fee for printing the information. *The executive commissioner shall establish the fee by rule.*

SECTION 2.077. Section 531.033, Government Code, is amended to read as follows:

Sec. 531.033. RULES. The *executive* commissioner shall adopt rules necessary to carry out the commission's duties under this chapter.

SECTION 2.078. Section 531.0335(b), Government Code, is amended to read as follows:

(b) The *executive* commissioner by rule shall prohibit a health and human services agency from taking a punitive action against a person responsible for a child's care, custody, or welfare for failure of the person to ensure that the child receives the immunization series prescribed by Section 161.004, Health and Safety Code.

SECTION 2.079. Section 531.035, Government Code, is amended to read as follows:

Sec. 531.035. DISPUTE ARBITRATION. The *executive* commissioner shall arbitrate and render the final decision on interagency disputes.

SECTION 2.080. The heading to Section 531.0381, Government Code, is amended to read as follows:

Sec. 531.0381. CERTAIN *GIFTS AND* GRANTS TO HEALTH AND HUMAN SERVICES AGENCIES.

SECTION 2.081. Sections 531.0381(b) and (c), Government Code, are amended to read as follows:

(b) Acceptance of a gift or grant under this section is subject to the written approval of the *executive* commissioner. Chapter 575 does not apply to a gift or grant under this section.

(c) The *executive* commissioner may adopt rules and procedures to implement this section. The rules must ensure that acceptance of a gift or grant under this section is consistent with any applicable federal law or regulation and does not adversely affect federal financial participation in any state program, including [~~the state~~] Medicaid [~~program~~].

SECTION 2.082. Section 531.0392(a), Government Code, is amended to read as follows:

(a) In this section, "dually eligible individual" means an individual who is eligible to receive health care benefits under both [~~the~~] Medicaid and *the* Medicare *program* [~~programs~~].

SECTION 2.083. Section 531.041, Government Code, is amended to read as follows:

Sec. 531.041. GENERAL POWERS AND DUTIES. The *executive commissioner and the* commission *have* [~~has~~] all the powers and duties necessary to administer this chapter.

SECTION 2.084. Section 531.042(a), Government Code, is amended to read as follows:

(a) The *executive* commissioner by rule shall require each health and human services agency to provide to each patient or client of the agency and to at least one family member of the patient or client, if possible, information regarding all care and support options available to the patient or client, including community-based services appropriate to the needs of the patient or client, before the agency allows the patient or client to be placed in a care setting, including a nursing *facility* [~~home~~], intermediate care facility for *individuals with an intellectual disability* [~~the mentally retarded~~], or *general residential operation for children with an intellectual disability that is* [~~institution for the mentally retarded~~] licensed [~~or operated~~] by the Department of *Family and* Protective [~~and Regulatory~~] Services, to receive care or services provided by the agency or by a person under an agreement with the agency.

SECTION 2.085. Section 531.043(a), Government Code, is amended to read as follows:

(a) In conjunction with the appropriate state agencies, the *executive* commissioner shall develop a plan for access to individualized long-term care services for persons with functional limitations or medical needs and their families that assists those persons in achieving and maintaining the greatest possible independence, autonomy, and quality of life.

SECTION 2.086. Section 531.044, Government Code, is amended to read as follows:

Sec. 531.044. *FINANCIAL ASSISTANCE* [~~AFDC~~] RECIPIENTS ELIGIBLE FOR FEDERAL PROGRAMS. [~~(a)~~] The commission shall assist recipients of financial assistance under Chapter 31, Human Resources Code, who are eligible for assistance under federal programs to apply for benefits under those federal programs. The commission may delegate this responsibility to a health and human *services* [~~service~~] agency, contract with a unit of local government, or use any other cost-effective method to assist financial assistance recipients who are eligible for federal programs.

[~~(b) The commission shall organize a planning group involving the Texas Department of Human Services, the Texas Education Agency, and the Texas Rehabilitation Commission to:~~

[~~(1) improve workload coordination between those agencies as necessary to administer this section; and~~

[~~(2) provide information and help train employees to correctly screen applicants under this section as requested by the commission.~~]

SECTION 2.087. Sections 531.045(b) and (g), Government Code, are amended to read as follows:

(b) The task force is composed of:

(1) a representative of:

(A) the attorney general's office, appointed by the attorney general;

(B) the comptroller's office, appointed by the comptroller;

(C) the commission, appointed by the *executive* commissioner;

(D) the [~~Texas~~] Department of *State* Health *Services*, appointed by the commissioner of *state health services* [~~public health~~];

(E) the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services, appointed by the commissioner of *aging and disability* [~~human~~] services;

(F) the Texas Workforce Commission, appointed by the executive director of that agency; and

(G) the *Department of Assistive and Rehabilitative Services* [~~Texas Rehabilitation Commission~~], appointed by the commissioner of *assistive and rehabilitative services* [~~that agency~~]; and

(2) two representatives of each of the following groups, appointed by the comptroller:

(A) retailers who maintain electronic benefits transfer point-of-sale equipment;

(B) banks or owners of automatic teller machines; and

(C) consumer or client advocacy organizations.

(g) The task force shall:

(1) serve as this state's counterpoint to the federal electronic benefits transfer task force;

(2) identify benefit programs that merit addition to this state's electronic benefits transfer system;

(3) identify and address problems that may occur if a program is added;

(4) pursue state-federal partnerships to facilitate the development and expansion of this state's electronic benefits transfer system;

(5) track and distribute federal legislation and information from other states that relate to electronic benefits transfer systems;

(6) ensure efficiency and planning coordination in relation to this state's electronic benefits transfer system;

(7) [~~develop a plan using the experience and expertise of appropriate state agencies for the use of a photograph or other imaging technology on all electronic benefits transfer cards and, if proven to be effective in reducing fraud and misuse, begin using the new cards starting with replacement cards for cards that were used in the program on June 13, 1995;~~

[~~(8)~~] review current and potential fraud problems with electronic benefits transfer and propose methods to prevent or deter fraud;

[~~(9) evaluate the feasibility of adding the Medicaid program to the state's electronic benefits transfer system;~~] and

(8) [~~(10)~~] develop a plan to assist beneficiaries of public programs to obtain bank accounts.

SECTION 2.088. Section 531.047(a), Government Code, is amended to read as follows:

(a) The *executive commissioner* [~~commission~~], after consulting with representatives from the Department of *Family and* Protective [~~and Regulatory~~] Services, the Texas Juvenile *Justice Department* [~~Probation Commission~~], *the Department of Aging and Disability Services,* and the [~~Texas~~] Department of *State Health Services* [~~Mental Health and Mental Retardation~~], shall by rule adopt result-oriented standards that a provider of substitute care services for children under the care of the state must achieve.

SECTION 2.089. Section 531.048, Government Code, is amended to read as follows:

Sec. 531.048. CASELOAD STANDARDS. (a) *The executive* [~~After considering the recommendations of the caseload standards advisory committees under Section 531.049(e), the~~] commissioner may establish caseload standards and other standards relating to caseloads for each category of caseworker employed by the [~~Texas Department of Human Services or the~~] Department of *Family and* Protective [~~and Regulatory~~] Services.

(b) In establishing standards under this section, the *executive* commissioner shall:

(1) ensure the standards are based on the actual duties of the caseworker;

(2) ensure the caseload standards are reasonable and achievable;

(3) ensure the standards are consistent with existing professional caseload standards;

(4) consider standards developed by other states for caseworkers in similar positions of employment; and

(5) ensure the standards are consistent with existing caseload standards of other state agencies.

(c) Subject to the availability of funds appropriated by the legislature, [~~the commissioner of human services and~~] the *commissioner* [~~executive director~~] of the Department of *Family and* Protective [~~and Regulatory~~] Services shall use the standards established by the *executive* commissioner under this section to determine the number of personnel to assign as caseworkers for *the department* [~~their respective agencies~~].

(d) Subject to the availability of funds appropriated by the legislature, the [~~Texas Department of Human Services and the~~] Department of *Family and* Protective [~~and Regulatory~~] Services shall use the standards established by the *executive* commissioner to assign caseloads to individual caseworkers employed by *the department* [~~those agencies~~].

[~~(e) The commissioner shall include a recommendation made to the commissioner by a caseload standards advisory committee under Section 531.049(e) in the strategic plan of the agency that is the subject of the recommendation.~~]

(f) Nothing in this section may be construed to create a cause of action.

[~~(g) The executive commissioner shall develop and, subject to the availability of funds, implement a caseload management reduction plan to reduce, not later than January 1, 2011, caseloads for caseworkers employed by the adult protective services division of the Department of Family and Protective Services to a level that does not exceed professional caseload standards by more than five cases per caseworker. The plan must provide specific annual targets for caseload reduction.~~]

SECTION 2.090. Section 531.050, Government Code, is amended to read as follows:

Sec. 531.050. MINIMUM COLLECTION GOAL. (a) Before August 31 of each year, the *executive commissioner* [~~commission, after consulting with the Texas Department of Human Services,~~] by rule shall set a minimum goal for the *commission* [~~Texas Department of Human Services~~] that specifies the percentage of the amount of benefits granted by the *commission* [~~department~~] in error under the *supplemental nutrition assistance* [~~food stamp~~] program or the program of financial assistance under Chapter 31, Human Resources Code, that the *commission* [~~department~~] should recover. The *executive commissioner* [~~commission~~] shall set the percentage based on comparable recovery rates reported by other states or other appropriate factors identified by the *executive commissioner* [~~commission and the department~~].

(b) If the *commission* [~~department~~] fails to meet the goal set under Subsection (a) for the fiscal year, the *executive* commissioner shall notify the comptroller, and the comptroller shall reduce the *commission's* [~~department's~~] general revenue appropriation by an amount equal to the difference between the amount of state funds the *commission* [~~department~~] would have collected had the *commission* [~~department~~] met the goal and the amount of state funds the *commission* [~~department~~] actually collected.

(c) The *executive commissioner* [~~commission~~], the governor, and the Legislative Budget Board shall monitor the *commission's* [~~department's~~] performance in meeting the goal set under this section. The *commission* [~~department~~] shall cooperate by providing to [~~the commission,~~] the governor[~~,~~] and the Legislative Budget Board, on request, information concerning the *commission's* [~~department's~~] collection efforts.

SECTION 2.091. Section 531.051(c), Government Code, is amended to read as follows:

(c) In adopting rules for the consumer direction models, the *executive commissioner* [~~commission~~] shall:

(1) with assistance from the work group established under Section 531.052, determine which services are appropriate and suitable for delivery through consumer direction;

(2) ensure that each consumer direction model is designed to comply with applicable federal and state laws;

(3) maintain procedures to ensure that a potential consumer or the consumer's

legally authorized representative has adequate and appropriate information, including the responsibilities of a consumer or representative under each service delivery option, to make an informed choice among the types of consumer direction models;

(4) require each consumer or the consumer's legally authorized representative to sign a statement acknowledging receipt of the information required by Subdivision (3);

(5) maintain procedures to monitor delivery of services through consumer direction to ensure:

(A) adherence to existing applicable program standards;

(B) appropriate use of funds; and

(C) consumer satisfaction with the delivery of services;

(6) ensure that authorized program services that are not being delivered to a consumer through consumer direction are provided by a provider agency chosen by the consumer or the consumer's legally authorized representative; and

(7) work in conjunction with the work group established under Section 531.052 to set a timetable to complete the implementation of the consumer direction models.

SECTION 2.092. Sections 531.055(a) and (e), Government Code, are amended to read as follows:

(a) Each health and human services agency, the Texas *Correctional Office* [~~Council~~] on Offenders with *Medical or* Mental Impairments, the Texas Department of Criminal Justice, the Texas Department of Housing and Community Affairs, the Texas Education Agency, the Texas Workforce Commission, and the Texas *Juvenile Justice Department* [~~Youth Commission~~] shall *enter into* [~~adopt~~] a joint memorandum of understanding to promote a system of local-level interagency staffing groups to coordinate services for persons needing multiagency services.

(e) The agencies shall ensure that a state-level interagency staffing group provides a biennial report to the *administrative head* [~~executive director~~] of each agency, the legislature, and the governor that includes:

(1) the number of persons served through the local-level interagency staffing groups and the outcomes of the services provided;

(2) a description of any barriers identified to the state's ability to provide effective services to persons needing multiagency services; and

(3) any other information relevant to improving the delivery of services to persons needing multiagency services.

SECTION 2.093. Section 531.056, Government Code, is amended to read as follows:

Sec. 531.056. REVIEW OF SURVEY PROCESS IN CERTAIN INSTITUTIONS AND FACILITIES. (a) The commission shall adopt procedures to review:

(1) citations or penalties assessed for a violation of a rule or law against an institution or facility licensed under Chapter 242, 247, or 252, Health and Safety Code, or certified *to participate in Medicaid administered* in accordance with Chapter 32, Human Resources Code, considering:

(A) the number of violations by geographic region;

(B) the patterns of violations in each region; and

(C) the outcomes following the assessment of a penalty or citation; and

(2) the performance of duties by employees and agents of *a* [~~the Texas Department of Human Services or another~~] state agency responsible for licensing, inspecting, surveying, or investigating institutions and facilities licensed under Chapter 242, 247, or 252, Health and Safety Code, or certified *to participate in Medicaid administered* in accordance with Chapter 32, Human Resources Code, related to:

(A) complaints received by the commission; or

(B) any standards or rules violated by an employee or agent of a state agency.

SECTION 2.094. Section 531.057, Government Code, is amended to read as follows:

Sec. 531.057. VOLUNTEER ADVOCATE PROGRAM FOR THE ELDERLY. (a) In this section:

(1) "Designated caregiver" means:

(A) a person designated as a caregiver by an elderly individual receiving services from or under the direction of the commission or a health and human services agency; or

(B) a court-appointed guardian of an elderly individual receiving services from or under the direction of the commission or a health and human services agency.

(2) "Elderly" means individuals who are at least 60 years of age.

(3) "Program" means the volunteer advocate program *created under this section* for the elderly *receiving services from or under the direction of the commission or a health and human services agency* [~~created under this section~~].

(4) "Volunteer advocate" means a person who successfully completes the volunteer advocate curriculum described by Subsection (c)(2).

[~~(b) The executive commissioner shall coordinate with the advisory committee established under Section 531.0571 to develop a volunteer advocate program for the elderly receiving services from or under the direction of the commission or a health and human services agency.~~]

(c) *The* [~~In developing the~~] program[~~, the executive commissioner and the advisory committee~~] shall adhere to the following principles:

(1) the intent of the program is to evaluate, through operation of pilot projects, whether providing the services of a trained volunteer advocate selected by an elderly individual or the individual's designated caregiver is effective in achieving the following goals:

(A) extend the time the elderly individual can remain in an appropriate home setting;

(B) maximize the efficiency of services delivered to the elderly individual by focusing on services needed to sustain family caregiving;

(C) protect the elderly individual by providing a knowledgeable third party to review the quality of care and services delivered to the individual and the care options available to the individual and the individual's family; and

(D) facilitate communication between the elderly individual or the individual's designated caregiver and providers of health care and other services;

(2) a volunteer advocate curriculum must be *maintained* [~~established~~] that incorporates best practices as determined and recognized by a professional organization recognized in the elder health care field;

(3) the use of pro bono assistance from qualified professionals must be maximized in *modifying* [~~developing~~] the volunteer advocate curriculum and [~~designing~~] the program;

(4) trainers must be certified on the ability to deliver training;

(5) training shall be offered through multiple community-based organizations; and

(6) participation in the program is voluntary and must be initiated by the elderly individual or the individual's designated caregiver.

(d) The executive commissioner may enter into agreements with appropriate nonprofit organizations for the provision of services under the program. A nonprofit organization is eligible to provide services under the program if the organization:

(1) has significant experience in providing services to elderly individuals;

(2) has the capacity to provide training and supervision for individuals interested in serving as volunteer advocates; and

(3) meets any other criteria prescribed by the executive commissioner.

(e) The commission shall fund the program, including the design and evaluation of pilot projects, *modification* [~~development~~] of the volunteer advocate curriculum, and training of volunteers, through existing appropriations to the commission.

(f) Notwithstanding Subsection (e), the commission may accept gifts, grants, or donations for the program from any public or private source to:

(1) carry out the design of the program;

(2) develop criteria for evaluation of any proposed pilot projects operated under the program;

(3) *modify* [~~develop~~] a volunteer advocate training curriculum;

(4) conduct training for volunteer advocates; and

(5) develop a request for offers to conduct any proposed pilot projects under the program.

(g) The executive commissioner may adopt rules as necessary to implement the program.

SECTION 2.095. Sections 531.0571(a) and (b), Government Code, are amended to read as follows:

(a) The executive commissioner shall appoint an advisory committee composed of the following members:

(1) a representative of the Department of Aging and Disability Services;

(2) a representative of the Department of Assistive and Rehabilitative Services;

(3) a representative of the Department of State Health Services;

(4) a representative of the Texas Silver–Haired Legislature;

(5) a representative of an area agency on aging;

(6) a representative of United Ways of Texas;

(7) a home health provider;

(8) an assisted living provider;

(9) a nursing *facility* [~~home~~] provider;

(10) a representative of Texas CASA;

(11) a licensed gerontologist; and

(12) a representative of AARP.

(b) The advisory committee shall advise the executive commissioner on [~~the development of~~] the volunteer advocate program for the elderly [~~developed~~] under Section 531.057, including reviewing and commenting on:

(1) program design and selection of any pilot sites operated under the program;

(2) the volunteer advocate training curriculum;

(3) requests for oversight requirements for any pilot projects operated under the program;

(4) evaluation of any pilot projects operated under the program;

(5) requirements for periodic reports to the elderly individual or the individual's designated caregiver and providers of health care or other services; and

(6) other issues as requested by the executive commissioner.

SECTION 2.096. Sections 531.058(a), (b), and (d), Government Code, are amended to read as follows:

(a) The *executive commissioner* [~~commission~~] by rule shall establish an informal dispute resolution process in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of the *commission* [~~Texas Department of Hu-~~

~~man Services~~] under Section 32.021(d), Human Resources Code, or *the Department of Aging and Disability Services under* Chapter 242, 247, or 252, Health and Safety Code. The informal dispute resolution process must require:

(1) an institution or facility to request informal dispute resolution not later than the 10th calendar day after notification by the *commission or* department, *as applicable,* of the violation of a standard or standards; and

(2) the commission to complete the process not later than:

(A) the 30th calendar day after receipt of a request from an institution or facility, other than an assisted living facility, for informal dispute resolution; or

(B) the 90th calendar day after receipt of a request from an assisted living facility for informal dispute resolution.

(b) The *executive commissioner* [~~commission~~] shall adopt rules to adjudicate claims in contested cases.

(d) The *executive commissioner* [~~commission~~] shall use a negotiated rulemaking process and engage a qualified impartial third party as provided by Section 2009.053, with the goal of *the executive commissioner* adopting rules that are fair and impartial to all parties not later than January 1, 2015. This subsection expires September 1, 2015.

SECTION 2.097. Section 531.059, Government Code, is amended to read as follows:

Sec. 531.059. VOUCHER PROGRAM FOR TRANSITIONAL LIVING ASSISTANCE FOR PERSONS WITH DISABILITIES. (a) In this section:

(1) "Institutional housing" means:

(A) an *ICF-IID* [~~ICF-MR~~], as defined by Section 531.002, Health and Safety Code;

(B) a nursing facility;

(C) a state hospital, state *supported living center* [~~school~~], or state center maintained and managed by the [~~Texas~~] Department of *State Health Services or the Department of Aging and Disability Services* [~~Mental Health and Mental Retardation~~];

(D) *a general residential operation for children with an intellectual disability that is* [~~an institution for the mentally retarded~~] licensed [~~or operated~~] by the Department of Family and Protective Services; or

(E) a general residential operation, as defined by Section 42.002, Human Resources Code.

(2) "Integrated housing" means housing in which a person with a disability resides or may reside that is found in the community but that is not exclusively occupied by persons with disabilities and their care providers.

(b) Subject to the availability of funds, the commission shall coordinate with the [~~Texas Department of Human Services, the~~] Texas Department of Housing and Community Affairs, *the Department of State Health Services,* and the [~~Texas~~] Department of *Aging and Disability Services* [~~Mental Health and Mental Retardation~~] to develop a housing assistance program to assist persons with disabilities in moving from institutional housing to integrated housing. In developing the program, the agencies shall address:

(1) eligibility requirements for assistance;

(2) the period during which a person with a disability may receive assistance;

(3) the types of housing expenses to be covered under the program; and

(4) the locations at which the program will be operated.

(c) Subject to the availability of funds, the *Department of Aging and Disability Services* [~~commission~~] shall [~~require the Texas Department of Human Services to implement and~~] administer the housing assistance program under this section. The department shall coordinate with the Texas Department of Housing and Community Affairs in

[~~implementing and~~] administering the program, determining the availability of funding from the United States Department of Housing and Urban Development, and obtaining those funds.

(d) The [~~Texas Department of Human Services and the~~] Texas Department of Housing and Community Affairs *and the Department of Aging and Disability Services* shall provide information to the commission as necessary to facilitate the *administration* [~~development and implementation~~] of the housing assistance program.

SECTION 2.098. Sections 531.060(c)(3) and (4), Government Code, are amended to read as follows:

(3) "Institution" means any congregate care facility, including:

(A) a nursing *facility* [~~home~~];

(B) an *ICF-IID* [~~ICF-MR facility~~], as defined by Section 531.002, Health and Safety Code;

(C) a group home operated by the [~~Texas~~] Department of *Aging and Disability Services* [~~Mental Health and Mental Retardation~~]; and

(D) *a general residential operation for children with an intellectual disability that is* [~~an institution for the mentally retarded~~] licensed by the Department of *Family and* Protective [~~and Regulatory~~] Services.

(4) "Waiver services" means services provided under:

(A) the Medically Dependent Children Program *(MDCP)*;

(B) the Community Living Assistance and Support Services *(CLASS) waiver program* [~~Program~~];

(C) the Home and Community-based [~~Waiver~~] Services *(HCS) waiver program* [~~Program, including the HCS-OBRA Program~~];

(D) [~~the Mental Retardation-Local Authority Pilot Project (MRLA);~~

[~~(E)~~] the *Deaf Blind with Multiple Disabilities (DBMD) waiver program* [~~Deaf, Blind, and Multiply Disabled Program~~]; and

(E) [~~(F)~~] any other Section 1915(c) waiver program that provides long-term care services for children.

SECTION 2.099. Sections 531.062(a) and (b), Government Code, are amended to read as follows:

(a) Notwithstanding any other law, the commission may establish one or more pilot projects through which reimbursement under *Medicaid* [~~the medical assistance program under Chapter 32, Human Resources Code,~~] is made to demonstrate the applications of technology in providing services under that program.

(b) A pilot project established under this section may relate to providing rehabilitation services, services for the aging or *persons with disabilities* [~~disabled~~], or long-term care services, including community care services and support.

SECTION 2.100. Sections 531.063(a) and (i), Government Code, are amended to read as follows:

(a) The *executive commissioner* [~~commission,~~] by rule[~~;~~] shall establish at least one but not more than four call centers for purposes of determining and certifying or recertifying a person's eligibility and need for services related to the programs listed under Section 531.008(c), if cost-effective. [~~The commission must conduct a public hearing before establishing the initial call center.~~]

(i) Notwithstanding Subsection (a), the *executive* commissioner shall develop and implement policies that provide an applicant for services related to the programs listed under Section 531.008(c) with an opportunity to appear in person to establish initial eligibility or to comply with periodic eligibility recertification requirements if the applicant requests a personal interview. In implementing the policies, the commission shall maintain offices to serve applicants who request a personal interview. This subsec-

tion does not affect a law or rule that requires an applicant to appear in person to establish initial eligibility or to comply with periodic eligibility recertification requirements.

SECTION 2.101. Section 531.064(a), Government Code, is amended to read as follows:

(a) In this section, "vaccines for children program" means the program operated by the [~~Texas~~] Department of *State* Health *Services* under authority of 42 U.S.C. Section 1396s, as amended.

SECTION 2.102. Sections 531.067(a), (b), (d), and (g), Government Code, are amended to read as follows:

(a) The commission shall appoint a Public Assistance Health Benefit Review and Design Committee. The committee consists of nine representatives of health care providers participating in [~~the~~] Medicaid [~~program~~] or the child health plan program, or both. The committee membership must include at least three representatives from each program.

(b) The *executive* commissioner shall designate one member to serve as presiding officer for a term of two years.

(d) The committee shall review and provide recommendations to the commission regarding health benefits and coverages provided under [~~the state~~] Medicaid [~~program~~], the child health plan program, and any other income-based health care program administered by the commission or a health and human services agency. In performing its duties under this subsection, the committee must:

(1) review benefits provided under each of the programs; and

(2) review procedures for addressing high utilization of benefits by recipients.

(g) In performing the duties under this section, the commission may design and implement a program to improve and monitor clinical and functional outcomes of a recipient of services under *Medicaid or* the state child health plan [~~or medical assistance~~] program. The program may use financial, clinical, and other criteria based on pharmacy, medical services, and other claims data related to *Medicaid or* the child health plan [~~or the state medical assistance~~] program. The commission must report to the committee on the fiscal impact, including any savings associated with the strategies utilized under this section.

SECTION 2.103. Section 531.068, Government Code, is amended to read as follows:

Sec. 531.068. MEDICAID OR OTHER HEALTH BENEFIT COVERAGE. In adopting rules or standards governing [~~the state~~] Medicaid [~~program~~] or rules or standards for the development or implementation of health benefit coverage for a program administered by the commission or a health and human services agency, the *executive commissioner* [~~commission and each health and human services agency, as appropriate,~~] may take into consideration any recommendation made with respect to health benefits provided under [~~their respective programs or the state~~] Medicaid *or another of those programs* [~~program~~] by the Public Assistance Health Benefit Review and Design Committee established under Section 531.067.

SECTION 2.104. Section 531.0691(a)(1), Government Code, is amended to read as follows:

(1) "Medicaid Drug Utilization Review Program" means the program operated by the vendor drug program to improve the quality of pharmaceutical care under [~~the~~] Medicaid [~~program~~].

SECTION 2.105. Section 531.0693(a), Government Code, is amended to read as follows:

(a) The commission shall monitor and analyze prescription drug use and expenditure patterns in [~~the~~] Medicaid [~~program~~]. The commission shall identify the therapeutic prescription drug classes and individual prescription drugs that are most often prescribed to patients or that represent the greatest expenditures.

SECTION 2.106. Section 531.0694, Government Code, is amended to read as follows:

Sec. 531.0694. PERIOD OF VALIDITY FOR PRESCRIPTION. In *the* [~~its~~] rules and

standards governing the vendor drug program, the *executive commissioner* [~~commission~~], to the extent allowed by federal law and laws regulating the writing and dispensing of prescription medications, shall ensure that a prescription written by an authorized health care provider under [~~the~~] Medicaid [~~program~~] is valid for the lesser of the period for which the prescription is written or one year. This section does not apply to a prescription for a controlled substance, as defined by Chapter 481, Health and Safety Code.

SECTION 2.107. Section 531.0697(a), Government Code, is amended to read as follows:

(a) This section applies to:

(1) the vendor drug program for [~~the~~] Medicaid and *the* child health plan *program* [~~programs~~];

(2) the kidney health care program;

(3) the children with special health care needs program; and

(4) any other state program administered by the commission that provides prescription drug benefits.

SECTION 2.108. Sections 531.070(b), (c), and (m), Government Code, are amended to read as follows:

(b) For purposes of this section, the term "supplemental rebates" means cash rebates paid by a manufacturer to the state on the basis of appropriate quarterly health and human services program utilization data relating to the manufacturer's products, pursuant to a state supplemental rebate agreement negotiated with the manufacturer and, if necessary, approved by the federal government under Section 1927 of the federal Social Security Act *(42 U.S.C. Section 1396r–8).*

(c) The commission may enter into a written agreement with a manufacturer to accept certain program benefits in lieu of supplemental rebates, as defined by this section, only if:

(1) the program benefit yields savings that are at least equal to the amount the manufacturer would have provided under a state supplemental rebate agreement during the current biennium as determined by the written agreement;

(2) the manufacturer posts a performance bond guaranteeing savings to the state, and agrees that if the savings are not achieved in accordance with the written agreement, the manufacturer will forfeit the bond to the state less any savings that were achieved; and

(3) the program benefit is in addition to other program benefits currently offered by the manufacturer to recipients of *Medicaid* [~~medical assistance~~] or related programs.

(m) In negotiating terms for a supplemental rebate, the commission shall use the average manufacturer price (AMP), as defined in *42 U.S.C. Section 1396r–8(k)(1)* [~~Section 1396r–8(k)(1) of the Omnibus Budget Reconciliation Act of 1990~~], as the cost basis for the product.

SECTION 2.109. Section 531.071(a), Government Code, is amended to read as follows:

(a) Notwithstanding any other state law, information obtained or maintained by the commission regarding prescription drug rebate negotiations or a supplemental *Medicaid* [~~medical assistance~~] or other rebate agreement, including trade secrets, rebate amount, rebate percentage, and manufacturer or labeler pricing, is confidential and not subject to disclosure under Chapter 552.

SECTION 2.110. Sections 531.073(a), (a–1), (c), and (d), Government Code, are amended to read as follows:

(a) The *executive commissioner* [~~commission~~], in *the* [~~its~~] rules and standards governing the Medicaid vendor drug program and the child health plan program, shall require prior authorization for the reimbursement of a drug that is not included in the appropriate preferred drug list adopted under Section 531.072, except for any drug exempted from prior authorization requirements by federal law. The *executive commissioner* [~~com-~~

~~mission~~] may require prior authorization for the reimbursement of a drug provided through any other state program administered by the commission or a state health and human services agency, including a community mental health center and a state mental health hospital if the commission adopts preferred drug lists under Section 531.072 that apply to those facilities and the drug is not included in the appropriate list. The *executive commissioner* [~~commission~~] shall require that the prior authorization be obtained by the prescribing physician or prescribing practitioner.

(a–1) Until the commission has completed a study evaluating the impact of a requirement of prior authorization on recipients of certain drugs, the *executive commissioner* [~~commission~~] shall delay requiring prior authorization for drugs that are used to treat patients with illnesses that:

(1) are life-threatening;

(2) are chronic; and

(3) require complex medical management strategies.

(c) The commission shall ensure that a prescription drug prescribed before implementation of a prior authorization requirement for that drug for a recipient under the child health plan program, [~~the~~] Medicaid [~~program~~], or another state program administered by the commission or a health and human services agency or for a person who becomes eligible under the child health plan program, [~~the~~] Medicaid [~~program~~], or another state program administered by the commission or a health and human services agency is not subject to any requirement for prior authorization under this section unless the recipient has exhausted all the prescription, including any authorized refills, or a period prescribed by the commission has expired, whichever occurs first.

(d) The commission shall implement procedures to ensure that a recipient under the child health plan program, [~~the~~] Medicaid [~~program~~], or another state program administered by the commission or a person who becomes eligible under the child health plan program, [~~the~~] Medicaid [~~program~~], or another state program administered by the commission or a health and human services agency receives continuity of care in relation to certain prescriptions identified by the commission.

SECTION 2.111. Sections 531.074(b), (c), (f), (i), and (i–1), Government Code, are amended to read as follows:

(b) The committee consists of the following members appointed by the governor:

(1) six physicians licensed under Subtitle B, Title 3, Occupations Code, and participating in [~~the~~] Medicaid [~~program~~], at least one of whom is a licensed physician who is actively engaged in mental health providing care and treatment to persons with severe mental illness and who has practice experience in the state Medicaid plan; and

(2) five pharmacists licensed under Subtitle J, Title 3, Occupations Code, and participating in the Medicaid vendor drug program.

(c) In making appointments to the committee under Subsection (b), the governor shall ensure that the committee includes physicians and pharmacists who:

(1) represent different specialties and provide services to all segments of the [~~Medicaid program's~~] diverse population *served by Medicaid*;

(2) have experience in either developing or practicing under a preferred drug list; and

(3) do not have contractual relationships, ownership interests, or other conflicts of interest with a pharmaceutical manufacturer or labeler or with an entity engaged by the commission to assist in the development of the preferred drug lists or the administration of the prior authorization system.

(f) The [~~committee shall meet at least monthly during the six-month period following establishment of the committee to enable the committee to develop recommendations for the initial preferred drug lists. After that period, the~~] committee shall meet at least quarterly and at other times at the call of the presiding officer or a majority of the committee members.

(i) The *executive commissioner* [~~commission~~] shall adopt rules governing the operation of the committee, including rules governing the procedures used by the committee for providing notice of a meeting and rules prohibiting the committee from discussing confidential information described by Section 531.071 in a public meeting. The committee shall comply with the rules adopted under this subsection and Subsection (i–1).

(i–1) In addition to the rules under Subsection (i), the *executive commissioner* [~~commission~~] by rule shall require the committee or the committee's designee to present a summary of any clinical efficacy and safety information or analyses regarding a drug under consideration for a preferred drug list that is provided to the committee by a private entity that has contracted with the commission to provide the information. The committee or the committee's designee shall provide the summary in electronic form before the public meeting at which consideration of the drug occurs. Confidential information described by Section 531.071 must be omitted from the summary. The summary must be posted on the commission's Internet website.

SECTION 2.112. The heading to Section 531.077, Government Code, is amended to read as follows:

Sec. 531.077. RECOVERY OF *CERTAIN* [~~MEDICAL~~] ASSISTANCE.

SECTION 2.113. Section 531.077(a), Government Code, is amended to read as follows:

(a) The *executive* commissioner shall ensure that [~~the state~~] Medicaid [~~program~~] implements 42 U.S.C. Section 1396p(b)(1).

SECTION 2.114. Section 531.078(a), Government Code, is amended to read as follows:

(a) In this section, "gross receipts" means money received as compensation for services under an intermediate care *facility* [~~facilities~~] for *individuals with an intellectual disability* [~~the mentally retarded~~] waiver program such as a home and community services waiver or a community living assistance and support services waiver. The term does not include a charitable contribution, revenues received for services or goods other than waivers, or any money received from consumers or their families as reimbursement for services or goods not normally covered by the waivers.

SECTION 2.115. Section 531.079, Government Code, is amended to read as follows:

Sec. 531.079. WAIVER PROGRAM QUALITY ASSURANCE FEE ACCOUNT. (a) The waiver program quality assurance fee account is a dedicated account in the general revenue fund. The account is exempt from the application of Section 403.095. [~~Interest earned on money in the account shall be credited to the account.~~]

(b) The account consists of fees collected under Section 531.078 [~~and interest earned on money in the account~~].

(c) Subject to legislative appropriation and state and federal law, money in the account may be appropriated only to the Department of Aging and Disability Services to increase reimbursement rates paid under the home and community services waiver program or the community living assistance and support services waiver program or to offset allowable expenses under [~~the state~~] Medicaid [~~program~~].

SECTION 2.116. Section 531.081, Government Code, is amended to read as follows:

Sec. 531.081. INVALIDITY; FEDERAL FUNDS. If any portion of Sections 531.078–531.080 is held invalid by a final order of a court that is not subject to appeal, or if the commission determines that the imposition of the quality assurance fee and the expenditure of the money collected as provided by those sections will not entitle this state to receive additional federal money under [~~the~~] Medicaid [~~program~~], the commission shall:

(1) stop collection of the quality assurance fee; and

(2) not later than the 30th day after the date the collection of the quality assurance fee is stopped, return any money collected under Section 531.078, but not spent under Section 531.080, to the persons who paid the fees in proportion to the total amount paid by those persons.

SECTION 2.117. Section 531.084(a), Government Code, is amended to read as follows:

(a) The commission shall make every effort to achieve cost efficiencies within the Medicaid long-term care program. To achieve those efficiencies, the commission shall:

(1) establish a fee schedule for reimbursable incurred medical expenses for dental services controlled in long-term care facilities;

(2) implement a fee schedule for reimbursable incurred medical expenses for durable medical equipment in nursing facilities and *ICF-IID* [~~ICF-MR~~] facilities;

(3) implement a durable medical equipment fee schedule action plan;

(4) establish a system for private contractors to secure and coordinate the collection of Medicare funds for recipients who are dually eligible for Medicare and Medicaid;

(5) create additional partnerships with pharmaceutical companies to obtain discounted prescription drugs for Medicaid recipients; and

(6) develop and implement a system for auditing the Medicaid hospice care system that provides services in long-term care facilities to ensure correct billing for pharmaceuticals.

SECTION 2.118. Section 531.085, Government Code, is amended to read as follows:

Sec. 531.085. HOSPITAL EMERGENCY ROOM USE REDUCTION INITIATIVES. The commission shall develop and implement a comprehensive plan to reduce the use of hospital emergency room services by recipients under *Medicaid* [~~the medical assistance program~~]. The plan may include:

(1) a pilot program designed to facilitate program participants in accessing an appropriate level of health care, which may include as components:

(A) providing program participants access to bilingual health services providers; and

(B) giving program participants information on how to access primary care physicians, advanced practice *registered* nurses, and local health clinics;

(2) a pilot program under which health care providers, other than hospitals, are given financial incentives for treating recipients outside of normal business hours to divert those recipients from hospital emergency rooms;

(3) payment of a nominal referral fee to hospital emergency rooms that perform an initial medical evaluation of a recipient and subsequently refer the recipient, if medically stable, to an appropriate level of health care, such as care provided by a primary care physician, advanced practice *registered* nurse, or local clinic;

(4) a program under which the commission or a managed care organization that enters into a contract with the commission under Chapter 533 contacts, by telephone or mail, a recipient who accesses a hospital emergency room three times during a six-month period and provides the recipient with information on ways the recipient may secure a medical home to avoid unnecessary treatment at hospital emergency rooms;

(5) a health care literacy program under which the commission develops partnerships with other state agencies and private entities to:

(A) assist the commission in developing materials that:

(i) contain basic health care information for parents of young children who are recipients under *Medicaid* [~~the medical assistance program~~] and who are participating in public or private child-care or prekindergarten programs, including federal Head Start programs; and

(ii) are written in a language understandable to those parents and specifically tailored to be applicable to the needs of those parents;

(B) distribute the materials developed under Paragraph (A) to those parents; and

(C) otherwise teach those parents about the health care needs of their children and ways to address those needs; and

(6) other initiatives developed and implemented in other states that have shown success in reducing the incidence of unnecessary treatment in hospital emergency rooms.

SECTION 2.119. Sections 531.0861(a) and (b), Government Code, are amended to read as follows:

(a) If cost-effective, the executive commissioner by rule shall establish a physician incentive program designed to reduce the use of hospital emergency room services for non-emergent conditions by recipients under *Medicaid* [~~the medical assistance program~~].

(b) In establishing the physician incentive program under Subsection (a), the executive commissioner may include only the program components identified as cost-effective in the study conducted under *former* Section 531.086.

SECTION 2.120. Section 531.087(a), Government Code, is amended to read as follows:

(a) The commission shall ensure that educational materials relating to the federal earned income tax credit are provided in accordance with this section to each person receiving assistance or benefits under:

(1) the child health plan program;

(2) the financial assistance program under Chapter 31, Human Resources Code;

(3) *Medicaid* [~~the medical assistance program under Chapter 32, Human Resources Code~~];

(4) the *supplemental nutrition assistance* [~~food stamp~~] program under Chapter 33, Human Resources Code; or

(5) another appropriate health and human services program.

SECTION 2.121. Section 531.089(b), Government Code, is amended to read as follows:

(b) The executive commissioner [~~of the Health and Human Services Commission~~] may adopt rules as necessary to implement this section.

SECTION 2.122. Section 531.090(a), Government Code, is amended to read as follows:

(a) Subject to Subsection (b), the commission and each health and human services agency authorized by the executive commissioner may enter into an agreement with one or more other states for the joint bulk purchasing of prescription drugs and other medications to be used in [~~the~~] Medicaid [~~program~~], the state child health plan, or another program under the authority of the commission.

SECTION 2.123. Section 531.091(b), Government Code, is amended to read as follows:

(b) The method may:

(1) provide for the use of a single integrated benefits issuance card or multiple cards capable of integrating benefits issuance or other program functions;

(2) incorporate a fingerprint image identifier to enable personal identity verification at a point of service and reduce fraud [~~as permitted by Section 531.1063~~];

(3) enable immediate electronic verification of recipient eligibility; and

(4) replace multiple forms, cards, or other methods used for fraud reduction or provision of health and human services benefits, including:

(A) electronic benefits transfer cards; and

(B) smart cards used in [~~the~~] Medicaid [~~program~~].

SECTION 2.124. Section 531.097, Government Code, is amended to read as follows:

Sec. 531.097. TAILORED BENEFIT PACKAGES FOR CERTAIN CATEGORIES OF THE MEDICAID POPULATION. (a) The executive commissioner may seek a waiver under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315) to develop and, subject to Subsection (c), implement tailored benefit packages designed to:

(1) provide Medicaid benefits that are customized to meet the health care needs of recipients within defined categories of the Medicaid population through a defined system of care;

(2) improve health outcomes for those recipients;

(3) improve those recipients' access to services;

(4) achieve cost containment and efficiency; and

(5) reduce the administrative complexity of delivering Medicaid benefits.

(b) The commission:

(1) shall develop a tailored benefit package that is customized to meet the health care needs of Medicaid recipients who are children with special health care needs, subject to approval of the waiver described by Subsection (a); and

(2) may develop tailored benefit packages that are customized to meet the health care needs of other categories of Medicaid recipients.

(c) If the commission develops tailored benefit packages under Subsection (b)(2), the commission shall submit a report to the standing committees of the senate and house of representatives having primary jurisdiction over [~~the~~] Medicaid [~~program~~] that specifies, in detail, the categories of Medicaid recipients to which each of those packages will apply and the services available under each package. [~~The commission may not implement a package developed under Subsection (b)(2) before September 1, 2009.~~]

(d) Except as otherwise provided by this section and subject to the terms of the waiver authorized by this section, the commission has broad discretion to develop the tailored benefit packages under this section and determine the respective categories of Medicaid recipients to which the packages apply in a manner that preserves recipients' access to necessary services and is consistent with federal requirements.

(e) Each tailored benefit package developed under this section must include:

(1) a basic set of benefits that are provided under all tailored benefit packages; and

(2) to the extent applicable to the category of Medicaid recipients to which the package applies:

(A) a set of benefits customized to meet the health care needs of recipients in that category; and

(B) services to integrate the management of a recipient's acute and long-term care needs, to the extent feasible.

(f) In addition to the benefits required by Subsection (e), a tailored benefit package developed under this section that applies to Medicaid recipients who are children must provide at least the services required by federal law under the early and periodic screening, diagnosis, and treatment program.

(g) A tailored benefit package developed under this section may include any service available under the state Medicaid plan or under any federal Medicaid waiver, including any preventive health or wellness service.

(g–1) A tailored benefit package developed under this section must increase the state's flexibility with respect to the state's use of Medicaid funding and may not reduce the benefits available under the Medicaid state plan to any Medicaid recipient population.

(h) In developing the tailored benefit packages, the commission shall consider similar benefit packages established in other states as a guide.

(i) The executive commissioner, by rule, shall define each category of recipients to which a tailored benefit package applies and a mechanism for appropriately placing recipients in specific categories. Recipient categories must include children with special health care needs and may include:

(1) persons with disabilities or special health needs;

(2) elderly persons;

(3) children without special health care needs; and

(4) working-age parents and caretaker relatives.

[~~(j) This section does not apply to a tailored benefit package or similar package of benefits if, before September 1, 2007:~~

[~~(1) a federal waiver was requested to implement the package of benefits;~~

[~~(2) the package of benefits is being developed, as directed by the legislature; or~~

[~~(3) the package of benefits has been implemented.~~]

SECTION 2.125. Sections 531.099(a) and (b), Government Code, are amended to read as follows:

(a) The commission shall review forms and requirements under [~~the~~] Medicaid [~~program~~] regarding written orders for diabetic equipment and supplies to identify variations between permissible ordering procedures under that program and ordering procedures available to providers under the Medicare program.

(b) To the extent practicable, and in conformity with Chapter 157, Occupations Code, and Chapter 483, Health and Safety Code, after conducting a review under Subsection (a) the commission *or executive commissioner, as appropriate,* shall modify only forms, rules, and procedures applicable to orders for diabetic equipment and supplies under [~~the~~] Medicaid [~~program~~] to provide for an ordering system that is comparable to the ordering system for diabetic equipment and supplies under the Medicare program. The ordering system must permit a diabetic equipment or supplies supplier to complete the forms by hand or to enter by electronic format medical information or supply orders into any form as necessary to provide the information required to dispense diabetic equipment or supplies.

SECTION 2.126. Section 531.0995(a), Government Code, is amended to read as follows:

(a) This section applies to individuals receiving benefits under:

(1) the financial assistance program under Chapter 31, Human Resources Code;

(2) *Medicaid* [~~the medical assistance program under Chapter 32, Human Resources Code~~]; or

(3) the supplemental nutrition assistance program under Chapter 33, Human Resources Code.

SECTION 2.127. Section 531.0996(a), Government Code, is amended to read as follows:

(a) The commission shall develop and implement a pilot program in Harris County to create pregnancy medical homes that provide coordinated evidence-based maternity care management to women who reside in the pilot program area and are recipients of *Medicaid* [~~medical assistance~~] through a Medicaid managed care model or arrangement under Chapter 533.

SECTION 2.128. Section 531.0998(e), Government Code, is amended to read as follows:

(e) Not later than October 1 of each year, the commission, the Texas Veterans Commission, the Veterans' Land Board, and the Department of Aging and Disability Services collectively shall submit to the legislature, the governor, and the Legislative Budget Board a report describing:

(1) interagency progress in identifying and obtaining *United States* Department of Veterans Affairs benefits for veterans receiving Medicaid and other public benefit programs;

(2) the number of veterans benefits claims awarded, the total dollar amount of veterans benefits claims awarded, and the costs to the state that were avoided as a result of state agencies' use of the system;

(3) efforts to expand the use of the system and improve the effectiveness of shifting veterans from Medicaid and other public benefits to *United States* Department of Veterans Affairs benefits, including any barriers and how state agencies have addressed those barriers; and

(4) the extent to which the Texas Veterans Commission has targeted specific populations of veterans, including populations in rural counties and in specific age and service-connected disability categories, in order to maximize benefits for veterans and savings to the state.

SECTION 2.129. Sections 531.101(a) and (b), Government Code, are amended to read as follows:

(a) The commission may grant an award to an individual who reports activity that constitutes fraud or abuse of funds in [~~the state~~] Medicaid [~~program~~] or reports overcharges in *Medicaid* [~~the program~~] if the commission determines that the disclosure results in the recovery of an administrative penalty imposed under Section 32.039, Human Resources Code. The commission may not grant an award to an individual in connection with a report if the commission or attorney general had independent knowledge of the activity reported by the individual.

(b) The commission shall determine the amount of an award. The award may not exceed five percent of the amount of the administrative penalty imposed under Section 32.039, Human Resources Code, that resulted from the individual's disclosure. In determining the amount of the award, the commission shall consider how important the disclosure is in ensuring the fiscal integrity of *Medicaid* [~~the program~~]. The commission may also consider whether the individual participated in the fraud, abuse, or overcharge.

SECTION 2.130. Sections 531.1011(1), (6), (9), and (10), Government Code, are amended to read as follows:

(1) "Abuse" means:

(A) a practice by a provider that is inconsistent with sound fiscal, business, or medical practices and that results in:

(i) an unnecessary cost to [~~the~~] Medicaid [~~program~~]; or

(ii) the reimbursement of services that are not medically necessary or that fail to meet professionally recognized standards for health care; or

(B) a practice by a recipient that results in an unnecessary cost to [~~the~~] Medicaid [~~program~~].

(6) "Payment hold" means the temporary denial of reimbursement under [~~the~~] Medicaid [~~program~~] for items or services furnished by a specified provider.

(9) "Program exclusion" means the suspension of a provider from being authorized under [~~the~~] Medicaid [~~program~~] to request reimbursement of items or services furnished by that specific provider.

(10) "Provider" means a person, firm, partnership, corporation, agency, association, institution, or other entity that was or is approved by the commission to:

(A) provide *Medicaid services* [~~medical assistance~~] under *a* contract or provider agreement with the commission; or

(B) provide third-party billing vendor services under a contract or provider agreement with the commission.

SECTION 2.131. Sections 531.102(e), (f), (m), and (n), Government Code, are amended to read as follows:

(e) The *executive commissioner* [~~commission~~], in consultation with the inspector general, by rule shall set specific claims criteria that, when met, require the office to begin an investigation.

(f)(1) If the commission receives a complaint or allegation of Medicaid fraud or abuse from any source, the office must conduct a preliminary investigation as provided by Section 531.118(c) to determine whether there is a sufficient basis to warrant a full investigation. A preliminary investigation must begin not later than the 30th day after the date the commission receives a complaint or allegation or has reason to believe that fraud or abuse has occurred. A preliminary investigation shall be completed not later than the 90th day after it began.

(2) If the findings of a preliminary investigation give the office reason to believe that an incident of fraud or abuse involving possible criminal conduct has occurred in [~~the~~] Medicaid [~~program~~], the office must take the following action, as appropriate, not later than the 30th day after the completion of the preliminary investigation:

(A) if a provider is suspected of fraud or abuse involving criminal conduct, the office must refer the case to the state's Medicaid fraud control unit, provided that the

criminal referral does not preclude the office from continuing its investigation of the provider, which investigation may lead to the imposition of appropriate administrative or civil sanctions; or

(B) if there is reason to believe that a recipient has defrauded [~~the~~] Medicaid [~~program~~], the office may conduct a full investigation of the suspected fraud, subject to Section 531.118(c).

(m) The office shall employ a dental director who is a licensed dentist under Subtitle D, Title 3, Occupations Code, and the rules adopted under that subtitle by the State Board of Dental Examiners, and who preferably has significant knowledge of [~~the~~] Medicaid [~~program~~]. The dental director shall ensure that any investigative findings based on the necessity of dental services or the quality of dental care have been reviewed by a qualified expert as described by the Texas Rules of Evidence before the office imposes a payment hold or seeks recoupment of an overpayment, damages, or penalties.

(n) To the extent permitted under federal law, *the executive commissioner, on behalf of* the office, [~~acting through the commission,~~] shall adopt rules establishing the criteria for initiating a full-scale fraud or abuse investigation, conducting the investigation, collecting evidence, accepting and approving a provider's request to post a surety bond to secure potential recoupments in lieu of a payment hold or other asset or payment guarantee, and establishing minimum training requirements for Medicaid provider fraud or abuse investigators.

SECTION 2.132. Section 531.102(l), Government Code, as added by Chapter 622 (S.B. 1803), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

(l) The office shall employ a medical director who is a licensed physician under Subtitle B, Title 3, Occupations Code, and the rules adopted under that subtitle by the Texas Medical Board, and who preferably has significant knowledge of [~~the~~] Medicaid [~~program~~]. The medical director shall ensure that any investigative findings based on medical necessity or the quality of medical care have been reviewed by a qualified expert as described by the Texas Rules of Evidence before the office imposes a payment hold or seeks recoupment of an overpayment, damages, or penalties.

SECTION 2.133. Subsection (l), Section 531.102, Government Code, as added by Chapter 1311 (S.B. 8), Acts of the 83rd Legislature, Regular Session, 2013, is redesignated as Subsection (o), Section 531.102, Government Code, to read as follows:

(o) [~~(l)~~] Nothing in this section limits the authority of any other state agency or governmental entity.

SECTION 2.134. Section 531.1021(a), Government Code, is amended to read as follows:

(a) The office of inspector general may request that the *executive* commissioner or the *executive* commissioner's designee approve the issuance by the office of a subpoena in connection with an investigation conducted by the office. If the request is approved, the office may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

SECTION 2.135. Section 531.1022(a), Government Code, is amended to read as follows:

(a) The commission's office of inspector general shall employ and commission not more than five peace officers at any given time for the purpose of assisting the office in carrying out the duties of the office relating to the investigation of fraud, waste, and abuse in [~~the~~] Medicaid [~~program~~].

SECTION 2.136. Sections 531.103(a) and (c), Government Code, are amended to read as follows:

(a) The commission, acting through the commission's office of inspector general, and the office of the attorney general shall enter into a memorandum of understanding to develop and implement joint written procedures for processing cases of suspected fraud, waste, or abuse, as those terms are defined by state or federal law, or other violations of

state or federal law under [~~the state~~] Medicaid [~~program~~] or *another* [~~other~~] program administered by the commission or a health and human services agency, including the financial assistance program under Chapter 31, Human Resources Code, *the supplemental nutrition* [~~a nutritional~~] assistance program under Chapter 33, Human Resources Code, and the child health plan program. The memorandum of understanding shall require:

(1) the office of inspector general and the office of the attorney general to set priorities and guidelines for referring cases to appropriate state agencies for investigation, prosecution, or other disposition to enhance deterrence of fraud, waste, abuse, or other violations of state or federal law, including a violation of Chapter 102, Occupations Code, in the programs and maximize the imposition of penalties, the recovery of money, and the successful prosecution of cases;

(1–a) the office of inspector general to refer each case of suspected provider fraud, waste, or abuse to the office of the attorney general not later than the 20th business day after the date the office of inspector general determines that the existence of fraud, waste, or abuse is reasonably indicated;

(1–b) the office of the attorney general to take appropriate action in response to each case referred to the attorney general, which action may include direct initiation of prosecution, with the consent of the appropriate local district or county attorney, direct initiation of civil litigation, referral to an appropriate United States attorney, a district attorney, or a county attorney, or referral to a collections agency for initiation of civil litigation or other appropriate action;

(2) the office of inspector general to keep detailed records for cases processed by that office or the office of the attorney general, including information on the total number of cases processed and, for each case:

(A) the agency and division to which the case is referred for investigation;

(B) the date on which the case is referred; and

(C) the nature of the suspected fraud, waste, or abuse;

(3) the office of inspector general to notify each appropriate division of the office of the attorney general of each case referred by the office of inspector general;

(4) the office of the attorney general to ensure that information relating to each case investigated by that office is available to each division of the office with responsibility for investigating suspected fraud, waste, or abuse;

(5) the office of the attorney general to notify the office of inspector general of each case the attorney general declines to prosecute or prosecutes unsuccessfully;

(6) representatives of the office of inspector general and of the office of the attorney general to meet not less than quarterly to share case information and determine the appropriate agency and division to investigate each case; and

(7) the office of inspector general and the office of the attorney general to submit information requested by the comptroller about each resolved case for the comptroller's use in improving fraud detection.

(c) The commission and the office of the attorney general shall jointly prepare and submit an annual report to the governor, lieutenant governor, and speaker of the house of representatives concerning the activities of those agencies in detecting and preventing fraud, waste, and abuse under [~~the state~~] Medicaid [~~program~~] or *another* [~~other~~] program administered by the commission or a health and human services agency. The report may be consolidated with any other report relating to the same subject matter the commission or office of the attorney general is required to submit under other law.

SECTION 2.137. Section 531.1031(a)(2), Government Code, is amended to read as follows:

(2) "Participating agency" means:

(A) the Medicaid fraud enforcement divisions of the office of the attorney general;

(B) each board or agency with authority to license, register, regulate, or certify a

health care professional or managed care organization that may participate in [~~the state~~] Medicaid [~~program~~]; and

(C) the commission's office of inspector general.

SECTION 2.138. Section 531.1031(b), Government Code, is amended to read as follows:

(b) This section applies only to criminal history record information held by a participating agency that relates to a health care professional and information held by a participating agency that relates to a health care professional or managed care organization that is the subject of an investigation by a participating agency for alleged fraud or abuse under [~~the state~~] Medicaid [~~program~~].

SECTION 2.139. Section 531.105, Government Code, is amended to read as follows:

Sec. 531.105. FRAUD DETECTION TRAINING. (a) The commission shall develop and implement a program to provide annual training to contractors who process Medicaid claims and *to* appropriate staff of the *health and human services agencies* [~~Texas Department of Health and the Texas Department of Human Services~~] in identifying potential cases of fraud, waste, or abuse under [~~the state~~] Medicaid [~~program~~]. The training provided to the contractors and staff must include clear criteria that specify:

(1) the circumstances under which a person should refer a potential case to the commission; and

(2) the time by which a referral should be made.

(b) The *health and human services agencies* [~~Texas Department of Health and the Texas Department of Human Services~~], in cooperation with the commission, shall periodically set a goal of the number of potential cases of fraud, waste, or abuse under [~~the state~~] Medicaid [~~program~~] that each agency will attempt to identify and refer to the commission. The commission shall include information on the agencies' goals and the success of each agency in meeting the agency's goal in the report required by Section 531.103(c).

SECTION 2.140. Sections 531.106(a), (d), (f), and (g), Government Code, are amended to read as follows:

(a) The commission shall use learning or neural network technology to identify and deter fraud in [~~the~~] Medicaid [~~program~~] throughout this state.

(d) The commission shall require each health and human services agency that performs any aspect of [~~the state~~] Medicaid [~~program~~] to participate in the implementation and use of the technology.

(f) The commission shall refer cases identified by the technology to the commission's office of *inspector general* [~~investigations and enforcement~~] or the office of the attorney general, as appropriate.

(g) Each month, the learning or neural network technology implemented under this section must match [~~bureau of~~] vital statistics *unit* death records with Medicaid claims filed by a provider. If the commission determines that a provider has filed a claim for services provided to a person after the person's date of death, as determined by the [~~bureau of~~] vital statistics *unit* death records, the commission shall refer the case for investigation to the commission's office of *inspector general* [~~investigations and enforcement~~].

SECTION 2.141. Sections 531.1061(a) and (c), Government Code, are amended to read as follows:

(a) The commission shall use an automated fraud investigation tracking system through the commission's office of *inspector general* [~~investigations and enforcement~~] to monitor the progress of an investigation of suspected fraud, abuse, or insufficient quality of care under [~~the state~~] Medicaid [~~program~~].

(c) The commission shall require each health and human services agency that performs any aspect of [~~the state~~] Medicaid [~~program~~] to participate in the implementation and use of the automated fraud investigation tracking system.

SECTION 2.142. Section 531.1062(a), Government Code, is amended to read as follows:

(a) The commission shall use an automated recovery monitoring system to monitor the collections process for a settled case of fraud, abuse, or insufficient quality of care under [~~the state~~] Medicaid [~~program~~].

SECTION 2.143. Sections 531.107(a), (b), and (f), Government Code, are amended to read as follows:

(a) The Medicaid and Public Assistance Fraud Oversight Task Force advises and assists the commission and the commission's office of *inspector general* [~~investigations and enforcement~~] in improving the efficiency of fraud investigations and collections.

(b) The task force is composed of a representative of the:

(1) attorney general's office, appointed by the attorney general;

(2) comptroller's office, appointed by the comptroller;

(3) Department of Public Safety, appointed by the public safety director;

(4) state auditor's office, appointed by the state auditor;

(5) commission, appointed by the *executive* commissioner [~~of health and human services~~];

(6) [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services, appointed by the commissioner of *aging and disability* [~~human~~] services;

(7) Texas Department of Insurance, appointed by the commissioner of insurance; [~~and~~]

(8) [~~Texas~~] Department of *State* Health *Services*, appointed by the commissioner of *state* [~~public~~] health *services; and*

(9) commission's office of inspector general, appointed by the executive commissioner.

(f) At least once each fiscal quarter, the commission's office of *inspector general* [~~investigations and enforcement~~] shall provide to the task force:

(1) information detailing:

(A) the number of fraud referrals made to the office and the origin of each referral;

(B) the time spent investigating each case;

(C) the number of cases investigated each month, by program and region;

(D) the dollar value of each fraud case that results in a criminal conviction; and

(E) the number of cases the office rejects and the reason for rejection, by region; and

(2) any additional information the task force requires.

SECTION 2.144. Sections 531.108(a) and (b), Government Code, are amended to read as follows:

(a) The commission's office of *inspector general* [~~investigations and enforcement~~] shall compile and disseminate accurate information and statistics relating to:

(1) fraud prevention; and

(2) post-fraud referrals received and accepted or rejected from the commission's case management system or the case management system of a health and human services agency.

(b) The commission shall:

(1) aggressively publicize successful fraud prosecutions and fraud-prevention programs through all available means, including the use of statewide press releases [~~issued in coordination with the Texas Department of Human Services~~]; and

(2) ensure that a toll-free hotline for reporting suspected fraud in programs

administered by the commission or a health and human services agency is maintained and promoted, either by the commission or by a health and human services agency.

SECTION 2.145. Section 531.109(a), Government Code, is amended to read as follows:

(a) The commission shall annually select and review a random, statistically valid sample of all claims for reimbursement under [~~the state~~] Medicaid [~~program~~], including *under* the vendor drug program, for potential cases of fraud, waste, or abuse.

SECTION 2.146. Sections 531.110(a), (b), (c), and (e), Government Code, are amended to read as follows:

(a) The commission shall conduct electronic data matches for a *Medicaid* recipient [~~of assistance under the state Medicaid program~~] at least quarterly to verify the identity, income, employment status, and other factors that affect the eligibility of the recipient.

(b) To verify eligibility of a recipient for [~~assistance under the state~~] Medicaid [~~program~~], the electronic data matching must match information provided by the recipient with information contained in databases maintained by appropriate federal and state agencies.

(c) The *health and human services agencies* [~~Texas Department of Human Services~~] shall cooperate with the commission by providing data or any other assistance necessary to conduct the electronic data matches required by this section.

(e) The *executive commissioner shall establish procedures by which the* commission, or a health and human services agency designated by the commission, *verifies* [~~by rule shall establish procedures to verify~~] the electronic data matches conducted by the commission under this section. Not later than the 20th day after the date the electronic data match is verified, the *commission* [~~Texas Department of Human Services~~] shall remove from eligibility a recipient who is determined to be ineligible for [~~assistance under the state~~] Medicaid [~~program~~].

SECTION 2.147. Section 531.111, Government Code, is amended to read as follows:

Sec. 531.111. FRAUD DETECTION TECHNOLOGY. The commission may contract with a contractor who specializes in developing technology capable of identifying patterns of fraud exhibited by Medicaid recipients to:

(1) develop and implement the fraud detection technology; and

(2) determine if a pattern of fraud by Medicaid recipients is present in the recipients' eligibility files maintained by the *commission* [~~Texas Department of Human Services~~].

SECTION 2.148. Section 531.1112(a), Government Code, is amended to read as follows:

(a) The commission and the commission's office of inspector general shall jointly study the feasibility of increasing the use of technology to strengthen the detection and deterrence of fraud in [~~the state~~] Medicaid [~~program~~]. The study must include the determination of the feasibility of using technology to verify a person's citizenship and eligibility for coverage.

SECTION 2.149. Section 531.112(a)(1), Government Code, is amended to read as follows:

(1) "Chemical dependency" has the meaning assigned by Section *461A.002* [~~461.002~~], Health and Safety Code.

SECTION 2.150. Section 531.112(b), Government Code, is amended to read as follows:

(b) Following the final conviction of a chemical dependency treatment provider for an offense, an element of which involves submitting a fraudulent claim for reimbursement for services under [~~the state~~] Medicaid [~~program~~], the commission or other health and human services agency that operates a portion of [~~the state~~] Medicaid [~~program~~] shall expunge or provide for the expunction of a diagnosis of chemical dependency in a child that has been made by the treatment provider and entered in any:

(1) appropriate official record of the commission or agency;

(2) applicable medical record that is in the commission's or agency's custody; and

(3) applicable record of a company that the commission contracts with for the processing and payment of claims under [~~the state~~] Medicaid [~~program~~].

SECTION 2.151. Sections 531.113(a) and (e), Government Code, are amended to read as follows:

(a) Each managed care organization that provides or arranges for the provision of health care services to an individual under a government-funded program, including [~~the~~] Medicaid [~~program~~] and the child health plan program, shall:

(1) establish and maintain a special investigative unit within the managed care organization to investigate fraudulent claims and other types of program abuse by recipients and service providers; or

(2) contract with another entity for the investigation of fraudulent claims and other types of program abuse by recipients and service providers.

(e) The *executive* commissioner shall adopt rules as necessary to accomplish the purposes of this section.

SECTION 2.152. Section 531.1131(a), Government Code, is amended to read as follows:

(a) If a managed care organization's special investigative unit under Section 531.113(a)(1) or the entity with which the managed care organization contracts under Section 531.113(a)(2) discovers fraud or abuse in [~~the~~] Medicaid [~~program~~] or the child health plan program, the unit or entity shall:

(1) immediately and contemporaneously notify the commission's office of inspector general and the office of the attorney general;

(2) subject to Subsection (b), begin payment recovery efforts; and

(3) ensure that any payment recovery efforts in which the organization engages are in accordance with applicable rules adopted by the executive commissioner.

SECTION 2.153. Section 531.114(g), Government Code, is amended to read as follows:

(g) The *executive commissioner* [~~commission~~] shall adopt rules as necessary to implement this section.

SECTION 2.154. Section 531.116, Government Code, is amended to read as follows:

Sec. 531.116. COMPLIANCE WITH LAW PROHIBITING SOLICITATION. A provider who furnishes services under [~~the~~] Medicaid [~~program~~] or *the* child health plan program is subject to Chapter 102, Occupations Code, and the provider's compliance with that chapter is a condition of the provider's eligibility to participate as a provider under those programs.

SECTION 2.155. Section 531.117, Government Code, is amended to read as follows:

Sec. 531.117. RECOVERY AUDIT CONTRACTORS. To the extent required under Section 1902(a)(42), Social Security Act (42 U.S.C. Section 1396a(a)(42)), the commission shall establish a program under which the commission contracts with one or more recovery audit contractors for purposes of identifying underpayments and overpayments under [~~the~~] Medicaid [~~program~~] and recovering the overpayments.

SECTION 2.156. Sections 531.121(2), (4), and (6), Government Code, are amended to read as follows:

(2) "Guardian" has the meaning assigned by Section *1002.012, Estates* [~~601, Texas Probate~~] Code.

(4) "Incapacitated individual" means an incapacitated person as defined by Section *1002.017, Estates* [~~601, Texas Probate~~] Code.

(6) "Statutory probate court" has the meaning assigned by Section *1002.008(b), Estates* [~~601, Texas Probate~~] Code.

SECTION 2.157. Sections 531.122(c) and (f), Government Code, are amended to read as follows:

(c) To be eligible for an appointment under this section, an individual must have demonstrated experience working with:

(1) a guardianship program;

(2) an organization that advocates on behalf of or in the interest of elderly individuals or individuals with mental illness or *an intellectual disability* [~~mental retardation~~]; or

(3) incapacitated individuals.

(f) Sections *2110.002 and 2110.008* [~~2 and 8, Article 6252-33, Revised Statutes,~~] do not apply to the advisory board.

SECTION 2.158. Section 531.125(a), Government Code, is amended to read as follows:

(a) The commission *in accordance with commission rules* [~~by rule~~] may award grants to:

(1) a local guardianship program, subject to the requirements of this section; and

(2) a local legal guardianship program to enable low-income family members and friends to have legal representation in court if they are willing and able to be appointed guardians of proposed wards who are indigent.

SECTION 2.159. Section 531.151(3), Government Code, is amended to read as follows:

(3) "Institution" means:

(A) an *ICF-IID* [~~ICF-MR~~], as defined by Section 531.002, Health and Safety Code;

(B) a group home operated under the authority of the [~~Texas~~] Department of *Aging and Disability Services* [~~Mental Health and Mental Retardation~~], including a residential service provider under a Medicaid waiver program authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended, that provides services at a residence other than the child's home or foster home;

(C) a foster group home or an agency foster group home as defined by Section 42.002, Human Resources Code;

(D) a nursing facility;

(E) *a general residential operation for children with an intellectual disability that is* [~~an institution for the mentally retarded~~] licensed by the Department of *Family and* Protective [~~and Regulatory~~] Services; or

(F) another residential arrangement other than a foster home as defined by Section 42.002, Human Resources Code, that provides care to four or more children who are unrelated to each other.

SECTION 2.160. Sections 531.1521(a) and (b), Government Code, are amended to read as follows:

(a) The executive commissioner by rule shall develop and implement a system by which the Department of Aging and Disability Services ensures that, for each child with respect to whom the department or a local *intellectual and developmental disability* [~~mental retardation~~] authority is notified of a request for placement in an institution, the child's parent or guardian is fully informed before the child is placed in the institution of all community-based services and any other service and support options for which the child may be eligible. The system must be designed to ensure that the department provides the information through:

(1) a local *intellectual and developmental disability* [~~mental retardation~~] authority;

(2) any private entity that has knowledge and expertise regarding the needs of and full spectrum of care options available to children with disabilities as well as the philosophy and purpose of permanency planning; or

(3) a department employee.

(b) An institution in which a child's parent or guardian is considering placing the child may provide information required under Subsection (a), but the information must also be provided by a local *intellectual and developmental disability* [~~mental retardation~~] authority, private entity, or employee of the Department of Aging and Disability Services as required by Subsection (a).

SECTION 2.161. Sections 531.153(b), (d), (d–1), and (e), Government Code, are amended to read as follows:

(b) The Department of *Family and* Protective [~~and Regulatory~~] Services shall develop a permanency plan as required by this subchapter for each child who resides in an institution in this state for whom the department has been appointed permanent managing conservator. The department is not required to develop a permanency plan under this subchapter for a child for whom the department has been appointed temporary managing conservator, but may incorporate the requirements of this subchapter in a permanency plan developed for the child under Section 263.3025, Family Code.

(d) In implementing permanency planning procedures under Subsection (a) to develop a permanency plan for each child, the Department of Aging and Disability Services shall:

(1) delegate the department's duty to develop a permanency plan to a local *intellectual and developmental disability* [~~mental retardation~~] authority, as defined by Section 531.002, Health and Safety Code, or enter into a memorandum of understanding with the local *intellectual and developmental disability* [~~mental retardation~~] authority to develop the permanency plan for each child who resides in an institution in this state or with respect to whom the department is notified in advance that institutional care is sought;

(2) contract with a private entity, other than an entity that provides long-term institutional care, to develop a permanency plan for a child who resides in an institution in this state or with respect to whom the department is notified in advance that institutional care is sought; or

(3) perform the department's duties regarding permanency planning procedures using department personnel.

(d–1) A contract or memorandum of understanding under Subsection (d) must include performance measures by which the Department of Aging and Disability Services may evaluate the effectiveness of a local *intellectual and developmental disability* [~~mental retardation~~] authority's or private entity's permanency planning efforts.

(e) The *commission, the Department of Aging and Disability Services,* [~~Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation,~~] and the Department of *Family and* Protective [~~and Regulatory~~] Services may solicit and accept gifts, grants, and donations to support the development of permanency plans for children residing in institutions by individuals or organizations not employed by or affiliated with those institutions.

SECTION 2.162. Section 531.1531, Government Code, is amended to read as follows:

Sec. 531.1531. ASSISTANCE WITH PERMANENCY PLANNING EFFORTS. An institution in which a child resides shall assist with providing effective permanency planning for the child by:

(1) cooperating with the health and human services agency, local *intellectual and developmental disability* [~~mental retardation~~] authority, or private entity responsible for developing the child's permanency plan; and

(2) participating in meetings to review the child's permanency plan as requested by a health and human services agency, local *intellectual and developmental disability* [~~mental retardation~~] authority, or private entity responsible for developing the child's permanency plan.

SECTION 2.163. Section 531.154, Government Code, is amended to read as follows:

Sec. 531.154. NOTIFICATION REQUIRED. (a) Not later than the third day after the date a child is initially placed in an institution, the institution shall notify:

(1) the *Department of Aging and Disability Services* [~~Texas Department of Human Services~~], if the child is placed in a nursing *facility* [~~home~~];

(2) the local *intellectual and developmental disability* [~~mental retardation~~] authority, as defined by Section 531.002, Health and Safety Code, where the institution is located, if the child:

(A) is placed in an *ICF–IID* [~~ICF–MR~~], as defined by Section 531.002, Health and Safety Code; or

(B) is placed by a [~~state or local~~] child protective services agency in *a general residential operation for children with an intellectual disability that is* [~~an institution for the mentally retarded~~] licensed by the Department of *Family and* Protective [~~and Regulatory~~] Services;

(3) the community resource coordination group in the county of residence of a parent or guardian of the child;

(4) if the child is at least three years of age, the school district for the area in which the institution is located; and

(5) if the child is less than three years of age, the local early *childhood* intervention program for the area in which the institution is located.

(b) The [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services shall notify the local *intellectual and developmental disability* [~~mental retardation~~] authority, as defined by Section 531.002, Health and Safety Code, of a child's placement in a nursing *facility* [~~home~~] if the child is known or suspected to *have an intellectual disability* [~~suffer from mental retardation~~] or another disability for which the child may receive services through the [~~Texas~~] Department of *Aging and Disability Services* [~~Mental Health and Mental Retardation~~].

SECTION 2.164. Section 531.156, Government Code, is amended to read as follows:

Sec. 531.156. DESIGNATION OF ADVOCATE. (a) *The Department of Aging and Disability Services* [~~Except as provided by Subsection (b), the Texas Department of Human Services~~] shall designate a person, including a member of a community-based organization, to serve as a volunteer advocate for a child residing in an institution to assist in developing a permanency plan for the child if:

(1) the child's parent or guardian requests the assistance of an advocate; [~~or~~]

(2) the institution in which the child is placed cannot locate the child's parent or guardian*; or*[~~.~~]

(3) [~~(b) The Texas Department of Mental Health and Mental Retardation shall designate the person to serve as a volunteer advocate for a child in accordance with Subsection (a) if~~] the child resides in an institution operated by the department.

(b) [~~(c)~~] The person designated [~~by the Texas Department of Human Services or the Texas Department of Mental Health and Mental Retardation~~] to serve as the child's volunteer advocate under this section may be:

(1) a person selected by the child's parent or guardian, except that the person may not be employed by or under a contract with the institution in which the child resides;

(2) an adult relative of the child; or

(3) a representative of a child advocacy group.

(c) [~~(d)~~] The [~~Texas Department of Human Services or the Texas~~] Department of *Aging and Disability Services* [~~Mental Health and Mental Retardation, as appropriate,~~] shall provide to each person designated to serve as a child's volunteer advocate information regarding permanency planning under this subchapter.

SECTION 2.165. Sections 531.159(b), (c), (d), (e), and (f), Government Code, are amended to read as follows:

(b) The chief executive officer of each appropriate health and human services agency or the officer's designee must approve the placement of a child in an institution. The initial placement of the child in the institution is temporary and may not exceed six months unless the appropriate chief executive officer or the officer's designee approves an extension of an additional six months after conducting a review of documented permanency planning efforts to unite the child with a family in a permanent living arrangement. After the initial six-month extension of a child's placement in an institution approved under this subsection, the chief executive officer or the officer's designee

shall conduct a review of the child's placement in the institution at least semiannually to determine whether a continuation of that placement is warranted. If, based on the review, the chief executive officer or the officer's designee determines that an additional extension is warranted, the officer or the officer's designee shall recommend to the *executive* commissioner that the child continue residing in the institution.

(c) On receipt of a recommendation made under Subsection (b) for an extension of a child's placement, the *executive* commissioner, the *executive* commissioner's designee, or another person with whom the commission contracts shall conduct a review of the child's placement. Based on the results of the review, the *executive* commissioner or the *executive* commissioner's designee may approve a six-month extension of the child's placement if the extension is appropriate.

(d) The child may continue residing in the institution after the six-month extension approved under Subsection (c) only if the chief executive officer of the appropriate health and human services agency or the officer's designee makes subsequent recommendations as provided by Subsection (b) for each additional six-month extension and the *executive* commissioner or the *executive* commissioner's designee approves each extension as provided by Subsection (c).

(e) The *executive* commissioner or the *executive* commissioner's designee shall conduct a semiannual review of data received from health and human services agencies regarding all children who reside in institutions in this state. The *executive* commissioner, the *executive* commissioner's designee, or a person with whom the commission contracts shall also review the recommendations of the chief executive officers of each appropriate health and human services agency or the officer's designee if the officer or the officer's designee repeatedly recommends that children continue residing in an institution.

(f) The *executive commissioner* [~~commission~~] by rule shall develop procedures by which to conduct the reviews required by Subsections (c), (d), and (e). In developing the procedures, the commission may seek input from the work group on children's long-term services, health services, and mental health services established under Section 22.035, Human Resources Code.

SECTION 2.166. Section 531.160, Government Code, is amended to read as follows:

Sec. 531.160. INSPECTIONS. As part of each inspection, survey, or investigation of an institution, including a nursing *facility* [~~home~~], *general residential operation for children with an intellectual disability that is* [~~institution for the mentally retarded~~] licensed by the Department of *Family and* Protective [~~and Regulatory~~] Services, or *ICF–IID* [~~ICF–MR~~], as defined by Section 531.002, Health and Safety Code, in which a child resides, the agency or the agency's designee shall determine the extent to which the nursing *facility* [~~home~~], *general residential operation* [~~institution~~], or *ICF–IID* [~~ICF–MR~~] is complying with the permanency planning requirements under this subchapter.

SECTION 2.167. Section 531.161, Government Code, is amended to read as follows:

Sec. 531.161. ACCESS TO RECORDS. Each institution in which a child resides shall allow the following to have access to the child's records to assist in complying with the requirements of this subchapter:

(1) the commission;

(2) appropriate health and human services agencies; and

(3) to the extent not otherwise prohibited by state or federal confidentiality laws, a local *intellectual and developmental disability* [~~mental retardation~~] authority or private entity that enters into a contract or memorandum of understanding under Section 531.153(d) to develop a permanency plan for the child.

SECTION 2.168. Section 531.162(b), Government Code, is amended to read as follows:

(b) The *executive* commissioner shall submit a semiannual report to the governor and the committees of each house of the legislature that have primary oversight jurisdiction over health and human services agencies regarding:

(1) the number of children residing in institutions in this state and, of those chil-

dren, the number for whom a recommendation has been made for a transition to a community-based residence but who have not yet made that transition;

(2) the circumstances of each child described by Subdivision (1), including the type of institution and name of the institution in which the child resides, the child's age, the residence of the child's parents or guardians, and the length of time in which the child has resided in the institution;

(3) the number of permanency plans developed for children residing in institutions in this state, the progress achieved in implementing those plans, and barriers to implementing those plans;

(4) the number of children who previously resided in an institution in this state and have made the transition to a community-based residence;

(5) the number of children who previously resided in an institution in this state and have been reunited with their families or placed with alternate families;

(6) the community supports that resulted in the successful placement of children described by Subdivision (5) with alternate families; and

(7) the community supports that are unavailable but necessary to address the needs of children who continue to reside in an institution in this state after being recommended to make a transition from the institution to an alternate family or community-based residence.

SECTION 2.169. Sections 531.164(b), (e), (f), (g), and (h), Government Code, are amended to read as follows:

(b) An institution described by Section 531.151(3)(A) or (B) shall notify the local *intellectual and developmental disability* [~~mental retardation~~] authority for the region in which the institution is located of a request for placement of a child in the institution. An institution described by Section 531.151(3)(D) shall notify the Department of Aging and Disability Services of a request for placement of a child in the institution.

(e) Except as otherwise provided by Subsection (f):

(1) an *ICF-IID* [~~ICF-MR~~] must:

(A) attempt to notify the parent or guardian of a child who resides in the *ICF-IID* [~~ICF-MR~~] in writing of a periodic permanency planning meeting or annual service plan review and reauthorization meeting not later than the 21st day before the date the meeting is scheduled to be held; and

(B) request a response from the parent or guardian; and

(2) a nursing facility must:

(A) attempt to notify the parent or guardian of a child who resides in the facility in writing of an annual service plan review and reauthorization meeting not later than the 21st day before the date the meeting is scheduled to be held; and

(B) request a response from the parent or guardian.

(f) If an emergency situation involving a child residing in an *ICF-IID* [~~ICF-MR~~] or nursing facility occurs, the *ICF-IID* [~~ICF-MR~~] or nursing facility, as applicable, must:

(1) attempt to notify the child's parent or guardian as soon as possible; and

(2) request a response from the parent or guardian.

(g) If a child's parent or guardian does not respond to a notice under Subsection (e) or (f), the *ICF-IID* [~~ICF-MR~~] or nursing facility, as applicable, must attempt to locate the parent or guardian by contacting another person whose information was provided by the parent or guardian under Section 531.1533(1)(B).

(h) Not later than the 30th day after the date an *ICF-IID* [~~ICF-MR~~] or nursing facility determines that it is unable to locate a child's parent or guardian for participation in activities listed under Subsection (e)(1) or (2), the *ICF-IID* [~~ICF-MR~~] or nursing facility must notify the Department of Aging and Disability Services of that determination and request that the department initiate a search for the child's parent or guardian.

SECTION 2.170. Section 531.171, Government Code, is amended to read as follows:

Sec. 531.171. COMMITTEE DUTIES. (a) The standing or other committees of the house of representatives and the senate that have jurisdiction over the *commission* [~~Health and Human Services Commission~~] and other agencies relating to implementation of this chapter, as identified by the speaker of the house of representatives and the lieutenant governor, shall:

(1) monitor the commission's implementation of Section 531.0055 and the commission's other duties in consolidating and integrating health and human services to ensure implementation consistent with law;

(2) recommend, as needed, adjustments to the implementation of Section 531.0055 and the commission's other duties in consolidating and integrating health and human services; and

(3) review the rulemaking process used by the commission, including the commission's plan for obtaining public input.

(b) The commission shall provide copies of all required reports to the committees and shall provide the committees with copies of proposed rules before the rules are published in the Texas Register. At the request of a committee or the *executive* commissioner, a health and human services agency shall provide other information to the committee, including information relating to the health and human services system, and shall report on agency progress in implementing statutory directives identified by the committee and the directives of the commission.

SECTION 2.171. Section 531.191(a), Government Code, is amended to read as follows:

(a) The commission, subject to the approval of the governor and the Legislative Budget Board, shall develop and implement a plan for the integration of services and functions relating to eligibility determination and service delivery by health and human services agencies, the Texas Workforce Commission, and other agencies. The plan must include a reengineering of eligibility determination business processes, streamlined service delivery, a unified and integrated process for the transition from welfare to work, and improved access to benefits and services for clients. In developing and implementing the plan, the commission:

(1) shall give priority to the design and development of computer hardware and software for and provide technical support relating to the integrated eligibility determination system;

(2) shall consult with agencies whose programs are included in the plan, including the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services, the *Department of State Health Services* [~~Texas Department of Health~~], and the Texas Workforce Commission;

(3) may contract for appropriate professional and technical assistance; and

(4) may use the staff and resources of agencies whose programs are included in the plan.

SECTION 2.172. Sections 531.251(a–1) and (a–2), Government Code, are amended to read as follows:

(a–1) The consortium must include:

(1) representatives of the Department of State Health Services, Department of Family and Protective Services, *commission's* [~~Health and Human Services Commission's~~] Medicaid program, Texas Education Agency, Texas Juvenile Justice Department, and Texas Correctional Office on Offenders with Medical or Mental Impairments; *and*

(2) one *member who is:*

(A) a youth or young adult who has a serious emotional disturbance and has received mental health services and supports; or

(B) [~~(3)~~] a family member of a youth or young adult described by *Paragraph (A)* [~~Subdivision (2)~~].

(a–2) The consortium may coordinate with the Children's Policy Council for the purposes of including the representation required by *Subsection* [~~Subsections~~] (a–1)(2) [~~and (3)~~].

SECTION 2.173. The heading to Subchapter H, Chapter 531, Government Code, is amended to read as follows:

SUBCHAPTER H. OFFICE OF *HEALTH* [~~EARLY CHILDHOOD~~] COORDINATION *AND CONSUMER SERVICES*

SECTION 2.174. Section 531.281, Government Code, is amended to read as follows:

Sec. 531.281. *DEFINITION* [~~DEFINITIONS~~]. In this chapter, *"office"*[~~:~~

[~~(1) "Office"~~] means the Office of *Health* [~~Early Childhood~~] Coordination *and Consumer Services*.

[~~(2) "Advisory committee" means the Office of Early Childhood Coordination Advisory Committee.~~]

SECTION 2.175. Sections 531.282(a) and (b), Government Code, are amended to read as follows:

(a) The Office of *Health* [~~Early Childhood~~] Coordination *and Consumer Services* is an office within the commission.

(b) The *executive* commissioner shall employ staff as needed to carry out the duties of the office.

SECTION 2.176. Section 531.284(b), Government Code, is amended to read as follows:

(b) In developing the statewide strategic plan, the office shall:

(1) consider existing programs and models to serve children younger than six years of age, including:

(A) community resource coordination groups;

(B) the Texas *System of Care* [~~Integrated Funding Initiative~~];

(C) the Texas Information and Referral Network; and

(D) efforts to create a 2–1–1 telephone number for access to human services;

(2) attempt to maximize federal funds and local existing infrastructure and funds; and

(3) provide for local participation to the greatest extent possible.

SECTION 2.177. Section 531.285(a), Government Code, is amended to read as follows:

(a) The office shall identify:

(1) gaps in early childhood services by functional area and geographical area;

(2) state policies, rules, and service procedures that prevent or inhibit children younger than six years of age from accessing available services;

(3) sources of funds for early childhood services, including federal, state, and private-public ventures;

(4) opportunities for collaboration between the Texas Education Agency and health and human services agencies to better serve the needs of children younger than six years of age;

(5) methods for coordinating the provision of early childhood services provided by the Texas Head *Start State* [~~Start-State~~] Collaboration *Office* [~~Project~~], the Texas Education Agency, and the Texas Workforce Commission;

(6) quantifiable benchmarks for success within early childhood service delivery; and

(7) national best practices in early care and educational delivery models.

SECTION 2.178. Sections 531.301(a) and (b), Government Code, are amended to read as follows:

(a) The commission shall develop and implement a state prescription drug program that operates in the same manner as the vendor drug program operates in providing prescription drug benefits to *Medicaid* recipients [~~of medical assistance under Chapter 32, Human Resources Code~~].

(b) A person is eligible for prescription drug benefits under the state program if the person is:

(1) a qualified Medicare beneficiary, as defined by 42 U.S.C. Section 1396d(p)(1), as amended;

(2) a specified low-income Medicare beneficiary who is eligible for [~~medical~~] assistance *under Medicaid* for Medicare cost-sharing payments under 42 U.S.C. Section 1396a(a)(10)(E)(iii), as amended;

(3) a qualified disabled and working individual, as defined by 42 U.S.C. Section 1396d(s), as amended; *or*

(4) a qualifying individual who is eligible for that assistance under 42 U.S.C. Section *1396a(a)(10)(E)(iv)* [~~1396a(a)(10)(E)(iv)(I), as amended; or~~

[~~(5) a qualifying individual who is eligible for that assistance under 42 U.S.C. Section 1396a(a)(10)(E)(iv)(II), as amended~~].

SECTION 2.179. Section 531.302, Government Code, is amended to read as follows:

Sec. 531.302. RULES. (a) The *executive commissioner* [~~commission~~] shall adopt all rules necessary for implementation of the state prescription drug program.

(b) In adopting rules for the state prescription drug program, the *executive commissioner* [~~commission~~] may:

(1) require a person who is eligible for prescription drug benefits to pay a cost-sharing payment;

(2) authorize the use of a prescription drug formulary to specify which prescription drugs the state program will cover;

(3) to the extent possible, require clinically appropriate prior authorization for prescription drug benefits in the same manner as prior authorization is required under the vendor drug program; and

(4) establish a drug utilization review program to ensure the appropriate use of prescription drugs under the state program.

(c) In adopting rules for the state prescription drug program, the *executive commissioner* [~~commission~~] shall consult with an advisory panel composed of an equal number of physicians, pharmacists, and pharmacologists appointed by the *executive* commissioner.

SECTION 2.180. Section 531.303, Government Code, is amended to read as follows:

Sec. 531.303. GENERIC EQUIVALENT AUTHORIZED. In adopting rules under the state program, the *executive commissioner* [~~commission~~] may require that, unless the practitioner's signature on a prescription clearly indicates that the prescription must be dispensed as written, the pharmacist may select a generic equivalent of the prescribed drug.

SECTION 2.181. Section 531.304, Government Code, is amended to read as follows:

Sec. 531.304. PROGRAM FUNDING PRIORITIES. If money available for the state prescription drug program is insufficient to provide prescription drug benefits to all persons who are eligible under Section 531.301(b), the commission shall limit the number of enrollees based on available funding and shall provide the prescription drug benefits to eligible persons in the following order of priority:

(1) persons eligible under Section 531.301(b)(1);

(2) persons eligible under Section 531.301(b)(2); and

(3) persons eligible under Sections 531.301(b)(3) *and* [~~,~~] (4)[~~, and (5)~~].

SECTION 2.182. Section 531.402(b), Government Code, is amended to read as follows:

(b) The council is composed of nine members of the public appointed by the governor with the advice and consent of the senate. To be eligible for appointment to the council, a person must have demonstrated an interest in and knowledge of problems and available services related to *Medicaid,* the child health plan program, the financial assistance program under Chapter 31, Human Resources Code, [~~the medical assistance program under Chapter 32, Human Resources Code,~~] or the *supplemental nutrition assistance program* [~~nutritional assistance programs~~] under Chapter 33, Human Resources Code.

SECTION 2.183. Sections 531.421(1), (2), and (3), Government Code, are amended to read as follows:

(1) "Children with severe emotional disturbances" includes:

(A) children who are at risk of incarceration or placement in a residential mental health facility;

(B) children for whom a court may appoint the Department of *Family and* Protective [~~and Regulatory~~] Services as managing conservator;

(C) children who are students in a special education program under Subchapter A, Chapter 29, Education Code; and

(D) children who have a substance abuse disorder or a developmental disability.

(2) "Community resource coordination group" means a coordination group established under a memorandum of understanding adopted under Section 531.055[~~, as added by Chapter 114, Acts of the 77th Legislature, Regular Session, 2001~~].

(3) "Consortium" means the *Texas System of Care Consortium established under Subchapter G-1* [~~consortium that oversees the Texas Integrated Funding Initiative under Subchapter G, Chapter 531, as added by Chapter 446, Acts of the 76th Legislature, Regular Session, 1999~~].

SECTION 2.184. The heading to Section 531.423, Government Code, is amended to read as follows:

Sec. 531.423. SUMMARY REPORT BY [~~TEXAS INTEGRATED FUNDING INITIATIVE~~] CONSORTIUM.

SECTION 2.185. Section 531.423(c), Government Code, is amended to read as follows:

(c) The consortium may include in the report created under this section recommendations for the statewide expansion of sites participating in the Texas *System of Care* [~~Integrated Funding Initiative under Subchapter G, Chapter 531, as added by Chapter 446, Acts of the 76th Legislature, Regular Session, 1999,~~] and the integration of services provided at those sites with services provided by community resource coordination groups.

SECTION 2.186. Section 531.424, Government Code, is amended to read as follows:

Sec. 531.424. AGENCY IMPLEMENTATION OF RECOMMENDATIONS. *As appropriate, the person or entity responsible for adopting rules for an* [~~An~~] agency described by Section 531.423(a) shall[~~, as appropriate,~~] adopt rules, *and the agency shall implement* policy changes[~~;~~] and *enter into* memoranda of understanding with other agencies, to implement the recommendations in the report created under Section 531.423.

SECTION 2.187. Section 531.551(a), Government Code, is amended to read as follows:

(a) The executive commissioner shall adopt rules providing for:

(1) a standard definition of "uncompensated hospital care";

(2) a methodology to be used by hospitals in this state to compute the cost of that care that incorporates *a* [~~the~~] standard set of adjustments *to a hospital's initial computation of the cost of uncompensated hospital care that account for all funding streams that:*

(A) are not patient-specific; and

(B) are used to offset the hospital's initially computed amount of uncompensated care [~~described by Section 531.552(g)(4)~~]; and

(3) procedures to be used by those hospitals to report the cost of that care to the commission and to analyze that cost.

SECTION 2.188. The heading to Section 531.652, Government Code, is amended to read as follows:

Sec. 531.652. *OPERATION* [~~ESTABLISHMENT~~] OF NURSE–FAMILY PARTNERSHIP COMPETITIVE GRANT PROGRAM.

SECTION 2.189. Section 531.652(a), Government Code, is amended to read as follows:

(a) The commission shall *operate* [~~establish~~] a nurse-family partnership competitive grant program through which the commission will award grants for the implementation of nurse-family partnership programs, or the expansion of existing programs, and for the operation of those programs for a period of not less than two years.

SECTION 2.190. Section 531.659(a), Government Code, is amended to read as follows:

(a) The commission, with the assistance of the Nurse–Family Partnership National Service Office, shall:

(1) adopt performance indicators that are designed to measure a grant recipient's performance with respect to the partnership program standards adopted by the *executive commissioner* [~~commission~~] under Section 531.656;

(2) use the performance indicators to continuously monitor and formally evaluate on an annual basis the performance of each grant recipient; and

(3) prepare and submit an annual report, not later than December 1 of each year, to the Senate Health and Human Services Committee, or its successor, and the House Human Services Committee, or its successor, regarding the performance of each grant recipient during the preceding state fiscal year with respect to providing partnership program services.

SECTION 2.191. Section 531.706(c), Government Code, is amended to read as follows:

(c) The advisory committee shall:

(1) develop strategies for implementing the regulation of health care interpreters and health care translators;

(2) make recommendations to the commission for any legislation necessary to establish and enforce qualifications for health care interpreters and health care translators or for the adoption of rules by *or for* state agencies regulating health care practitioners, hospitals, physician offices, and health care facilities that hire health care interpreters or health care translators; and

(3) perform other activities assigned by the commission related to health care interpreters or health care translators.

SECTION 2.192. Section 531.754, Government Code, is amended to read as follows:

Sec. 531.754. TRAINING PROGRAM. The commission shall develop and administer a training program for navigators. The program must include training on:

(1) how to complete an online application for public assistance benefits through the Texas Integrated Eligibility Redesign System (TIERS);

(2) the importance of maintaining the confidentiality of information handled by a navigator;

(3) the importance of obtaining and submitting complete and accurate information when completing an application for public assistance benefits online through the Texas Integrated Eligibility Redesign System (TIERS);

(4) the financial assistance program, the supplemental nutrition assistance program, *Medicaid* [~~the medical assistance program~~], the child health plan program, and any other public assistance benefits program for which an individual may complete an online application through the Texas Integrated Eligibility Redesign System (TIERS); and

(5) how an individual may apply for other public assistance benefits for which an in-

dividual may not complete an online application through the Texas Integrated Eligibility Redesign System (TIERS).

SECTION 2.193. Sections 531.802(c), (d), and (g), Government Code, are amended to read as follows:

(c) Subject to Subsection (d), the council is composed of the following:

(1) the executive commissioner;

(2) the commissioner of state health services;

(3) the commissioner of the Department of Family and Protective Services;

(4) the commissioner of aging and disability services;

(5) the commissioner of assistive and rehabilitative services;

(6) the commissioner of education;

(7) the executive director of the Texas Juvenile *Justice Department* [~~Probation Commission~~];

(8) [~~the executive commissioner of the Texas Youth Commission;~~

[~~(9)~~] the executive director of the Texas Workforce Commission;

(9) [~~(10)~~] the director of the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(10) [~~(11)~~] two public representatives who are parents of children who have received services from an agency represented on the council, appointed by the executive commissioner; and

(11) [~~(12)~~] two representatives who are young adults or adolescents who have received services from an agency represented on the council, appointed by the executive commissioner.

(d) An individual listed in Subsections *(c)(1)–(9)* [~~(c)(1)–(10)~~] may designate another individual as having authority to act on behalf of the individual at council meetings and with respect to council functions.

(g) The council is administratively attached to the commission but is independent of direction by the commission or the executive commissioner. The commission, through the commission's Office of *Health* [~~Program~~] Coordination *and Consumer Services* [~~for Children and Youth~~], shall provide administrative support and resources to the council as necessary to enable the council to perform its duties.

SECTION 2.194. The heading to Subchapter U, Chapter 531, Government Code, is amended to read as follows:

SUBCHAPTER U. MORTALITY REVIEW FOR CERTAIN INDIVIDUALS WITH *AN* INTELLECTUAL OR DEVELOPMENTAL *DISABILITY* [~~DISABILITIES~~]

SECTION 2.195. Section 531.8501, Government Code, is amended to read as follows:

Sec. 531.8501. DEFINITION. In this subchapter, "contracted organization" means an entity that contracts with the *commission* [~~Health and Human Services Commission~~] for the provision of services as described by Section 531.851(c).

SECTION 2.196. Sections 531.851(a), (c), and (e), Government Code, are amended to read as follows:

(a) The executive commissioner shall establish an independent mortality review system to review the death of a person with an intellectual or developmental disability who, at the time of the person's death or at any time during the 24–hour period before the person's death:

(1) resided in or received services from:

(A) an *ICF–IID* [~~intermediate care facility for persons with an intellectual or~~

~~developmental disability (ICF/IID)~~] operated or licensed by the Department of Aging and Disability Services or a community center; or

(B) the *ICF–IID* [~~ICF/IID~~] component of the Rio Grande State Center; or

(2) received services through a Section 1915(c) waiver program for individuals who are eligible for *ICF–IID* [~~ICF/IID~~] services.

(c) The executive commissioner shall contract with an institution of higher education or a health care organization or association with experience in conducting research-based mortality studies to conduct independent mortality reviews of persons with an intellectual or developmental disability. The contract must require the contracted organization to form a review team consisting of:

(1) a physician with expertise regarding the medical treatment of individuals with *an* intellectual or developmental *disability* [~~disabilities~~];

(2) a registered nurse with expertise regarding the medical treatment of individuals with *an* intellectual or developmental *disability* [~~disabilities~~];

(3) a clinician or other professional with expertise in the delivery of services and supports for individuals with *an* intellectual or developmental *disability* [~~disabilities~~]; and

(4) any other appropriate person as provided by the executive commissioner.

(e) To ensure consistency across mortality review systems, a review under this section must collect information consistent with the information required to be collected by any other independent mortality review process established specifically for persons with *an* intellectual or developmental *disability* [~~disabilities~~].

SECTION 2.197. Section 531.854(a), Government Code, is amended to read as follows:

(a) The commission may use or publish information under this subchapter only to advance statewide practices regarding the treatment and care of individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~]. A summary of the data in the contracted organization's reports or a statistical compilation of data reports may be released by the commission for general publication if the summary or statistical compilation does not contain any information that would permit the identification of an individual or that is confidential or privileged under this subchapter or other state or federal law.

SECTION 2.198. Section 531.901(4), Government Code, is amended to read as follows:

(4) "Local or regional health information exchange" means a health information exchange operating in this state that securely exchanges electronic health information, including information for patients receiving services under the child health plan *program* or Medicaid [~~program~~], among hospitals, clinics, physicians' offices, and other health care providers that are not owned by a single entity or included in a single operational unit or network.

SECTION 2.199. Sections 531.903(a) and (c), Government Code, are amended to read as follows:

(a) The commission shall develop an electronic health information exchange system to improve the quality, safety, and efficiency of health care services provided under the child health plan *program* and Medicaid [~~programs~~]. In developing the system, the commission shall ensure that:

(1) the confidentiality of patients' health information is protected and the privacy of those patients is maintained in accordance with applicable federal and state law, including:

(A) Section 1902(a)(7), Social Security Act (42 U.S.C. Section 1396a(a)(7));

(B) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104–191);

(C) Chapter 552 [~~, Government Code~~];

(D) Subchapter G, Chapter 241, Health and Safety Code;

(E) Section 12.003, Human Resources Code; and

(F) federal and state rules and regulations, including:

(i) 42 C.F.R. Part 431, Subpart F; and

(ii) 45 C.F.R. Part 164;

(2) appropriate information technology systems used by the commission and health and human services agencies are interoperable;

(3) the system and external information technology systems are interoperable in receiving and exchanging appropriate electronic health information as necessary to enhance:

(A) the comprehensive nature of the information contained in electronic health records; and

(B) health care provider efficiency by supporting integration of the information into the electronic health record used by health care providers;

(4) the system and other health information systems not described by Subdivision (3) and data warehousing initiatives are interoperable; and

(5) the system has the elements described by Subsection (b).

(c) The commission shall implement the health information exchange system in stages as described by *this chapter* [~~Sections 531.905 through 531.908~~], except that the commission may deviate from those stages if technological advances make a deviation advisable or more efficient.

SECTION 2.200. Section 531.904(b), Government Code, is amended to read as follows:

(b) The executive commissioner shall appoint to the advisory committee at least 12 and not more than 16 members who have an interest in health information technology and who have experience in serving persons receiving health care through the child health plan *program* and Medicaid [~~programs~~].

SECTION 2.201. Sections 531.906(a) and (d), Government Code, are amended to read as follows:

(a) In stage one of implementing the health information exchange system, the commission shall support and coordinate electronic prescribing tools used by health care providers and health care facilities under the child health plan *program* and Medicaid [~~programs~~].

(d) The commission shall apply for and actively pursue any waiver to the child health plan program or the state Medicaid plan from the federal Centers for Medicare and Medicaid Services or any other federal agency as necessary to remove an identified impediment to supporting and implementing electronic prescribing tools under this section, including the requirement for handwritten certification of certain drugs under 42 C.F.R. Section 447.512. If the commission, with assistance from the Legislative Budget Board, determines that the implementation of operational modifications in accordance with a waiver obtained as required by this subsection has resulted in cost increases in the child health plan *program* or Medicaid [~~program~~], the commission shall take the necessary actions to reverse the operational modifications.

SECTION 2.202. Section 531.907(a), Government Code, is amended to read as follows:

(a) Based on the recommendations of the advisory committee established under Section 531.904 and feedback provided by interested parties, the commission in stage two of implementing the health information exchange system may expand the system by:

(1) providing an electronic health record for each child enrolled in the child health plan program;

(2) including state laboratory results information in an electronic health record, including the results of newborn screenings and tests conducted under the Texas Health Steps program, based on the system developed for the health passport under Section 266.006, Family Code;

(3) improving data-gathering capabilities for an electronic health record so that the record may include basic health and clinical information in addition to available claims information, as determined by the executive commissioner;

(4) using evidence-based technology tools to create a unique health profile to alert health care providers regarding the need for additional care, education, counseling, or health management activities for specific patients; and

(5) continuing to enhance the electronic health record created *for each Medicaid recipient* [~~under Section 531.905~~] as technology becomes available and interoperability capabilities improve.

SECTION 2.203. Section 531.911, Government Code, is amended to read as follows:

Sec. 531.911. RULES. The executive commissioner may adopt rules to implement Sections 531.903 through *531.909* [~~531.910~~].

SECTION 2.204. Sections 531.912(a), (b), and (c), Government Code, are amended to read as follows:

(a) In this section, "nursing facility" means a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code, that provides long-term care services, as defined by Section 22.0011, Human Resources Code, to *Medicaid* [~~medical assistance~~] recipients.

(b) If feasible, the executive commissioner by rule may establish an incentive payment program for nursing facilities that choose to participate. The program must be designed to improve the quality of care and services provided to *Medicaid* [~~medical assistance~~] recipients. Subject to Subsection (f), the program may provide incentive payments in accordance with this section to encourage facilities to participate in the program.

(c) In establishing an incentive payment program under this section, the executive commissioner shall, subject to Subsection (d), adopt common performance measures to be used in evaluating nursing facilities that are related to structure, process, and outcomes that positively correlate to nursing facility quality and improvement. The common performance measures:

(1) must be:

(A) recognized by the executive commissioner as valid indicators of the overall quality of care received by *Medicaid* [~~medical assistance~~] recipients; and

(B) designed to encourage and reward evidence-based practices among nursing facilities; and

(2) may include measures of:

(A) quality of care, as determined by clinical performance ratings published by the federal Centers for Medicare and Medicaid Services, the Agency for Healthcare Research and Quality, or another federal agency;

(B) direct-care staff retention and turnover;

(C) recipient satisfaction, including the satisfaction of recipients who are short-term and long-term residents of facilities, and family satisfaction, as determined by the Nursing Home Consumer Assessment of *Healthcare* [~~Health~~] Providers and Systems *surveys* [~~survey~~] relied upon by the federal Centers for Medicare and Medicaid Services;

(D) employee satisfaction and engagement;

(E) the incidence of preventable acute care emergency room services use;

(F) regulatory compliance;

(G) level of person-centered care; and

(H) direct-care staff training, including a facility's utilization of independent distance learning programs for the continuous training of direct-care staff.

SECTION 2.205. The heading to Section 531.982, Government Code, is amended to read as follows:

Sec. 531.982. *IMPLEMENTATION* [~~ESTABLISHMENT~~] OF TEXAS HOME VISITING PROGRAM.

SECTION 2.206. Section 531.982(a), Government Code, is amended to read as follows:

(a) The commission shall *maintain* [~~create~~] a strategic plan to serve at-risk pregnant women and families with children under the age of six through home visiting programs that improve outcomes for parents and families.

SECTION 2.207. Section 531.988, Government Code, is amended to read as follows:

Sec. 531.988. RULES. The *executive commissioner* [~~commission~~] may adopt rules as necessary to implement this subchapter.

SECTION 2.208. The heading to Chapter 533, Government Code, is amended to read as follows:

CHAPTER 533. [~~IMPLEMENTATION OF~~] MEDICAID MANAGED CARE PROGRAM

SECTION 2.209. Sections 533.001(2) and (6), Government Code, are amended to read as follows:

(2) *"Executive commissioner"* [~~"Commissioner"~~] means the *executive* commissioner of *the Health and Human Services Commission* [~~health and human services~~].

(6) "Recipient" means a recipient of *Medicaid* [~~medical assistance under Chapter 32, Human Resources Code~~].

SECTION 2.210. Section 533.002, Government Code, is amended to read as follows:

Sec. 533.002. PURPOSE. The commission shall implement the Medicaid managed care program [~~as part of the health care delivery system developed under Chapter 532~~] by contracting with managed care organizations in a manner that, to the extent possible:

(1) improves the health of Texans by:

(A) emphasizing prevention;

(B) promoting continuity of care; and

(C) providing a medical home for recipients;

(2) ensures that each recipient receives high quality, comprehensive health care services in the recipient's local community;

(3) encourages the training of and access to primary care physicians and providers;

(4) maximizes cooperation with existing public health entities, including local departments of health;

(5) provides incentives to managed care organizations to improve the quality of health care services for recipients by providing value-added services; and

(6) reduces administrative and other nonfinancial barriers for recipients in obtaining health care services.

SECTION 2.211. Sections 533.0025(b), (c), (d), (e), (f), and (h), Government Code, are amended to read as follows:

(b) Except as otherwise provided by this section and notwithstanding any other law, the commission shall provide *Medicaid* [~~medical assistance for~~] acute care services through the most cost-effective model of Medicaid capitated managed care as determined by the commission. The commission shall require mandatory participation in a Medicaid capitated managed care program for all persons eligible for *Medicaid* acute care [~~medical assistance~~] benefits, but may implement alternative models or arrangements, including a traditional fee-for-service arrangement, if the commission determines the alternative would be more cost-effective or efficient.

(c) In determining whether a model or arrangement described by Subsection (b) is more cost-effective, the *executive* commissioner must consider:

(1) the scope, duration, and types of health benefits or services to be provided in a certain part of this state or to a certain population of recipients;

(2) administrative costs necessary to meet federal and state statutory and regulatory requirements;

(3) the anticipated effect of market competition associated with the configuration of Medicaid service delivery models determined by the commission; and

(4) the gain or loss to this state of a tax collected under Chapter 222, Insurance Code.

(d) If the commission determines that it is not more cost-effective to use a Medicaid managed care model to provide certain types of *Medicaid* [~~medical assistance for~~] acute care in a certain area or to certain [~~medical assistance~~] recipients as prescribed by this section, the commission shall provide *Medicaid* [~~medical assistance for~~] acute care through a traditional fee-for-service arrangement.

(e) The commission shall determine the most cost-effective alignment of managed care service delivery areas. The *executive* commissioner may consider the number of lives impacted, the usual source of health care services for residents in an area, and other factors that impact the delivery of health care services in the area.

(f) The commission shall:

(1) conduct a study to evaluate the feasibility of automatically enrolling applicants determined eligible for benefits under *Medicaid* [~~the medical assistance program~~] in a Medicaid managed care plan chosen by the applicant; and

(2) report the results of the study to the legislature not later than December 1, 2014.

(h) If the commission determines that it is feasible, the commission may, notwithstanding any other law, implement an automatic enrollment process under which applicants determined eligible for *Medicaid* [~~medical assistance~~] benefits are automatically enrolled in a Medicaid managed care plan chosen by the applicant. The commission may elect to implement the automatic enrollment process as to certain populations of recipients [~~under the medical assistance program~~].

SECTION 2.212. Section 533.00251(a)(3), Government Code, is amended to read as follows:

(3) "Nursing facility" means a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code, that provides long-term services and supports to [~~Medicaid~~] recipients.

SECTION 2.213. Sections 533.00251(b), (c), and (d), Government Code, are amended to read as follows:

(b) Subject to Section 533.0025, the commission shall expand the STAR + PLUS Medicaid managed care program to all areas of this state to serve individuals eligible for acute care services and long-term services and supports under *Medicaid* [~~the medical assistance program~~].

(c) Subject to Section 533.0025 and notwithstanding any other law, the commission, in consultation with the advisory committee, shall provide benefits under *Medicaid* [~~the medical assistance program~~] to recipients who reside in nursing facilities through the STAR + PLUS Medicaid managed care program. In implementing this subsection, the commission shall ensure:

(1) that the commission is responsible for setting the minimum reimbursement rate paid to a nursing facility under the managed care program, including the staff rate enhancement paid to a nursing facility that qualifies for the enhancement;

(2) that a nursing facility is paid not later than the 10th day after the date the facility submits a clean claim;

(3) the appropriate utilization of services consistent with criteria *established* [~~adopted~~] by the commission;

(4) a reduction in the incidence of potentially preventable events and unnecessary institutionalizations;

(5) that a managed care organization providing services under the managed care program provides discharge planning, transitional care, and other education programs to physicians and hospitals regarding all available long-term care settings;

(6) that a managed care organization providing services under the managed care program:

(A) assists in collecting applied income from recipients; and

(B) provides payment incentives to nursing facility providers that reward reductions in preventable acute care costs and encourage transformative efforts in the delivery of nursing facility services, including efforts to promote a resident-centered care culture through facility design and services provided;

(7) the establishment of a portal that is in compliance with state and federal regulations, including standard coding requirements, through which nursing facility providers participating in the STAR + PLUS Medicaid managed care program may submit claims to any participating managed care organization;

(8) that rules and procedures relating to the certification and decertification of nursing facility beds under *Medicaid* [~~the medical assistance program~~] are not affected; and

(9) that a managed care organization providing services under the managed care program, to the greatest extent possible, offers nursing facility providers access to:

(A) acute care professionals; and

(B) telemedicine, when feasible and in accordance with state law, including rules adopted by the Texas Medical Board.

(d) Subject to Subsection (e), the commission shall ensure that a nursing facility provider authorized to provide services under *Medicaid* [~~the medical assistance program~~] on September 1, 2013, is allowed to participate in the STAR + PLUS Medicaid managed care program through August 31, 2017.

SECTION 2.214. Section 533.002515(a), Government Code, is amended to read as follows:

(a) The commission shall develop a plan in preparation for implementing the requirement under Section 533.00251(c) that the commission provide benefits under *Medicaid* [~~the medical assistance program~~] to recipients who reside in nursing facilities through the STAR + PLUS Medicaid managed care program. The plan required by this section must be completed in two phases as follows:

(1) phase one: contract planning phase; and

(2) phase two: initial testing phase.

SECTION 2.215. Section 533.00252(a), Government Code, is amended to read as follows:

(a) The STAR + PLUS Nursing Facility Advisory Committee is established to advise the commission on the implementation of and other activities related to the provision of *Medicaid* [~~medical assistance~~] benefits to recipients who reside in nursing facilities through the STAR + PLUS Medicaid managed care program under Section 533.00251, including advising the commission regarding its duties with respect to:

(1) developing quality-based outcomes and process measures for long-term services and supports provided in nursing facilities;

(2) developing quality-based long-term care payment systems and quality initiatives for nursing facilities;

(3) transparency of information received from managed care organizations;

(4) the reporting of outcome and process measures;

(5) the sharing of data among health and human services agencies; and

(6) patient care coordination, quality of care improvement, and cost savings.

SECTION 2.216. Section 533.00253(a)(2), Government Code, is amended to read as follows:

(2) "Health home" means a primary care provider practice, or, if appropriate, a specialty care provider practice, incorporating several features, including comprehensive care coordination, family-centered care, and data management, that are focused on improving outcome-based quality of care and increasing patient and provider satisfaction under *Medicaid* [~~the medical assistance program~~].

SECTION 2.217. Sections 533.00253(b), (d), and (e), Government Code, are amended to read as follows:

(b) Subject to Section 533.0025, the commission shall, in consultation with the advisory committee and the Children's Policy Council established under Section 22.035, Human Resources Code, establish a mandatory STAR Kids capitated managed care program tailored to provide *Medicaid* [~~medical assistance~~] benefits to children with disabilities. The managed care program developed under this section must:

(1) provide *Medicaid* [~~medical assistance~~] benefits that are customized to meet the health care needs of recipients under the program through a defined system of care;

(2) better coordinate care of recipients under the program;

(3) improve the health outcomes of recipients;

(4) improve recipients' access to health care services;

(5) achieve cost containment and cost efficiency;

(6) reduce the administrative complexity of delivering *Medicaid* [~~medical assistance~~] benefits;

(7) reduce the incidence of unnecessary institutionalizations and potentially preventable events by ensuring the availability of appropriate services and care management;

(8) require a health home; and

(9) coordinate and collaborate with long-term care service providers and long-term care management providers, if recipients are receiving long-term services and supports outside of the managed care organization.

(d) The commission shall provide *Medicaid* [~~medical assistance~~] benefits through the STAR Kids managed care program established under this section to children who are receiving benefits under the medically dependent children (MDCP) waiver program. The commission shall ensure that the STAR Kids managed care program provides all of the benefits provided under the medically dependent children (MDCP) waiver program to the extent necessary to implement this subsection.

(e) The commission shall ensure that there is a plan for transitioning the provision of Medicaid [~~program~~] benefits to recipients 21 years of age or older from under the STAR Kids program to under the STAR + PLUS Medicaid managed care program that protects continuity of care. The plan must ensure that coordination between the programs begins when a recipient reaches 18 years of age.

SECTION 2.218. Section 533.0026(a), Government Code, is amended to read as follows:

(a) Notwithstanding any other law, the commission shall ensure that a managed care plan offered by a managed care organization that contracts with the commission under this chapter and any other Medicaid managed care model or arrangement implemented under this chapter allow a [~~Medicaid~~] recipient who receives services through the plan or other model or arrangement to, in the manner and to the extent required by Section 32.072, Human Resources Code:

(1) select an in-network ophthalmologist or therapeutic optometrist in the managed care network to provide eye health care services, other than surgery; and

(2) have direct access to the selected in-network ophthalmologist or therapeutic optometrist for the provision of the nonsurgical services.

SECTION 2.219. Section 533.0028, Government Code, is amended to read as follows:

Sec. 533.0028. EVALUATION OF CERTAIN STAR + PLUS MEDICAID MANAGED

CARE PROGRAM SERVICES. The external quality review organization shall periodically conduct studies and surveys to assess the quality of care and satisfaction with health care services provided to enrollees in the STAR + PLUS Medicaid managed care program who are eligible to receive health care benefits under both [~~the~~] Medicaid and *the* Medicare *program* [~~programs~~].

SECTION 2.220. Section 533.00281(d), Government Code, is amended to read as follows:

(d) In conjunction with the commission's office of contract management, the commission shall provide a report to the standing committees of the senate and house of representatives with jurisdiction over [~~the~~] Medicaid [~~program~~] not later than December 1 of each year. The report must:

(1) summarize the results of the utilization reviews conducted under this section during the preceding fiscal year;

(2) provide analysis of errors committed by each reviewed managed care organization; and

(3) extrapolate those findings and make recommendations for improving the efficiency of the program.

SECTION 2.221. Section 533.003(b), Government Code, is amended to read as follows:

(b) The commission, in considering approval of a subcontract between a managed care organization and a pharmacy benefit manager for the provision of prescription drug benefits under [~~the~~] Medicaid [~~program~~], shall review and consider whether the pharmacy benefit manager has been in the preceding three years:

(1) convicted of an offense involving a material misrepresentation or an act of fraud or of another violation of state or federal criminal law;

(2) adjudicated to have committed a breach of contract; or

(3) assessed a penalty or fine in the amount of $500,000 or more in a state or federal administrative proceeding.

SECTION 2.222. Section 533.005(a), Government Code, is amended to read as follows:

(a) A contract between a managed care organization and the commission for the organization to provide health care services to recipients must contain:

(1) procedures to ensure accountability to the state for the provision of health care services, including procedures for financial reporting, quality assurance, utilization review, and assurance of contract and subcontract compliance;

(2) capitation rates that ensure the cost-effective provision of quality health care;

(3) a requirement that the managed care organization provide ready access to a person who assists recipients in resolving issues relating to enrollment, plan administration, education and training, access to services, and grievance procedures;

(4) a requirement that the managed care organization provide ready access to a person who assists providers in resolving issues relating to payment, plan administration, education and training, and grievance procedures;

(5) a requirement that the managed care organization provide information and referral about the availability of educational, social, and other community services that could benefit a recipient;

(6) procedures for recipient outreach and education;

(7) a requirement that the managed care organization make payment to a physician or provider for health care services rendered to a recipient under a managed care plan on any claim for payment that is received with documentation reasonably necessary for the managed care organization to process the claim:

(A) not later than:

(i) the 10th day after the date the claim is received if the claim relates to services provided by a nursing facility, intermediate care facility, or group home;

(ii) the 30th day after the date the claim is received if the claim relates to the provision of long-term services and supports not subject to Subparagraph (i); and

(iii) the 45th day after the date the claim is received if the claim is not subject to Subparagraph (i) or (ii); or

(B) within a period, not to exceed 60 days, specified by a written agreement between the physician or provider and the managed care organization;

(7–a) a requirement that the managed care organization demonstrate to the commission that the organization pays claims described by Subdivision (7)(A)(ii) on average not later than the 21st day after the date the claim is received by the organization;

(8) a requirement that the commission, on the date of a recipient's enrollment in a managed care plan issued by the managed care organization, inform the organization of the recipient's Medicaid certification date;

(9) a requirement that the managed care organization comply with Section 533.006 as a condition of contract retention and renewal;

(10) a requirement that the managed care organization provide the information required by Section 533.012 and otherwise comply and cooperate with the commission's office of inspector general and the office of the attorney general;

(11) a requirement that the managed care organization's usages of out-of-network providers or groups of out-of-network providers may not exceed limits for those usages relating to total inpatient admissions, total outpatient services, and emergency room admissions determined by the commission;

(12) if the commission finds that a managed care organization has violated Subdivision (11), a requirement that the managed care organization reimburse an out-of-network provider for health care services at a rate that is equal to the allowable rate for those services, as determined under Sections 32.028 and 32.0281, Human Resources Code;

(13) a requirement that, notwithstanding any other law, including Sections 843.312 and 1301.052, Insurance Code, the organization:

(A) use advanced practice registered nurses and physician assistants in addition to physicians as primary care providers to increase the availability of primary care providers in the organization's provider network; and

(B) treat advanced practice registered nurses and physician assistants in the same manner as primary care physicians with regard to:

(i) selection and assignment as primary care providers;

(ii) inclusion as primary care providers in the organization's provider network; and

(iii) inclusion as primary care providers in any provider network directory maintained by the organization;

(14) a requirement that the managed care organization reimburse a federally qualified health center or rural health clinic for health care services provided to a recipient outside of regular business hours, including on a weekend day or holiday, at a rate that is equal to the allowable rate for those services as determined under Section 32.028, Human Resources Code, if the recipient does not have a referral from the recipient's primary care physician;

(15) a requirement that the managed care organization develop, implement, and maintain a system for tracking and resolving all provider appeals related to claims payment, including a process that will require:

(A) a tracking mechanism to document the status and final disposition of each provider's claims payment appeal;

(B) the contracting with physicians who are not network providers and who are of the same or related specialty as the appealing physician to resolve claims disputes

related to denial on the basis of medical necessity that remain unresolved subsequent to a provider appeal;

(C) the determination of the physician resolving the dispute to be binding on the managed care organization and provider; and

(D) the managed care organization to allow a provider with a claim that has not been paid before the time prescribed by Subdivision (7)(A)(ii) to initiate an appeal of that claim;

(16) a requirement that a medical director who is authorized to make medical necessity determinations is available to the region where the managed care organization provides health care services;

(17) a requirement that the managed care organization ensure that a medical director and patient care coordinators and provider and recipient support services personnel are located in the South Texas service region, if the managed care organization provides a managed care plan in that region;

(18) a requirement that the managed care organization provide special programs and materials for recipients with limited English proficiency or low literacy skills;

(19) a requirement that the managed care organization develop and establish a process for responding to provider appeals in the region where the organization provides health care services;

(20) a requirement that the managed care organization:

(A) develop and submit to the commission, before the organization begins to provide health care services to recipients, a comprehensive plan that describes how the organization's provider network will provide recipients sufficient access to:

(i) preventive care;

(ii) primary care;

(iii) specialty care;

(iv) after-hours urgent care;

(v) chronic care;

(vi) long-term services and supports;

(vii) nursing services; and

(viii) therapy services, including services provided in a clinical setting or in a home or community-based setting; and

(B) regularly, as determined by the commission, submit to the commission and make available to the public a report containing data on the sufficiency of the organization's provider network with regard to providing the care and services described under Paragraph (A) and specific data with respect to Paragraphs (A)(iii), (vi), (vii), and (viii) on the average length of time between:

(i) the date a provider makes a referral for the care or service and the date the organization approves or denies the referral; and

(ii) the date the organization approves a referral for the care or service and the date the care or service is initiated;

(21) a requirement that the managed care organization demonstrate to the commission, before the organization begins to provide health care services to recipients, that:

(A) the organization's provider network has the capacity to serve the number of recipients expected to enroll in a managed care plan offered by the organization;

(B) the organization's provider network includes:

(i) a sufficient number of primary care providers;

(ii) a sufficient variety of provider types;

(iii) a sufficient number of providers of long-term services and supports and specialty pediatric care providers of home and community-based services; and

(iv) providers located throughout the region where the organization will provide health care services; and

(C) health care services will be accessible to recipients through the organization's provider network to a comparable extent that health care services would be available to recipients under a fee-for-service or primary care case management model of Medicaid managed care;

(22) a requirement that the managed care organization develop a monitoring program for measuring the quality of the health care services provided by the organization's provider network that:

(A) incorporates the National Committee for Quality Assurance's Healthcare Effectiveness Data and Information Set (HEDIS) measures;

(B) focuses on measuring outcomes; and

(C) includes the collection and analysis of clinical data relating to prenatal care, preventive care, mental health care, and the treatment of acute and chronic health conditions and substance abuse;

(23) subject to Subsection (a–1), a requirement that the managed care organization develop, implement, and maintain an outpatient pharmacy benefit plan for its enrolled recipients:

(A) that exclusively employs the vendor drug program formulary and preserves the state's ability to reduce waste, fraud, and abuse under [~~the~~] Medicaid [~~program~~];

(B) that adheres to the applicable preferred drug list adopted by the commission under Section 531.072;

(C) that includes the prior authorization procedures and requirements prescribed by or implemented under Sections 531.073(b), (c), and (g) for the vendor drug program;

(D) for purposes of which the managed care organization:

(i) may not negotiate or collect rebates associated with pharmacy products on the vendor drug program formulary; and

(ii) may not receive drug rebate or pricing information that is confidential under Section 531.071;

(E) that complies with the prohibition under Section 531.089;

(F) under which the managed care organization may not prohibit, limit, or interfere with a recipient's selection of a pharmacy or pharmacist of the recipient's choice for the provision of pharmaceutical services under the plan through the imposition of different copayments;

(G) that allows the managed care organization or any subcontracted pharmacy benefit manager to contract with a pharmacist or pharmacy providers separately for specialty pharmacy services, except that:

(i) the managed care organization and pharmacy benefit manager are prohibited from allowing exclusive contracts with a specialty pharmacy owned wholly or partly by the pharmacy benefit manager responsible for the administration of the pharmacy benefit program; and

(ii) the managed care organization and pharmacy benefit manager must adopt policies and procedures for reclassifying prescription drugs from retail to specialty drugs, and those policies and procedures must be consistent with rules adopted by the executive commissioner and include notice to network pharmacy providers from the managed care organization;

(H) under which the managed care organization may not prevent a pharmacy or pharmacist from participating as a provider if the pharmacy or pharmacist agrees to comply with the financial terms and conditions of the contract as well as other reasonable administrative and professional terms and conditions of the contract;

(I) under which the managed care organization may include mail-order pharma-

cies in its networks, but may not require enrolled recipients to use those pharmacies, and may not charge an enrolled recipient who opts to use this service a fee, including postage and handling fees;

(J) under which the managed care organization or pharmacy benefit manager, as applicable, must pay claims in accordance with Section 843.339, Insurance Code; and

(K) under which the managed care organization or pharmacy benefit manager, as applicable:

(i) to place a drug on a maximum allowable cost list, must ensure that:

(a) the drug is listed as "A" or "B" rated in the most recent version of the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book, has an "NR" or "NA" rating or a similar rating by a nationally recognized reference; and

(b) the drug is generally available for purchase by pharmacies in the state from national or regional wholesalers and is not obsolete;

(ii) must provide to a network pharmacy provider, at the time a contract is entered into or renewed with the network pharmacy provider, the sources used to determine the maximum allowable cost pricing for the maximum allowable cost list specific to that provider;

(iii) must review and update maximum allowable cost price information at least once every seven days to reflect any modification of maximum allowable cost pricing;

(iv) must, in formulating the maximum allowable cost price for a drug, use only the price of the drug and drugs listed as therapeutically equivalent in the most recent version of the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book;

(v) must establish a process for eliminating products from the maximum allowable cost list or modifying maximum allowable cost prices in a timely manner to remain consistent with pricing changes and product availability in the marketplace;

(vi) must:

(a) provide a procedure under which a network pharmacy provider may challenge a listed maximum allowable cost price for a drug;

(b) respond to a challenge not later than the 15th day after the date the challenge is made;

(c) if the challenge is successful, make an adjustment in the drug price effective on the date the challenge is resolved, and make the adjustment applicable to all similarly situated network pharmacy providers, as determined by the managed care organization or pharmacy benefit manager, as appropriate;

(d) if the challenge is denied, provide the reason for the denial; and

(e) report to the commission every 90 days the total number of challenges that were made and denied in the preceding 90–day period for each maximum allowable cost list drug for which a challenge was denied during the period;

(vii) must notify the commission not later than the 21st day after implementing a practice of using a maximum allowable cost list for drugs dispensed at retail but not by mail; and

(viii) must provide a process for each of its network pharmacy providers to readily access the maximum allowable cost list specific to that provider;

(24) a requirement that the managed care organization and any entity with which the managed care organization contracts for the performance of services under a man-

aged care plan disclose, at no cost, to the commission and, on request, the office of the attorney general all discounts, incentives, rebates, fees, free goods, bundling arrangements, and other agreements affecting the net cost of goods or services provided under the plan; and

(25) a requirement that the managed care organization not implement significant, nonnegotiated, across-the-board provider reimbursement rate reductions unless:

(A) subject to Subsection (a–3), the organization has the prior approval of the commission to make the reduction; or

(B) the rate reductions are based on changes to the Medicaid fee schedule or cost containment initiatives implemented by the commission.

SECTION 2.223. Section 533.0051(d), Government Code, is amended to read as follows:

(d) Subject to Subsection (f), the commission shall assess the feasibility and cost-effectiveness of including provisions in a contract described by Subsection (a) that require the health maintenance organization to provide to the providers in the organization's provider network pay-for-performance opportunities that support quality improvements in the care of [~~Medicaid~~] recipients. Pay-for-performance opportunities may include incentives for providers to provide care after normal business hours and to participate in the early and periodic screening, diagnosis, and treatment program and other activities that improve [~~Medicaid~~] recipients' access to care. If the commission determines that the provisions are feasible and may be cost-effective, the commission shall develop and implement a pilot program in at least one health care service region under which the commission will include the provisions in contracts with health maintenance organizations offering managed care plans in the region.

SECTION 2.224. Section 533.0055(b), Government Code, is amended to read as follows:

(b) The provider protection plan required under this section must provide for:

(1) prompt payment and proper reimbursement of providers by managed care organizations;

(2) prompt and accurate adjudication of claims through:

(A) provider education on the proper submission of clean claims and on appeals;

(B) acceptance of uniform forms, including HCFA Forms 1500 and UB–92 and subsequent versions of those forms, through an electronic portal; and

(C) the establishment of standards for claims payments in accordance with a provider's contract;

(3) adequate and clearly defined provider network standards that are specific to provider type, including physicians, general acute care facilities, and other provider types defined in the commission's network adequacy standards in effect on January 1, 2013, and that ensure choice among multiple providers to the greatest extent possible;

(4) a prompt credentialing process for providers;

(5) uniform efficiency standards and requirements for managed care organizations for the submission and tracking of preauthorization requests for services provided under [~~the~~] Medicaid [~~program~~];

(6) establishment of an electronic process, including the use of an Internet portal, through which providers in any managed care organization's provider network may:

(A) submit electronic claims, prior authorization requests, claims appeals and reconsiderations, clinical data, and other documentation that the managed care organization requests for prior authorization and claims processing; and

(B) obtain electronic remittance advice, explanation of benefits statements, and other standardized reports;

(7) the measurement of the rates of retention by managed care organizations of significant traditional providers;

(8) the creation of a work group to review and make recommendations to the commission concerning any requirement under this subsection for which immediate implementation is not feasible at the time the plan is otherwise implemented, including the required process for submission and acceptance of attachments for claims' processing and prior authorization requests through an electronic process under Subdivision (6) and, for any requirement that is not implemented immediately, recommendations regarding the expected:

(A) fiscal impact of implementing the requirement; and

(B) timeline for implementation of the requirement; and

(9) any other provision that the commission determines will ensure efficiency or reduce administrative burdens on providers participating in a Medicaid managed care model or arrangement.

SECTION 2.225. Section 533.006, Government Code, is amended to read as follows:

Sec. 533.006. PROVIDER NETWORKS. (a) The commission shall require that each managed care organization that contracts with the commission to provide health care services to recipients in a region:

(1) seek participation in the organization's provider network from:

(A) each health care provider in the region who has traditionally provided care to [~~Medicaid~~] recipients;

(B) each hospital in the region that has been designated as a disproportionate share hospital under [~~the state~~] Medicaid [~~program~~]; and

(C) each specialized pediatric laboratory in the region, including those laboratories located in children's hospitals; and

(2) include in its provider network for not less than three years:

(A) each health care provider in the region who:

(i) previously provided care to Medicaid and charity care recipients at a significant level as prescribed by the commission;

(ii) agrees to accept the prevailing provider contract rate of the managed care organization; and

(iii) has the credentials required by the managed care organization, provided that lack of board certification or accreditation by *The* [~~the~~] Joint Commission [~~on Accreditation of Healthcare Organizations~~] may not be the sole ground for exclusion from the provider network;

(B) each accredited primary care residency program in the region; and

(C) each disproportionate share hospital designated by the commission as a statewide significant traditional provider.

(b) A contract between a managed care organization and the commission for the organization to provide health care services to recipients in a health care service region that includes a rural area must require that the organization include in its provider network rural hospitals, physicians, home and community support services agencies, and other rural health care providers who:

(1) are sole community providers;

(2) provide care to Medicaid and charity care recipients at a significant level as prescribed by the commission;

(3) agree to accept the prevailing provider contract rate of the managed care organization; and

(4) have the credentials required by the managed care organization, provided that lack of board certification or accreditation by *The* [~~the~~] Joint Commission [~~on Accreditation of Healthcare Organizations~~] may not be the sole ground for exclusion from the provider network.

SECTION 2.226. Sections 533.007(b), (d), and (e), Government Code, are amended to read as follows:

(b) Each managed care organization that contracts with the commission to provide health care services to recipients in a health care service region shall submit an implementation plan not later than the 90th day before the date on which the *managed care organization* [~~commission~~] plans to begin to provide health care services to recipients in that region through managed care. The implementation plan must include:

(1) specific staffing patterns by function for all operations, including enrollment, information systems, member services, quality improvement, claims management, case management, and provider and recipient training; and

(2) specific time frames for demonstrating preparedness for implementation before the date on which the *managed care organization* [~~commission~~] plans to begin to provide health care services to recipients in that region through managed care.

(d) Each managed care organization that contracts with the commission to provide health care services to recipients in a region shall submit status reports on the implementation plan not later than the 60th day and the 30th day before the date on which the *managed care organization* [~~commission~~] plans to begin to provide health care services to recipients in that region through managed care and every 30th day after that date until the 180th day after that date.

(e) The commission shall conduct a compliance and readiness review of each managed care organization that contracts with the commission not later than the 15th day before the date on which the *process of enrolling recipients in a managed care plan issued by the managed care organization is to begin* [~~commission plans to begin the enrollment process~~] in a region and again not later than the 15th day before the date on which the *managed care organization* [~~commission~~] plans to begin to provide health care services to recipients in that region through managed care. The review must include an on-site inspection and tests of service authorization and claims payment systems, including the ability of the managed care organization to process claims electronically, complaint processing systems, and any other process or system required by the contract.

SECTION 2.227. Section 533.0075, Government Code, is amended to read as follows:

Sec. 533.0075. RECIPIENT ENROLLMENT. The commission shall:

(1) encourage recipients to choose appropriate managed care plans and primary health care providers by:

(A) providing initial information to recipients and providers in a region about the need for recipients to choose plans and providers not later than the 90th day before the date on which *a managed care organization* [~~the commission~~] plans to begin to provide health care services to recipients in that region through managed care;

(B) providing follow-up information before assignment of plans and providers and after assignment, if necessary, to recipients who delay in choosing plans and providers; and

(C) allowing plans and providers to provide information to recipients or engage in marketing activities under marketing guidelines established by the commission under Section 533.008 after the commission approves the information or activities;

(2) consider the following factors in assigning managed care plans and primary health care providers to recipients who fail to choose plans and providers:

(A) the importance of maintaining existing provider-patient and physician-patient relationships, including relationships with specialists, public health clinics, and community health centers;

(B) to the extent possible, the need to assign family members to the same providers and plans; and

(C) geographic convenience of plans and providers for recipients;

(3) retain responsibility for enrollment and disenrollment of recipients in managed care plans, except that the commission may delegate the responsibility to an independent contractor who receives no form of payment from, and has no financial ties to, any managed care organization;

(4) develop and implement an expedited process for determining eligibility for and enrolling pregnant women and newborn infants in managed care plans; and

(5) ensure immediate access to prenatal services and newborn care for pregnant women and newborn infants enrolled in managed care plans, including ensuring that a pregnant woman may obtain an appointment with an obstetrical care provider for an initial maternity evaluation not later than the 30th day after the date the woman applies for Medicaid.

SECTION 2.228. Section 533.009(c), Government Code, is amended to read as follows:

(c) The executive commissioner, by rule, shall prescribe the minimum requirements that a managed care organization, in providing a disease management program, must meet to be eligible to receive a contract under this section. The managed care organization must, at a minimum, be required to:

(1) provide disease management services that have performance measures for particular diseases that are comparable to the relevant performance measures applicable to a provider of disease management services under Section *32.057* [~~32.059~~], Human Resources Code[~~, as added by Chapter 208, Acts of the 78th Legislature, Regular Session, 2003~~]; and

(2) show evidence of ability to manage complex diseases in the Medicaid population.

SECTION 2.229. Section 533.012(c), Government Code, is amended to read as follows:

(c) The commission's office of *inspector general* [~~investigations and enforcement~~] or the office of the attorney general, as applicable, shall review the information submitted under this section as appropriate in the investigation of fraud in the Medicaid managed care program.

SECTION 2.230. Sections 533.013(a) and (b), Government Code, are amended to read as follows:

(a) In determining premium payment rates paid to a managed care organization under a managed care plan, the commission shall consider:

(1) the regional variation in costs of health care services;

(2) the range and type of health care services to be covered by premium payment rates;

(3) the number of managed care plans in a region;

(4) the current and projected number of recipients in each region, including the current and projected number for each category of recipient;

(5) the ability of the managed care plan to meet costs of operation under the proposed premium payment rates;

(6) the applicable requirements of the federal Balanced Budget Act of 1997 and implementing regulations that require adequacy of premium payments to managed care organizations participating in [~~the state~~] Medicaid [~~program~~];

(7) the adequacy of the management fee paid for assisting enrollees of Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.) who are voluntarily enrolled in the managed care plan;

(8) the impact of reducing premium payment rates for the category of recipients who are pregnant; and

(9) the ability of the managed care plan to pay under the proposed premium payment rates inpatient and outpatient hospital provider payment rates that are comparable to the inpatient and outpatient hospital provider payment rates paid by the commission under a primary care case management model or a partially capitated model.

(b) In determining the maximum premium payment rates paid to a managed care organization that is licensed under Chapter 843, Insurance Code, the commission shall consider and adjust for the regional variation in costs of services under the traditional fee-for-service component of [~~the state~~] Medicaid [~~program~~], utilization patterns, and

other factors that influence the potential for cost savings. For a service area with a service area factor of .93 or less, or another appropriate service area factor, as determined by the commission, the commission may not discount premium payment rates in an amount that is more than the amount necessary to meet federal budget neutrality requirements for projected fee-for-service costs unless:

(1) a historical review of managed care financial results among managed care organizations in the service area served by the organization demonstrates that additional savings are warranted;

(2) a review of Medicaid fee-for-service delivery in the service area served by the organization has historically shown a significant overutilization by recipients of certain services covered by the premium payment rates in comparison to utilization patterns throughout the rest of the state; or

(3) a review of Medicaid fee-for-service delivery in the service area served by the organization has historically shown an above-market cost for services for which there is substantial evidence that Medicaid managed care delivery will reduce the cost of those services.

SECTION 2.231. Section 533.01315(a), Government Code, is amended to read as follows:

(a) This section applies only to a recipient receiving *benefits* [~~medical assistance~~] through any Medicaid managed care model or arrangement.

SECTION 2.232. Sections 533.014(a) and (b), Government Code, are amended to read as follows:

(a) The *executive commissioner* [~~commission~~] shall adopt rules regarding the sharing of profits earned by a managed care organization through a managed care plan providing health care services under a contract with the commission under this chapter.

(b) Except as provided by Subsection (c), any amount received by the state under this section shall be deposited in the general revenue fund [~~for the purpose of funding the state Medicaid program~~].

SECTION 2.233. Section 533.015, Government Code, is amended to read as follows:

Sec. 533.015. COORDINATION OF EXTERNAL OVERSIGHT ACTIVITIES. To the extent possible, the commission shall coordinate all external oversight activities to minimize duplication of oversight of managed care plans under [~~the state~~] Medicaid [~~program~~] and disruption of operations under those plans.

SECTION 2.234. Section 533.020(a), Government Code, is amended to read as follows:

(a) The Texas Department of Insurance, in conjunction with the commission, shall establish fiscal solvency standards and complaint system guidelines for managed care organizations that serve [~~Medicaid~~] recipients.

SECTION 2.235. Section 533.021, Government Code, is amended to read as follows:

Sec. 533.021. *MEDICAID MANAGED CARE ADVISORY COMMITTEES* [~~APPOINTMENT~~]. *A* [~~Not later than the 180th day before the date the commission plans to begin to provide health care services to recipients in a health care service region through managed care, the commission, in consultation with health and human services agencies, shall appoint a~~] Medicaid managed care advisory committee *exists for each health care service* [~~for that~~] region. *The commission, in consultation with health and human services agencies, appoints the committee members.*

SECTION 2.236. Section 533.023, Government Code, is amended to read as follows:

Sec. 533.023. PRESIDING OFFICER; SUBCOMMITTEES. The *executive* commissioner or the *executive* commissioner's designated representative serves as the presiding officer of a committee. The presiding officer may appoint subcommittees as necessary.

SECTION 2.237. Section 533.028, Government Code, is amended to read as follows:

Sec. 533.028. OTHER LAW. Except as provided by this chapter, a committee is subject to *Chapter 2110* [~~Article 6252-33, Revised Statutes~~].

SECTION 2.238. Sections 533.041(a) and (d), Government Code, are amended to read as follows:

(a) The executive commissioner shall appoint a state Medicaid managed care advisory committee. The advisory committee consists of representatives of:

(1) hospitals;

(2) managed care organizations and participating health care providers;

(3) primary care providers and specialty care providers;

(4) state agencies;

(5) low-income recipients or consumer advocates representing low-income recipients;

(6) recipients with disabilities, including recipients with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] or *with* physical disabilities, or consumer advocates representing those recipients;

(7) parents of children who are recipients;

(8) rural providers;

(9) advocates for children with special health care needs;

(10) pediatric health care providers, including specialty providers;

(11) long-term services and supports providers, including nursing facility providers and direct service workers;

(12) obstetrical care providers;

(13) community-based organizations serving low-income children and their families;

(14) community-based organizations engaged in perinatal services and outreach;

(15) recipients who are 65 years of age or older;

(16) recipients with mental illness;

(17) nonphysician mental health providers participating in the Medicaid managed care program; and

(18) entities with responsibilities for the delivery of long-term services and supports or other Medicaid [~~program~~] service delivery, including:

(A) independent living centers;

(B) area agencies on aging;

(C) aging and disability resource centers established under the Aging and Disability Resource Center initiative funded in part by the federal Administration on Aging and the Centers for Medicare and Medicaid Services;

(D) community mental health and intellectual disability centers; and

(E) the NorthSTAR Behavioral Health Program provided under Chapter 534, Health and Safety Code.

(d) To the greatest extent possible, the executive commissioner shall appoint members of the advisory committee who reflect the geographic diversity of the state and include members who represent rural [~~Medicaid program~~] recipients.

SECTION 2.239. Section 533.045(b), Government Code, is amended to read as follows:

(b) A member of the advisory committee who is a [~~Medicaid program~~] recipient or the relative of a [~~Medicaid program~~] recipient is entitled to a per diem allowance and reimbursement at rates established in the General Appropriations Act.

SECTION 2.240. The heading to Chapter 534, Government Code, is amended to read as follows:

CHAPTER 534. SYSTEM REDESIGN FOR DELIVERY OF MEDICAID ACUTE CARE SERVICES AND LONG-TERM SERVICES AND SUPPORTS TO PERSONS WITH *AN* INTELLECTUAL *OR* [~~AND~~] DEVELOPMENTAL *DISABILITY* [~~DISABILITIES~~]

SECTION 2.241. Sections 534.001(6), (7), (8), and (11), Government Code, are amended to read as follows:

(6) "ICF-IID" means the [~~Medicaid~~] program *under Medicaid* serving individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] who receive care in intermediate care facilities other than a state supported living center.

(7) "ICF-IID program" means a program under [~~the~~] Medicaid [~~program~~] serving individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] who reside in and receive care from:

(A) intermediate care facilities licensed under Chapter 252, Health and Safety Code; or

(B) community-based intermediate care facilities operated by local intellectual and developmental disability authorities.

(8) "Local intellectual and developmental disability authority" *has the meaning assigned* [~~means an authority defined~~] by *Section 531.002* [~~Section 531.002(11)~~], Health and Safety Code.

(11) "Medicaid waiver program" means only the following programs that are authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)) for the provision of services to persons with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~]:

(A) the community living assistance and support services (CLASS) waiver program;

(B) the home and community-based services (HCS) waiver program;

(C) the deaf-blind with multiple disabilities (DBMD) waiver program; and

(D) the Texas home living (TxHmL) waiver program.

SECTION 2.242. Section 534.051, Government Code, is amended to read as follows:

Sec. 534.051. ACUTE CARE SERVICES AND LONG-TERM SERVICES AND SUPPORTS SYSTEM FOR INDIVIDUALS WITH *AN* INTELLECTUAL *OR* [~~AND~~] DEVELOPMENTAL *DISABILITY* [~~DISABILITIES~~]. In accordance with this chapter, the commission and the department shall jointly design and implement an acute care services and long-term services and supports system for individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] that supports the following goals:

(1) provide Medicaid services to more individuals in a cost-efficient manner by providing the type and amount of services most appropriate to the individuals' needs;

(2) improve individuals' access to services and supports by ensuring that the individuals receive information about all available programs and services, including employment and least restrictive housing assistance, and how to apply for the programs and services;

(3) improve the assessment of individuals' needs and available supports, including the assessment of individuals' functional needs;

(4) promote person-centered planning, self-direction, self-determination, community inclusion, and customized, integrated, competitive employment;

(5) promote individualized budgeting based on an assessment of an individual's needs and person-centered planning;

(6) promote integrated service coordination of acute care services and long-term services and supports;

(7) improve acute care and long-term services and supports outcomes, including reducing unnecessary institutionalization and potentially preventable events;

(8) promote high-quality care;

(9) provide fair hearing and appeals processes in accordance with applicable federal law;

(10) ensure the availability of a local safety net provider and local safety net services;

(11) promote independent service coordination and independent ombudsmen services; and

(12) ensure that individuals with the most significant needs are appropriately served in the community and that processes are in place to prevent inappropriate institutionalization of individuals.

SECTION 2.243. Section 534.052, Government Code, is amended to read as follows:

Sec. 534.052. IMPLEMENTATION OF SYSTEM REDESIGN. The commission and department shall, in consultation with the advisory committee, jointly implement the acute care services and long-term services and supports system for individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] in the manner and in the stages described in this chapter.

SECTION 2.244. Sections 534.053(a), (b), and (e), Government Code, are amended to read as follows:

(a) The Intellectual and Developmental Disability System Redesign Advisory Committee *shall* [~~is established to~~] advise the commission and the department on the implementation of the acute care services and long-term services and supports system redesign under this chapter. Subject to Subsection (b), the executive commissioner and the commissioner of *aging and disability services* [~~the department~~] shall jointly appoint members of the advisory committee who are stakeholders from the intellectual and developmental disabilities community, including:

(1) individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] who are recipients of services under the Medicaid waiver programs, individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] who are recipients of services under the ICF–IID program, and individuals who are advocates of those recipients, including at least three representatives from intellectual and developmental disability advocacy organizations;

(2) representatives of Medicaid managed care and nonmanaged care health care providers, including:

(A) physicians who are primary care providers and physicians who are specialty care providers;

(B) nonphysician mental health professionals; and

(C) providers of long-term services and supports, including direct service workers;

(3) representatives of entities with responsibilities for the delivery of Medicaid long-term services and supports or other Medicaid [~~program~~] service delivery, including:

(A) representatives of aging and disability resource centers established under the Aging and Disability Resource Center initiative funded in part by the federal Administration on Aging and the Centers for Medicare and Medicaid Services;

(B) representatives of community mental health and intellectual disability centers;

(C) representatives of and service coordinators or case managers from private and public home and community-based services providers that serve individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~]; and

(D) representatives of private and public ICF–IID providers; and

(4) representatives of managed care organizations contracting with the state to provide services to individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~].

(b) To the greatest extent possible, the executive commissioner and the commissioner

of *aging and disability services* [~~the department~~] shall appoint members of the advisory committee who reflect the geographic diversity of the state and include members who represent rural Medicaid [~~program~~] recipients.

(e) A member of the advisory committee serves without compensation. A member of the advisory committee who is a Medicaid [~~program~~] recipient or the relative of a Medicaid [~~program~~] recipient is entitled to a per diem allowance and reimbursement at rates established in the General Appropriations Act.

SECTION 2.245. Section 534.054(a), Government Code, is amended to read as follows:

(a) Not later than September 30 of each year, the commission shall submit a report to the legislature regarding:

(1) the implementation of the system required by this chapter, including appropriate information regarding the provision of acute care services and long-term services and supports to individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] under [~~the~~] Medicaid [~~program~~]; and

(2) recommendations, including recommendations regarding appropriate statutory changes to facilitate the implementation.

SECTION 2.246. Section 534.055(a), Government Code, is amended to read as follows:

(a) The commission and department shall submit a report to the legislature not later than December 1, 2014, that includes the following information:

(1) the percentage of services provided by each local intellectual and developmental disability authority to individuals receiving ICF–IID or Medicaid waiver program services, compared to the percentage of those services provided by private providers;

(2) the types of evidence provided by local intellectual and developmental disability authorities to the department to demonstrate the lack of available private providers in areas of the state where local authorities provide services to more than 40 percent of the Texas home living (TxHmL) waiver program clients or 20 percent of the home and community-based services (HCS) waiver program clients;

(3) the types and amounts of services received by clients from local intellectual and developmental disability authorities compared to the types and amounts of services received by clients from private providers;

(4) the provider capacity of each local intellectual and developmental disability authority as determined under *Section 533A.0355(d)* [~~Section 533.0355(d)~~], Health and Safety Code;

(5) the number of individuals served above or below the applicable provider capacity by each local intellectual and developmental disability authority; and

(6) if a local intellectual and developmental disability authority is serving clients over the authority's provider capacity, the length of time the local authority has served clients above the authority's approved provider capacity.

SECTION 2.247. Section 534.101(2), Government Code, is amended to read as follows:

(2) "Provider" means a person with whom the commission contracts for the provision of long-term services and supports under [~~the~~] Medicaid [~~program~~] to a specific population based on capitation.

SECTION 2.248. Section 534.102, Government Code, is amended to read as follows:

Sec. 534.102. PILOT PROGRAMS TO TEST MANAGED CARE STRATEGIES BASED ON CAPITATION. The commission and the department may develop and implement pilot programs in accordance with this subchapter to test one or more service delivery models involving a managed care strategy based on capitation to deliver long-term services and supports under [~~the~~] Medicaid [~~program~~] to individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~].

SECTION 2.249. Sections 534.104(a) and (f), Government Code, are amended to read as follows:

(a) The department shall identify private services providers that are good candidates

to develop a service delivery model involving a managed care strategy based on capitation and to test the model in the provision of long-term services and supports under [~~the~~] Medicaid [~~program~~] to individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] through a pilot program established under this subchapter.

(f) For each pilot program service provider, the department shall develop and implement a pilot program. Under a pilot program, the pilot program service provider shall provide long-term services and supports under [~~the~~] Medicaid [~~program~~] to persons with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] to test its managed care strategy based on capitation.

SECTION 2.250. Section 534.107, Government Code, is amended to read as follows:

Sec. 534.107. COORDINATING SERVICES. In providing long-term services and supports under [~~the~~] Medicaid [~~program~~] to individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~], a pilot program service provider shall:

(1) coordinate through the pilot program institutional and community-based services available to the individuals, including services provided through:

(A) a facility licensed under Chapter 252, Health and Safety Code;

(B) a Medicaid waiver program; or

(C) a community-based ICF–IID operated by local authorities;

(2) collaborate with managed care organizations to provide integrated coordination of acute care services and long-term services and supports, including discharge planning from acute care services to community-based long-term services and supports;

(3) have a process for preventing inappropriate institutionalizations of individuals; and

(4) accept the risk of inappropriate institutionalizations of individuals previously residing in community settings.

SECTION 2.251. Section 534.109, Government Code, is amended to read as follows:

Sec. 534.109. PERSON–CENTERED PLANNING. The commission, in cooperation with the department, shall ensure that each individual with an intellectual or developmental disability who receives services and supports under [~~the~~] Medicaid [~~program~~] through a pilot program established under this subchapter, or the individual's legally authorized representative, has access to a facilitated, person-centered plan that identifies outcomes for the individual and drives the development of the individualized budget. The consumer direction model, as defined by Section 531.051, may be an outcome of the plan.

SECTION 2.252. Section 534.110, Government Code, is amended to read as follows:

Sec. 534.110. TRANSITION BETWEEN PROGRAMS. The commission shall ensure that there is a comprehensive plan for transitioning the provision of Medicaid [~~program~~] benefits between a Medicaid waiver program or an ICF–IID program and a pilot program under this subchapter to protect continuity of care.

SECTION 2.253. Section 534.151, Government Code, is amended to read as follows:

Sec. 534.151. DELIVERY OF ACUTE CARE SERVICES FOR INDIVIDUALS WITH *AN* INTELLECTUAL *OR* [~~AND~~] DEVELOPMENTAL *DISABILITY* [~~DISABILITIES~~]. Subject to Section 533.0025, the commission shall provide acute care Medicaid [~~program~~] benefits to individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] through the STAR + PLUS Medicaid managed care program or the most appropriate integrated capitated managed care program delivery model and monitor the provision of those benefits.

SECTION 2.254. Sections 534.152(a), (b), (c), (e), and (f), Government Code, are amended to read as follows:

(a) The commission shall:

(1) implement the most cost-effective option for the delivery of basic attendant and

habilitation services for individuals with *an* intellectual *or* ~~[and]~~ developmental *disability* ~~[disabilities]~~ under the STAR + PLUS Medicaid managed care program that maximizes federal funding for the delivery of services for that program and other similar programs; and

(2) provide voluntary training to individuals receiving services under the STAR + PLUS Medicaid managed care program or their legally authorized representatives regarding how to select, manage, and dismiss personal attendants providing basic attendant and habilitation services under the program.

(b) The commission shall require that each managed care organization that contracts with the commission for the provision of basic attendant and habilitation services under the STAR + PLUS Medicaid managed care program in accordance with this section:

(1) include in the organization's provider network for the provision of those services:

(A) home and community support services agencies licensed under Chapter 142, Health and Safety Code, with which the department has a contract to provide services under the community living assistance and support services (CLASS) waiver program; and

(B) persons exempted from licensing under Section 142.003(a)(19), Health and Safety Code, with which the department has a contract to provide services under:

(i) the home and community-based services (HCS) waiver program; or

(ii) the Texas home living (TxHmL) waiver program;

(2) review and consider any assessment conducted by a local intellectual and developmental disability authority providing intellectual and developmental disability service coordination under Subsection (c); and

(3) enter into a written agreement with each local intellectual and developmental disability authority in the service area regarding the processes the organization and the authority will use to coordinate the services of individuals with *an* intellectual *or* ~~[and]~~ developmental *disability* ~~[disabilities]~~.

(c) The department shall contract with and make contract payments to local intellectual and developmental disability authorities to conduct the following activities under this section:

(1) provide intellectual and developmental disability service coordination to individuals with *an* intellectual *or* ~~[and]~~ developmental *disability* ~~[disabilities]~~ under the STAR + PLUS Medicaid managed care program by assisting those individuals who are eligible to receive services in a community-based setting, including individuals transitioning to a community-based setting;

(2) provide an assessment to the appropriate managed care organization regarding whether an individual with an intellectual or developmental disability needs attendant or habilitation services, based on the individual's functional need, risk factors, and desired outcomes;

(3) assist individuals with *an* intellectual *or* ~~[and]~~ developmental *disability* ~~[disabilities]~~ with developing the individuals' plans of care under the STAR + PLUS Medicaid managed care program, including with making any changes resulting from periodic reassessments of the plans;

(4) provide to the appropriate managed care organization and the department information regarding the recommended plans of care with which the authorities provide assistance as provided by Subdivision (3), including documentation necessary to demonstrate the need for care described by a plan; and

(5) on an annual basis, provide to the appropriate managed care organization and the department a description of outcomes based on an individual's plan of care.

(e) During the first three years basic attendant and habilitation services are provided to individuals with *an* intellectual *or* ~~[and]~~ developmental *disability* ~~[disabilities]~~ under the STAR + PLUS Medicaid managed care program in accordance with this section, providers eligible to participate in the home and community-based services (HCS) waiver

program, the Texas home living (TxHmL) waiver program, or the community living assistance and support services (CLASS) waiver program on September 1, 2013, are considered significant traditional providers.

(f) A local intellectual and developmental disability authority with which the department contracts under Subsection (c) may subcontract with an eligible person, including a nonprofit entity, to coordinate the services of individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] under this section. The executive commissioner by rule shall establish minimum qualifications a person must meet to be considered an "eligible person" under this subsection.

SECTION 2.255. Sections 534.201(a), (b), (e), and (f), Government Code, are amended to read as follows:

(a) This section applies to individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] who are receiving long-term services and supports under the Texas home living (TxHmL) waiver program on the date the commission implements the transition described by Subsection (b).

(b) Not later than September 1, 2017, the commission shall transition the provision of Medicaid [~~program~~] benefits to individuals to whom this section applies to the STAR + PLUS Medicaid managed care program delivery model or the most appropriate integrated capitated managed care program delivery model, as determined by the commission based on cost-effectiveness and the experience of the STAR + PLUS Medicaid managed care program in providing basic attendant and habilitation services and of the pilot programs established under Subchapter C, subject to Subsection (c)(1).

(e) The commission shall ensure that there is a comprehensive plan for transitioning the provision of Medicaid [~~program~~] benefits under this section that protects the continuity of care provided to individuals to whom this section applies.

(f) In addition to the requirements of Section 533.005, a contract between a managed care organization and the commission for the organization to provide Medicaid [~~program~~] benefits under this section must contain a requirement that the organization implement a process for individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] that:

(1) ensures that the individuals have a choice among providers;

(2) to the greatest extent possible, protects those individuals' continuity of care with respect to access to primary care providers, including the use of single-case agreements with out-of-network providers; and

(3) provides access to a member services phone line for individuals or their legally authorized representatives to obtain information on and assistance with accessing services through network providers, including providers of primary, specialty, and other long-term services and supports.

SECTION 2.256. Sections 534.202(a), (b), (e), (f), and (i), Government Code, are amended to read as follows:

(a) This section applies to individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] who, on the date the commission implements the transition described by Subsection (b), are receiving long-term services and supports under:

(1) a Medicaid waiver program other than the Texas home living (TxHmL) waiver program; or

(2) an ICF–IID program.

(b) After implementing the transition required by Section 534.201 but not later than September 1, 2020, the commission shall transition the provision of Medicaid [~~program~~] benefits to individuals to whom this section applies to the STAR + PLUS Medicaid managed care program delivery model or the most appropriate integrated capitated managed care program delivery model, as determined by the commission based on cost-effectiveness and the experience of the transition of Texas home living (TxHmL) waiver program recipients to a managed care program delivery model under Section 534.201, subject to Subsections (c)(1) and (g).

(e) The commission shall ensure that there is a comprehensive plan for transitioning the provision of Medicaid [~~program~~] benefits under this section that protects the continuity of care provided to individuals to whom this section applies.

(f) Before transitioning the provision of Medicaid [~~program~~] benefits for children under this section, a managed care organization providing services under the managed care program delivery model selected by the commission must demonstrate to the satisfaction of the commission that the organization's network of providers has experience and expertise in the provision of services to children with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~]. Before transitioning the provision of Medicaid [~~program~~] benefits for adults with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] under this section, a managed care organization providing services under the managed care program delivery model selected by the commission must demonstrate to the satisfaction of the commission that the organization's network of providers has experience and expertise in the provision of services to adults with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~].

(i) In addition to the requirements of Section 533.005, a contract between a managed care organization and the commission for the organization to provide Medicaid [~~program~~] benefits under this section must contain a requirement that the organization implement a process for individuals with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] that:

(1) ensures that the individuals have a choice among providers;

(2) to the greatest extent possible, protects those individuals' continuity of care with respect to access to primary care providers, including the use of single-case agreements with out-of-network providers; and

(3) provides access to a member services phone line for individuals or their legally authorized representatives to obtain information on and assistance with accessing services through network providers, including providers of primary, specialty, and other long-term services and supports.

SECTION 2.257. Section 535.051(b), Government Code, is amended to read as follows:

(b) The chief administrative officer of each of the following state agencies, in consultation with the governor, shall designate one employee from the agency to serve as a liaison for faith- and community-based organizations:

(1) [~~the Texas Department of Rural Affairs;~~

[~~(2)~~] the Texas Commission on Environmental Quality;

(2) [~~(3)~~] the Texas Department of Criminal Justice;

(3) [~~(4)~~] the Texas Department of Housing and Community Affairs;

(4) [~~(5)~~] the Texas Juvenile Justice Department;

(5) [~~(6)~~] the Texas Veterans Commission;

(6) [~~(7)~~] the Texas Workforce Commission;

(7) [~~(8)~~] the office of the governor;

(8) [~~(9)~~] the Department of Public Safety;

(9) [~~(10)~~] the Texas Department of Insurance;

(10) [~~(11)~~] the Public Utility Commission of Texas;

(11) [~~(12)~~] the office of the attorney general;

(12) [~~(13)~~] the Department of Agriculture;

(13) [~~(14)~~] the office of the comptroller;

(14) [~~(15)~~] the Department of Information Resources;

(15) [~~(16)~~] the Office of State–Federal Relations;

(16) [~~(17)~~] the office of the secretary of state; and

(17) [~~(18)~~] other state agencies as determined by the governor.

SECTION 2.258. Section 535.103(b), Government Code, is amended to read as follows:

(b) The account consists of:

(1) all money appropriated for the purposes of this subchapter; *and*

(2) any gifts, grants, or donations received for the purposes of this subchapter[~~; and~~

[~~(3) interest earned on money in the account~~]].

SECTION 2.259. The heading to Chapter 536, Government Code, is amended to read as follows:

CHAPTER 536. MEDICAID AND *THE* CHILD HEALTH PLAN *PROGRAM* [~~PROGRAMS~~]: QUALITY–BASED OUTCOMES AND PAYMENTS

SECTION 2.260. Section 536.002(a), Government Code, is amended to read as follows:

(a) The Medicaid and CHIP Quality–Based Payment Advisory Committee *advises* [~~is established to advise~~] the commission on establishing, for purposes of the child health plan *program* and Medicaid [~~programs administered by the commission or a health and human services agency~~]:

(1) reimbursement systems used to compensate physicians or other health care providers under those programs that reward the provision of high-quality, cost-effective health care and quality performance and quality of care outcomes with respect to health care services;

(2) standards and benchmarks for quality performance, quality of care outcomes, efficiency, and accountability by managed care organizations and physicians and other health care providers;

(3) programs and reimbursement policies that encourage high-quality, cost-effective health care delivery models that increase appropriate provider collaboration, promote wellness and prevention, and improve health outcomes; and

(4) outcome and process measures under Section 536.003.

SECTION 2.261. Sections 536.003(a), (b), (d), and (e), Government Code, are amended to read as follows:

(a) The commission, in consultation with the advisory committee, shall develop quality-based outcome and process measures that promote the provision of efficient, quality health care and that can be used in the child health plan *program* and Medicaid [~~programs~~] to implement quality-based payments for acute care services and long-term services and supports across all delivery models and payment systems, including fee-for-service and managed care payment systems. Subject to Subsection (a–1), the commission, in developing outcome and process measures under this section, must include measures that are based on potentially preventable events and that advance quality improvement and innovation. The commission may change measures developed:

(1) to promote continuous system reform, improved quality, and reduced costs; and

(2) to account for managed care organizations added to a service area.

(b) To the extent feasible, the commission shall develop outcome and process measures:

(1) consistently across all child health plan *program* and Medicaid [~~program~~] delivery models and payment systems;

(2) in a manner that takes into account appropriate patient risk factors, including the burden of chronic illness on a patient and the severity of a patient's illness;

(3) that will have the greatest effect on improving quality of care and the efficient use of services, including acute care services and long-term services and supports;

(4) that are similar to outcome and process measures used in the private sector, as appropriate;

(5) that reflect effective coordination of acute care services and long-term services and supports;

(6) that can be tied to expenditures; and

(7) that reduce preventable health care utilization and costs.

(d) The executive commissioner by rule may require managed care organizations and physicians and other health care providers participating in the child health plan *program* and Medicaid [~~programs~~] to report to the commission in a format specified by the executive commissioner information necessary to develop outcome and process measures under this section.

(e) If the commission increases physician and other health care provider reimbursement rates under the child health plan *program* or Medicaid [~~program~~] as a result of an increase in the amounts appropriated for the programs for a state fiscal biennium as compared to the preceding state fiscal biennium, the commission shall, to the extent permitted under federal law and to the extent otherwise possible considering other relevant factors, correlate the increased reimbursement rates with the quality-based outcome and process measures developed under this section.

SECTION 2.262. Sections 536.004(a), (c), and (e), Government Code, are amended to read as follows:

(a) Using quality-based outcome and process measures developed under Section 536.003 and subject to this section, the commission, after consulting with the advisory committee and other appropriate stakeholders with an interest in the provision of acute care and long-term services and supports under the child health plan *program* and Medicaid [~~programs~~], shall develop quality-based payment systems, and require managed care organizations to develop quality-based payment systems, for compensating a physician or other health care provider participating in the child health plan *program* or Medicaid [~~program~~] that:

(1) align payment incentives with high-quality, cost-effective health care;

(2) reward the use of evidence-based best practices;

(3) promote the coordination of health care;

(4) encourage appropriate physician and other health care provider collaboration;

(5) promote effective health care delivery models; and

(6) take into account the specific needs of the child health plan program enrollee and Medicaid recipient populations.

(c) In developing quality-based payment systems under this chapter, the commission shall examine and consider implementing:

(1) an alternative payment system;

(2) any existing performance-based payment system used under the Medicare program that meets the requirements of this chapter, modified as necessary to account for programmatic differences, if implementing the system would:

(A) reduce unnecessary administrative burdens; and

(B) align quality-based payment incentives for physicians and other health care providers with the Medicare program; and

(3) alternative payment methodologies within the system that are used in the Medicare program, modified as necessary to account for programmatic differences, and that will achieve cost savings and improve quality of care in the child health plan *program* and Medicaid [~~programs~~].

(e) The commission may modify a quality-based payment system developed under this chapter to account for programmatic differences between the child health plan *program* and Medicaid [~~programs~~] and delivery systems under those programs.

SECTION 2.263. Sections 536.005(a) and (c), Government Code, are amended to read as follows:

(a) To the extent possible, the commission shall convert hospital reimbursement systems under the child health plan *program* and Medicaid [~~programs~~] to a diagnosis-

related groups (DRG) methodology that will allow the commission to more accurately classify specific patient populations and account for severity of patient illness and mortality risk.

(c) Notwithstanding Subsection (a) and to the extent possible, the commission shall convert outpatient hospital reimbursement systems under the child health plan *program* and Medicaid [~~programs~~] to an appropriate prospective payment system that will allow the commission to:

(1) more accurately classify the full range of outpatient service episodes;

(2) more accurately account for the intensity of services provided; and

(3) motivate outpatient service providers to increase efficiency and effectiveness.

SECTION 2.264. Section 536.051(a), Government Code, is amended to read as follows:

(a) Subject to Section 1903(m)(2)(A), Social Security Act (42 U.S.C. Section 1396b(m)(2)(A)), and other applicable federal law, the commission shall base a percentage of the premiums paid to a managed care organization participating in the child health plan *program* or Medicaid [~~program~~] on the organization's performance with respect to outcome and process measures developed under Section 536.003 that address potentially preventable events. The percentage of the premiums paid may increase each year.

SECTION 2.265. Sections 536.052(a) and (d), Government Code, are amended to read as follows:

(a) The commission may allow a managed care organization participating in the child health plan *program* or Medicaid [~~program~~] increased flexibility to implement quality initiatives in a managed care plan offered by the organization, including flexibility with respect to financial arrangements, in order to:

(1) achieve high-quality, cost-effective health care;

(2) increase the use of high-quality, cost-effective delivery models;

(3) reduce the incidence of unnecessary institutionalization and potentially preventable events; and

(4) increase the use of alternative payment systems, including shared savings models, in collaboration with physicians and other health care providers.

(d) In awarding contracts to managed care organizations under the child health plan *program* and Medicaid [~~programs~~], the commission shall, in addition to considerations under Section 533.003 of this code and Section 62.155, Health and Safety Code, give preference to an organization that offers a managed care plan that successfully implements quality initiatives under Subsection (a) as determined by the commission based on data or other evidence provided by the organization or meets quality of care and cost-efficiency benchmarks under Subsection (b).

SECTION 2.266. Section 536.101(1), Government Code, is amended to read as follows:

(1) "Health home" means a primary care provider practice or, if appropriate, a specialty care provider practice, incorporating several features, including comprehensive care coordination, family-centered care, and data management, that are focused on improving outcome-based quality of care and increasing patient and provider satisfaction under the child health plan *program* and Medicaid [~~programs~~].

SECTION 2.267. Section 536.151(b), Government Code, is amended to read as follows:

(b) The commission shall establish a program to provide a confidential report to each hospital in this state that participates in the child health plan *program* or Medicaid [~~program~~] regarding the hospital's performance with respect to each potentially preventable event described under Subsection (a). To the extent possible, a report provided under this section should include all potentially preventable events across all child health plan *program* and Medicaid [~~program~~] payment systems. A hospital shall distribute the information contained in the report to physicians and other health care providers providing services at the hospital.

SECTION 2.268. Section 536.203(c), Government Code, is amended to read as follows:

(c) The commission may limit a payment initiative to:

(1) one or more regions in this state;

(2) one or more organized networks of physicians and other health care providers; or

(3) specified types of services provided under the child health plan *program* or Medicaid [~~program~~], or specified types of enrollees or recipients under those programs.

SECTION 2.269. Section 536.253(b), Government Code, is amended to read as follows:

(b) The commission shall establish a program to provide a report to each Medicaid long-term services and supports provider in this state regarding the provider's performance with respect to potentially preventable admissions, potentially preventable readmissions, and potentially preventable emergency room visits. To the extent possible, a report provided under this section should include applicable potentially preventable events information across all Medicaid [~~program~~] payment systems.

SECTION 2.270. Section 537.002(b), Government Code, is amended to read as follows:

(b) The waiver under this section must be designed to achieve the following objectives regarding [~~the~~] Medicaid [~~program~~] and alternatives to *Medicaid* [~~the program~~]:

(1) provide flexibility to determine Medicaid eligibility categories and income levels;

(2) provide flexibility to design Medicaid benefits that meet the demographic, public health, clinical, and cultural needs of this state or regions within this state;

(3) encourage use of the private health benefits coverage market rather than public benefits systems;

(4) encourage people who have access to private employer-based health benefits to obtain or maintain those benefits;

(5) create a culture of shared financial responsibility, accountability, and participation in [~~the~~] Medicaid [~~program~~] by:

(A) establishing and enforcing copayment requirements similar to private sector principles for all eligibility groups;

(B) promoting the use of health savings accounts to influence a culture of individual responsibility; and

(C) promoting the use of vouchers for consumer-directed services in which consumers manage and pay for health-related services provided to them using program vouchers;

(6) consolidate federal funding streams, including funds from the disproportionate share hospitals and upper payment limit supplemental payment programs and other federal Medicaid funds, to ensure the most effective and efficient use of those funding streams;

(7) allow flexibility in the use of state funds used to obtain federal matching funds, including allowing the use of intergovernmental transfers, certified public expenditures, costs not otherwise matchable, or other funds and funding mechanisms to obtain federal matching funds;

(8) empower individuals who are uninsured to acquire health benefits coverage through the promotion of cost-effective coverage models that provide access to affordable primary, preventive, and other health care on a sliding scale, with fees paid at the point of service; and

(9) allow for the redesign of long-term care services and supports to increase access to patient-centered care in the most cost-effective manner.

SECTION 2.271. Section 538.002, Government Code, is amended to read as follows:

Sec. 538.002. EFFECT OF CHAPTER; AUTHORITY OF COMMISSION. This chapter does not affect or give the commission additional authority to:

(1) affect any individual health care treatment decision for a Medicaid recipient;

(2) replace or affect the process of determining Medicaid benefits, including the approval process for receiving benefits for durable medical equipment, or any applicable approval process required for reimbursement for services or other equipment under [~~the~~] Medicaid [~~program~~];

(3) implement a clinical initiative or associated rule or program policy that is otherwise prohibited under state or federal law; or

(4) implement any initiative that would expand eligibility for benefits under [~~the~~] Medicaid [~~program~~].

SECTION 2.272. Section 538.051, Government Code, is amended to read as follows:

Sec. 538.051. MEDICAID QUALITY IMPROVEMENT PROCESS. The commission shall, according to the provisions of this chapter, develop and implement a quality improvement process by which the commission:

(1) receives suggestions for clinical initiatives designed to improve:

(A) the quality of care provided under [~~the~~] Medicaid [~~program~~]; and

(B) the cost-effectiveness of [~~the~~] Medicaid [~~program~~];

(2) conducts a preliminary review under Section 538.053(4) of each suggestion received under Section 538.052 to determine whether the suggestion warrants further consideration and analysis; and

(3) conducts an analysis under Section 538.054 of clinical initiative suggestions that are selected for analysis under Subdivision (2) [~~and of required clinical initiatives under Section 538.0521~~].

SECTION 2.273. Section 538.052(a), Government Code, is amended to read as follows:

(a) Subject to Subsection (b), the commission shall solicit and accept suggestions for clinical initiatives, in either written or electronic form, from:

(1) a member of the state legislature;

(2) the executive commissioner;

(3) the commissioner of *aging and disability services* [~~the Department of Aging and Disability Services~~];

(4) the commissioner of *state health services* [~~the Department of State Health Services~~];

(5) the commissioner of the Department of Family and Protective Services;

(6) the commissioner of *assistive and rehabilitative services* [~~the Department of Assistive and Rehabilitative Services~~];

(7) the medical care advisory committee established under Section 32.022, Human Resources Code;

(8) the physician payment advisory committee created under Section 32.022(d), Human Resources Code; and

(9) the Electronic Health Information Exchange System Advisory Committee established under Section 531.904.

SECTION 2.274. Section 538.054, Government Code, is amended to read as follows:

Sec. 538.054. ANALYSIS OF CLINICAL INITIATIVES. The commission shall conduct an analysis of each clinical initiative selected by the commission after having conducted the commission's preliminary review under Section 538.053(4). The analysis required under this section must include a review of:

(1) any public comments and submitted research relating to the initiative;

(2) the available clinical research and historical utilization information relating to the initiative;

(3) published medical literature relating to the initiative;

(4) any adoption of the initiative by medical societies or other clinical groups;

(5) whether the initiative has been implemented under:

(A) the Medicare program;

(B) another state medical assistance program; or

(C) a state-operated health care program, including the child health plan program;

(6) the results of reports, research, pilot programs, or clinical studies relating to the initiative conducted by:

(A) institutions of higher education, including related medical schools;

(B) governmental entities and agencies; and

(C) private and nonprofit think tanks and research groups;

(7) the impact that the initiative would have on [~~the~~] Medicaid [~~program~~] if *the initiative were* implemented in this state, including:

(A) an estimate of the number of recipients under [~~the~~] Medicaid [~~program~~] that would be impacted by implementation of the initiative; and

(B) a description of any potential cost savings to the state that would result from implementation of the initiative; and

(8) any statutory barriers to implementation of the initiative.

SECTION 2.275. Section 538.055, Government Code, is amended to read as follows:

Sec. 538.055. FINAL REPORT ON CLINICAL INITIATIVE. The commission shall prepare a final report based on the commission's analysis of a clinical initiative under Section 538.054. The final report must include:

(1) a final determination of:

(A) the feasibility of implementing the initiative;

(B) the likely impact implementing the initiative would have on the quality of care provided under [~~the~~] Medicaid [~~program~~]; and

(C) the anticipated cost savings to the state that would result from implementing the initiative;

(2) a summary of the public comments, including a description of any opposition to the initiative;

(3) an identification of any statutory barriers to implementation of the initiative; and

(4) if the initiative is not implemented, an explanation of the decision not to implement the initiative.

SECTION 2.276. Section 538.057, Government Code, is amended to read as follows:

Sec. 538.057. ACTION ON CLINICAL INITIATIVE BY COMMISSION. After the commission conducts an analysis of a clinical initiative under Section 538.054:

(1) if the commission has determined that the initiative is cost-effective and will improve the quality of care under [~~the~~] Medicaid [~~program~~], the commission may:

(A) implement the initiative if implementation of the initiative is not otherwise prohibited by law; or

(B) if implementation requires a change in law, submit a copy of the final report together with recommendations relating to the initiative's implementation to the standing committees of the senate and house of representatives having jurisdiction over [~~the~~] Medicaid [~~program~~]; and

(2) if the commission has determined that the initiative is not cost-effective or will not improve quality of care under [~~the~~] Medicaid [~~program~~], the commission may not implement the initiative.

SECTION 2.277. Section 539.001, Government Code, is amended to read as follows:

Sec. 539.001. *DEFINITION* [~~DEFINITIONS~~]. In this chapter, *"department"* [~~:~~

[~~(1) "Department"~~] means the Department of State Health Services.

[~~(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.~~]

SECTION 2.278. Sections 2105.001(1) and (4), Government Code, are amended to read as follows:

(1) "Agency" means:

(A) the *Health and Human Services Commission* [~~Texas Department of Human Services~~];

(B) the [~~Texas~~] Department of *State* Health *Services*;

(C) the Texas Department of Housing and Community Affairs;

(D) the Texas Education Agency;

(E) the [~~Texas~~] Department of *Aging and Disability Services* [~~Mental Health and Mental Retardation~~]; *or*

(F) [~~the Texas Department on Aging; or~~

[~~(G)~~] any other commission, board, department, or state agency designated to receive block grant funds.

(4) "Provider" means a public or private organization that receives block grant funds or may be eligible to receive block grant funds to provide services or benefits to the public, including:

(A) a local government unit;

(B) a council of government;

(C) a community action agency; or

(D) a private new community developer or nonprofit community association in a community originally established as a new community development program under the *former* Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4511 et seq.).

SECTION 2.279. Section 2105.002, Government Code, is amended to read as follows:

Sec. 2105.002. COMBINATION OF PROGRAMS NOT INTENDED TO REDUCE SERVICES. The process of combining categorical federal assistance programs into block grants should not have an overall effect of reducing the relative proportion of services and benefits made available to low-income individuals, elderly individuals, [~~disabled~~] individuals *with disabilities*, and migrant and seasonal agricultural workers.

SECTION 2.280. Section 2105.005(c), Government Code, is amended to read as follows:

(c) To the extent consistent with the purpose of the block grant, an *agency's rules* [~~agency by rule~~] shall ensure that providers use block grant funds to the maximum benefit of low-income recipients and intended recipients.

SECTION 2.281. Section 2105.009, Government Code, is amended to read as follows:

Sec. 2105.009. PRIMARY CARE BLOCK GRANT. (a) The [~~Texas~~] Department of *State* Health *Services* shall administer *a* [~~the~~] primary care block grant if *that grant is authorized and if* the department satisfies federal requirements relating to the designation of an agency to administer the grant.

(b) In administering the primary care block grant, the department may:

(1) receive the primary care block grant funds on behalf of the state;

(2) spend primary care block grant funds and state funds specifically appropriated by the legislature to match funds received under a primary care block grant;

(3) make grants to, advance funds to, contract with, and take other actions through community health centers that meet the requirements of 42 U.S.C. Section 254c(e)(3)

to provide for the delivery of primary and supplemental health services to medically underserved populations of the state; *and*

(4) [~~adopt necessary rules; and~~

[~~(5)~~] perform other activities necessary to administer the primary care block grant.

(b–1) The executive commissioner of the Health and Human Services Commission may adopt necessary rules for administering the primary care block grant.

(c) In this section:

(1) "Community health center" has the meaning assigned by 42 U.S.C. Section 254c(a), *as that law existed on April 23, 1986.*

(2) "Medically underserved population," "primary health services," and "supplemental health services" have the meanings assigned by 42 U.S.C. Section 254c(b), *as that law existed on April 23, 1986.*

SECTION 2.282. Section 2105.058(d), Government Code, is amended to read as follows:

(d) An *agency's rules* [~~agency by rule~~] may require a provider to undertake other reasonable efforts to seek public participation.

SECTION 2.283. Section 2105.152, Government Code, is amended to read as follows:

Sec. 2105.152. *HEALTH AND* [~~DEPARTMENT OF~~] HUMAN SERVICES *COMMISSION* PROCEDURES FOR FAIR HEARING. The *Health and Human Services Commission* [~~Texas Department of Human Services~~] shall use procedures for conducting a fair hearing under this subchapter.

SECTION 2.284. Section 2105.202(a), Government Code, is amended to read as follows:

(a) *The individual or entity responsible for adopting rules for an* [~~An~~] agency shall adopt specific rules *for the agency that define* [~~defining~~] good cause for nonrenewal of a provider's contract or reduction of a provider's funding.

SECTION 2.285. Section 2165.301, Government Code, is amended by amending Subdivision (2) and adding Subdivision (2–a) to read as follows:

(2) "Department" means the [~~Texas~~] Department of *State* Health *Services.*

(2–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 2.286. Sections 2165.302(a), (d), and (e), Government Code, are amended to read as follows:

(a) Except as provided by Section 2165.303:

(1) the commission shall refer matters related to the investigation and testing of indoor air quality in state buildings under the charge and control of the commission to the *department* [~~Texas Department of Health~~]; and

(2) the department shall conduct any necessary investigation and testing of indoor air quality in state buildings, on request or referral of an entity with charge and control of the state building.

(d) The *executive commissioner by rule* [~~department~~] may establish a system of charges for indoor air quality investigation and testing in state buildings. A system established by the *executive commissioner* [~~department~~] shall ensure that the department is reimbursed for the cost of providing the services by the agency or agencies occupying the portions of a building that are investigated or tested.

(e) The *executive commissioner* [~~department~~] shall adopt rules and procedures relating to the investigation and testing of indoor air quality in state buildings.

SECTION 2.287. The following provisions of the Government Code are repealed:

(1) Section 531.02131;

(2) Section 531.0222;

(3) Section 531.0249;

(4) Section 531.030;

(5) Section 531.0314;

(6) Section 531.046;

(7) Section 531.049;

(8) Section 531.065;

(9) Section 531.0993;

(10) Section 531.1063;

(11) Section 531.286;

(12) Section 531.552;

(13) Section 531.902;

(14) Section 531.905;

(15) Section 533.0025(a);

(16) Subchapter D, Chapter 533;

(17) Section 534.001(10);

(18) Sections 536.001(4) and (13);

(19) Section 537.001; and

(20) Section 538.001.

ARTICLE 3. HEALTH AND SAFETY CODE

SECTION 3.0001. The heading to Subtitle A, Title 2, Health and Safety Code, is amended to read as follows:

SUBTITLE A. [~~TEXAS~~] DEPARTMENT OF *STATE* HEALTH *SERVICES*

SECTION 3.0002. The heading to Chapter 11, Health and Safety Code, is amended to read as follows:

CHAPTER 11. *GENERAL PROVISIONS* [~~ORGANIZATION OF TEXAS DEPARTMENT OF HEALTH~~]

SECTION 3.0003. Section 11.001, Health and Safety Code, is amended to read as follows:

Sec. 11.001. DEFINITIONS. In this title:

(1) *"Commission" means the Health and Human Services Commission* [~~"Board" means the Texas Board of Health~~].

(2) "Commissioner" means the commissioner of *state* [~~public~~] health *services*.

(3) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0004. Sections 11.003(b) and (c), Health and Safety Code, are amended to read as follows:

(b) In the review of the *department* [~~Department of State Health Services~~] by the Sunset Advisory Commission, as required by [~~this section and~~] Section 1001.003, the sunset commission shall review the powers and duties exercised by the department under Chapter 108 and determine whether the department, under that chapter, is:

(1) achieving the legislature's intent of empowering consumers with information to make informed health care decisions;

(2) maintaining appropriate privacy and security standards for patient information; and

(3) limiting the patient information the department collects to the information necessary for performing the department's duties under Chapter 108.

(c) The Sunset Advisory Commission shall report its findings to the legislature in the report required by Section 325.010, Government Code. This *section expires* [~~subsection and Subsection (b) expire~~] September 1, 2015.

SECTION 3.0005. (a) Section 11.004(b), Health and Safety Code, is transferred to Section 1001.071, Health and Safety Code, redesignated as Section 1001.071(a), Health and Safety Code, and amended to read as follows:

(a) [~~(b)~~] The department is the state agency with primary responsibility *to administer or provide* [~~for providing~~] health services, including:

(1) disease prevention;

(2) health promotion;

(3) indigent health care;

(4) certain acute care services;

(5) [~~health care facility regulation, excluding long-term care facilities;~~

[~~(6)~~] licensing of certain health professions; and

(6) [~~(7)~~] other health-related services as provided by law.

(b) Section 1001.071, Health and Safety Code, is amended to read as follows:

Sec. 1001.071. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO HEALTH CARE. *(b)* The department is responsible for administering human services programs regarding the public health, including:

(1) implementing the state's public health care delivery programs under the authority of the department;

(2) administering state health facilities, hospitals, and health care systems;

(3) developing and providing health care services, as directed by law;

(4) providing for the prevention and control of communicable diseases;

(5) providing public education on health-related matters, as directed by law;

(6) compiling and reporting health-related information, as directed by law;

(7) acting as the lead agency for implementation of state policies regarding the human immunodeficiency virus and acquired immunodeficiency syndrome and administering programs related to the human immunodeficiency virus and acquired immunodeficiency syndrome;

(8) investigating the causes of injuries and methods of prevention;

(9) administering a grant program to provide appropriated money to counties, municipalities, public health districts, and other political subdivisions for their use to provide or pay for essential public health services;

(10) administering the registration of vital statistics;

(11) licensing, inspecting, and enforcing regulations regarding health facilities, other than long-term care facilities regulated by the Department of Aging and Disability Services;

(12) implementing established standards and procedures for the management and control of sanitation and for health protection measures;

(13) enforcing regulations regarding radioactive materials;

(14) enforcing regulations regarding food, bottled and vended drinking water, drugs, cosmetics, and health devices;

(15) enforcing regulations regarding food service establishments, retail food stores, mobile food units, and roadside food vendors;

(16) enforcing regulations controlling hazardous substances in households and workplaces; and

(17) implementing a mental health program for veterans.

SECTION 3.0006. Sections 11.012(a), (b), (c), (d), and (f), Health and Safety Code, are transferred to Section 1001.051, Health and Safety Code, redesignated respectively as Sections 1001.051(a–1), (a–2), (a–3), (a–4), and (b–1), Health and Safety Code, and amended to read as follows:

(a–1) [~~(a)~~] The *executive* commissioner [~~of health and human services~~] shall employ the commissioner in accordance with Section 531.0056, Government Code.

(a–2) [~~(b)~~] Except as provided in Subsection *(a–3)* [~~(c)~~], the commissioner must:

(1) have at least five years of experience in the administration of public health systems; and

(2) be a person licensed to practice medicine in this state.

(a–3) [~~(c)~~] The *executive* commissioner [~~of health and human services~~] may, based on the qualifications and experience in administering public health systems, employ a person other than a physician as the commissioner.

(a–4) [~~(d)~~] If the *executive* commissioner [~~of health and human services~~] employs a person as commissioner who is not a physician, then the *executive commissioner* [~~board~~] shall designate a person licensed to practice medicine in this state as chief medical executive.

(b–1) [~~(f)~~] The *executive commissioner* [~~board~~] may supplement the salary of the commissioner with the approval of the governor. The salary may not exceed 1.5 times the salary of the governor, from funds appropriated to the department. The use of funds from other sources are not limited by this subsection.

SECTION 3.0007. Section 11.014, Health and Safety Code, is transferred to Subchapter B, Chapter 1001, Health and Safety Code, redesignated as Section 1001.034, Health and Safety Code, and amended to read as follows:

Sec. *1001.034* [~~11.014~~]. INVESTIGATION OF DEPARTMENT. The *executive commissioner* [~~board~~] shall investigate the conduct of the work of the department. For that purpose, the *executive commissioner* [~~board~~] shall have access at any time to all department books and records and may require an officer or employee of the department to furnish written or oral information.

SECTION 3.0008. Section 11.016, Health and Safety Code, is transferred to Subchapter B, Chapter 1001, Health and Safety Code, redesignated as Section 1001.035, Health and Safety Code, and amended to read as follows:

Sec. *1001.035* [~~11.016~~]. ADVISORY COMMITTEES. (a) The *executive commissioner* [~~board~~] may appoint advisory committees to assist the *executive commissioner and department* [~~board~~] in performing [~~its~~] duties *related to department functions*.

(b) *If the executive commissioner appoints* [~~The board shall appoint~~] an advisory committee *under this section, the appointment must be made* in a manner that provides for:

(1) a balanced representation of persons with knowledge and interest in the committee's field of work;

(2) the inclusion on the committee of at least two members who represent the interests of the public; and

(3) a balanced representation of the geographic regions of the state.

(d) *A* [~~Except as otherwise provided by law and contingent on the availability of department funds for this purpose, a~~] member of an advisory committee appointed *under this section may* [~~by the board is entitled to~~] receive *reimbursement for*[~~, with regard to~~] travel expenses *as provided by Section 2110.004, Government Code*[~~, the per diem and travel allowance authorized by the General Appropriations Act for state employees~~].

(e) The *executive commissioner* [~~board~~] shall specify each committee's purpose, powers, and duties, and shall require each committee to report to the *executive commissioner or department* [~~board~~] in the manner specified by the *executive commissioner* [~~board~~] concerning the committee's activities and the results of its work.

(f) The *executive commissioner* [~~board~~] shall establish procedures for receiving reports relating to the activities and accomplishments of an advisory committee established by statute to advise the [~~board or~~] department *or executive commissioner on matters related to department functions*. The *executive commissioner* [~~board~~] may appoint additional members to those advisory committees and may establish additional duties of those committees as the *executive commissioner* [~~board~~] determines to be necessary.

(g) The *executive commissioner* [~~board~~] shall adopt rules to implement this section.

SECTION 3.0009. The heading to Chapter 12, Health and Safety Code, is amended to read as follows:

CHAPTER 12. POWERS AND DUTIES OF [~~TEXAS~~] DEPARTMENT OF*STATE* HEALTH *SERVICES*

SECTION 3.0010. Subchapter A, Chapter 12, Health and Safety Code, is amended to read as follows:

SUBCHAPTER A. *GENERAL* POWERS AND DUTIES [~~OF BOARD~~]

Sec. 12.0001. *COMMISSIONER'S* POWERS AND DUTIES; *EFFECT OF CONFLICT WITH OTHER LAW* [~~OF COMMISSIONER OF HEALTH AND HUMAN SERVICES~~]. [~~The commissioner of health and human services has the powers and duties relating to the board and commissioner as provided by Section 531.0055, Government Code.~~] To the extent a power or duty given to the [~~board or~~] commissioner by this title or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Sec. 12.001. GENERAL POWERS AND DUTIES *OF EXECUTIVE COMMISSIONER*. (a) The *executive commissioner* [~~board~~] has general supervision and control over all matters relating to the health of the citizens of this state.

(b) The *executive commissioner* [~~board~~] shall[~~:~~

[~~(1)~~] adopt rules for [~~its procedure and for~~] the performance of each duty imposed by law on the *executive commissioner* [~~board~~], the department, or the commissioner and file a copy of those rules with the department.

Sec. 12.0011. INVESTIGATIONS IN GENERAL. Subject to the oversight of the executive commissioner, the department shall[~~; and~~

[~~(2)~~] examine, investigate, enter, and inspect any public place or public building as the *department* [~~board~~] determines necessary for the discovery and suppression of disease and the enforcement of any health or sanitation law of this state.

[~~(c) The board has all the powers, duties, and functions granted by law to:~~

[~~(1) the Texas Board of Health;~~

[~~(2) the state commissioner of health;~~

[~~(3) the Texas Department of Health;~~

[~~(4) the Texas Board of Health Resources; and~~

[~~(5) the Texas Department of Health Resources.~~]

Sec. 12.002. *CERTAIN PROCEDURES FOR* [~~BOARD~~] INVESTIGATIONS. (a) *The commissioner or the commissioner's designee* [~~A member of the board~~] may administer oaths, summon witnesses, and compel the attendance of witnesses in any matter proper for [~~board~~] investigation *by the department, subject to the executive commissioner's oversight,* including the determination of nuisances and the investigation of:

(1) public water supplies;

(2) sanitary conditions;

(3) the existence of infection; or

(4) any matter that requires the *department* [~~board~~] to exercise its discretionary powers and that is within the general scope of its authority under this subchapter.

(b) Each district court shall aid the *department* [~~board~~] in its investigations and in compelling compliance with this subchapter. If a witness summoned by the *commissioner or the commissioner's designee* [~~board~~] is disobedient or disrespectful to the *department's* [~~board's~~] lawful authority, the district court of the county in which the witness is summoned to appear shall punish the witness in the manner provided for contempt of court.

Sec. 12.003. LEGAL REPRESENTATION. (a) A suit brought by the *department* [~~board~~] must be brought in the name of the state.

(b) The attorney general shall assign a special assistant to attend to the *department's* [~~board's~~] legal matters, and on the *department's* [~~board's~~] request shall furnish necessary assistance to the *department* [~~board~~] relating to its legal requirements.

[~~Sec. 12.004. DEVELOPMENT OF PROPOSED RULES. (a) This section applies to the process by which the department develops proposed rules for the board's consideration before the proposed rules are published in the Texas Register and before the board, commissioner, or department complies with the rulemaking requirements of the administrative procedure law, Chapter 2001, Government Code. This section does not affect the duty of the board, commissioner, or department to comply with the rulemaking requirements of that law.~~

[~~(b) The board shall require the department to establish a checklist of methods that, to the extent appropriate, the department will follow to obtain early in the rule development process the advice and opinions of the public and of persons who will be most affected by a proposed rule. The checklist must include methods for identifying persons who will be most affected and for soliciting at a minimum the advice and opinions of affected local health departments, of recipients and providers of affected services, and of advocates for affected recipients or providers.~~

[~~(c) The checklist may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.~~

[~~(d) A rule adopted by the board may not be challenged on the grounds that the board, commissioner, or department did not comply with this section. If the department was unable to solicit a significant amount of advice and opinion from the public or from affected persons early in the rule development process, the department shall state in writing to the board the reasons why the department was unable to do so.~~

[~~Sec. 12.005. MEDICAL DIRECTOR; MEDICAID MANAGED CARE AND CHIPS PROGRAMS. (a) In addition to any other medical director employed by the department, the board shall require the department to employ a separate medical director whose duties consist of acting as the medical director for the children's health insurance program created under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.) and also as the medical director for the Medicaid managed care program, to the extent that those programs are administered by the department.~~

[~~(b) The medical director shall be primarily responsible for implementing and maintaining policies and systems for the programs that relate to clinical and professional medical issues, including clinical oversight.~~

[~~(c) The medical director must be a physician licensed to practice medicine in this state.~~]

SECTION 3.0011. Sections 12.0111(b) and (c), Health and Safety Code, are amended to read as follows: .

(b) Notwithstanding other law, *the executive commissioner by rule shall adopt and* the department shall *collect* [~~charge~~] a fee for issuing or renewing a license that is in an amount designed to allow the department to recover from its license holders all of the department's direct and indirect costs in administering and enforcing the applicable licensing program.

(c) Notwithstanding other law, each regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department and that issues licenses shall *adopt by rule and collect* [~~charge~~] a fee for issuing or renewing

a license that is in an amount designed to allow the department and the regulatory board or agency to recover from the license holders all of the direct and indirect costs to the department and to the regulatory board or agency in administering and enforcing the applicable licensing program.

SECTION 3.0012. Sections 12.0115(a), (e), and (h), Health and Safety Code, are amended to read as follows:

(a) In this section, "health care delivery programs" includes the department's primary health care services program, its program to improve maternal and infant health, its services *program* for [~~chronically ill and disabled~~] children *with special health care needs*, any aspects of health care delivery under the state Medicaid program assigned to the department by law or by the *commission* [~~Health and Human Services Commission~~], and the part of any other department program concerned with the department's responsibility for the delivery of health care services.

(e) One of the primary goals of the department in integrating the administration of [~~its~~] contracts *entered into by the executive commissioner or the executive commissioner's designee on behalf of the department* with providers of health care services shall be designing an integrated contract administration system that reduces the administrative and paperwork burden on providers while still providing the department with the information it needs to effectively administer the contracts. The department's integration of contract administration must include:

(1) the integration of the initial procurement process within and across programs, at least in part by efficiently combining requests for bids or proposals within or across programs to the extent it reduces the administrative burden for providers;

(2) the establishment of uniform contract terms, including:

(A) contract terms that require information from providers, or that prescribe performance standards for providers, that could be made uniform within or across programs while remaining effective as contract terms;

(B) the establishment of a procedure under which a contractor or a person responding to a request for bids or proposals may supply the department with requested information whenever possible by referencing current and correct information previously supplied to and on file with the department; and

(C) contract terms regarding incentives for contractors to meet or exceed contract requirements;

(3) the integration of contract monitoring, particularly with regard to monitoring providers that deliver health services for the department under more than one contract or under more than one department program; and

(4) the integration of reimbursement methods:

(A) particularly for a provider that delivers health services for the department under more than one contract or under more than one department program; and

(B) including the application across programs of the most effective and efficient reimbursement technologies or methods that are available to the department under any of its programs.

(h) The department may not integrate health care delivery programs under this section in a way that affects the single state agency status of another state agency for federal purposes without obtaining the approval of the *commission* [~~Health and Human Services Commission~~] and any necessary federal approval.

SECTION 3.0013. Sections 12.0121(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall adopt a list of categories of licensed, certified, registered, or otherwise authorized providers to whom the department may award a grant for professional services under this section or with whom the department may contract or otherwise engage to perform professional services under this section.

(d) The department may award a grant, enter into a contract, or otherwise engage an individual or a group or association of individuals to perform professional services without complying with Subsection (c) if the *executive* commissioner by order [~~ratified by the board at its next regular meeting~~] determines that an emergency exists that necessitates the use of different procedures. A grant, contract, or engagement under this subsection is effective only for the period specified by the *executive* commissioner's order.

SECTION 3.0014. Section 12.0122(d), Health and Safety Code, is amended to read as follows:

(d) The *executive commissioner* [~~department~~] by rule may establish *fees that the department may collect* [~~charges~~] for the sale of laboratory services.

SECTION 3.0015. Section 12.01221, Health and Safety Code, is transferred to Subchapter B, Chapter 33, Health and Safety Code, redesignated as Section 33.0165, Health and Safety Code, and amended to read as follows:

Sec. *33.0165* [~~12.01221~~]. MUTUAL AID AGREEMENT FOR NEWBORN SCREENING LABORATORY SERVICES. (a) In this section, "newborn screening laboratory services" means the performance of tests to analyze specimens collected as part of the newborn screenings performed under *this subchapter* [~~Subchapter B, Chapter 33~~].

(b) Notwithstanding Section 12.0122 or other law, the department may enter into a mutual aid agreement to provide newborn screening laboratory services to another state and to receive newborn screening laboratory services from another state in the event of an unexpected interruption of service, including an interruption caused by a disaster.

(c) Each mutual aid agreement under Subsection (b) shall include provisions:

(1) to address the confidentiality of the identity of the newborn child and the newborn child's family; and

(2) to ensure the return of blood specimens and related records to the state that received the newborn screening laboratory services.

SECTION 3.0016. Section 12.0123, Health and Safety Code, as added by Chapter 1411 (H.B. 2085), Acts of the 76th Legislature, Regular Session, 1999, is transferred to Subchapter B, Chapter 32, Human Resources Code, redesignated as Section 32.0705, Human Resources Code, amended to conform to Section 12.0123, Health and Safety Code, as added by Chapters 1447 (H.B. 2896) and 1460 (H.B. 2641), Acts of the 76th Legislature, Regular Session, 1999, and further amended to read as follows:

Sec. *32.0705* [~~12.0123~~]. EXTERNAL AUDITS OF CERTAIN MEDICAID CONTRACTORS BASED ON RISK. (a) In this section, "Medicaid contractor" means an entity that:

(1) is not a health and human services agency as defined by Section 531.001, Government Code; and

(2) under a contract with *the commission* or otherwise on behalf of the *commission* [~~department~~], performs one or more administrative services in relation to the *commission's* [~~department's~~] operation of [~~a part of the state~~] Medicaid [~~program~~], such as claims processing, utilization review, client enrollment, provider enrollment, quality monitoring, or payment of claims.

(b) The *commission* [~~department~~] shall contract with an independent auditor to perform *annual* independent external financial and performance audits of any Medicaid contractor used [~~by the department~~] in the *commission's* [~~department's~~] operation of [~~a part of the state~~] Medicaid [~~program~~]. The *commission* [~~department~~] regularly shall review *the* [~~its~~] Medicaid contracts and ensure that:

(1) the frequency and extent of audits of a Medicaid contractor under this section are based on the amount of risk to the state involved in the administrative services being performed by the contractor;

(2) audit procedures related to financial audits and performance audits are used consistently in audits under this section; and

(3) to the extent possible, audits under this section are completed in a timely manner.

(c) If another state agency succeeds to the *commission's* [~~department's~~] operation of a part of [~~the state~~] Medicaid [~~program~~] for which the *commission* [~~department~~] used a Medicaid contractor, the successor agency shall comply with this section with regard to the Medicaid contractor, including the requirement to contract with an independent auditor to perform the external financial and performance audits required by this section.

(d) An audit required by this section must be completed before the end of the fiscal year immediately following the fiscal year for which the audit is performed.

SECTION 3.0017. Section 12.0124, Health and Safety Code, is transferred to Subchapter B, Chapter 32, Human Resources Code, redesignated as Section 32.0316, Human Resources Code, and amended to read as follows:

Sec. *32.0316* [~~12.0124~~]. ELECTRONIC TRANSACTIONS; [~~STATE~~] MEDICAID [~~PROGRAM~~]. The *executive commissioner shall adopt and the commission* [~~department or the department's successor in function in relation to the department's operation of a part of the state Medicaid program~~] shall implement policies that encourage the use of electronic transactions *in Medicaid*. The policies shall require payment to Medicaid [~~service~~] providers by electronic funds transfer, including electronic remittance and status reports. The policies shall also include the establishment of incentives to submit claims electronically and of disincentives to submit claims on paper that are reasonably based on the higher administrative costs to process claims submitted on paper.

SECTION 3.0018. Sections 12.0125(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The department shall develop a voluntary drug manufacturer rebate program for drugs purchased by or on behalf of a client of the Kidney Health Care Program or the *Children with Special Health Care Needs* [~~Chronically Ill and Disabled Children's~~] Services Program for which rebates are not available under the Medicaid drug manufacturer rebate program.

(c) Amounts received by the department under the drug rebate program established under this section may be appropriated only for the Kidney Health Care Program or the *Children with Special Health Care Needs* [~~Chronically Ill and Disabled Children's~~] Services Program.

SECTION 3.0019. Section 12.0128, Health and Safety Code, is amended to read as follows:

Sec. 12.0128. HEALTH ALERT NETWORK. The department shall include *local health officials* [~~the Texas Association of Local Health Officials~~], the Texas Association of Community Health Centers, and the Texas Organization of Rural and Community Hospitals in the department's Texas Health Alert Network to the extent federal funds for bioterrorism preparedness are available for that purpose.

SECTION 3.0020. Section 12.014(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule may adopt reasonable registration fees to cover the costs of establishing and maintaining a registry and may adopt other rules as necessary to administer this section.

SECTION 3.0021. Sections 12.0145(a), (d), and (g), Health and Safety Code, are amended to read as follows:

(a) The department shall publish and provide information in accordance with this section regarding each final enforcement action taken by the department *or*[~~,~~] commissioner[~~, or board~~] against a person or facility regulated by the department in which any kind of sanction is imposed, including:

(1) the imposition of a reprimand, a period of probation, a monetary penalty, or a condition on a person's continued practice or a facility's continued operation; and

(2) the refusal to renew or the suspension, probation, or revocation of a license or other form of permission to engage in an activity.

(d) The department shall publish and provide the information promptly after the

sanction has been imposed or, when applicable, promptly after the period during which the sanction is imposed has begun. The *executive commissioner* [~~department~~] by rule shall establish the length of time during which the required information will be published and provided under this section based on the *executive commissioner's* [~~department's~~] determination regarding the types of services provided by regulated entities and the length of time for which information about a category of enforcement actions is useful to a member of the public.

(g) A determination that the department is not required to publish and provide information under this section does not affect a determination regarding whether the information is subject to required disclosure under the open records law, Chapter 552, Government Code. The *executive commissioner's* [~~department's~~] determination regarding the length of the period during which information should continue to be published and provided under this section does not affect a determination regarding the period for which the information must be preserved under Chapter 441, Government Code, or under another law.

SECTION 3.0022. Section 12.015(a), Health and Safety Code, is amended to read as follows:

(a) If the department determines that a person is not eligible for a level of care in a nursing *facility* [~~home~~], the department shall inform the person that community services might be available under *a* [~~the~~] community care for the aged and disabled program administered by the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services.

SECTION 3.0023. Section 12.016(d), Health and Safety Code, is amended to read as follows:

(d) An applicant for a license, permit, registration, or similar form of permission required by law to be obtained from the department may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to begin. If an amendment of an application would be necessary within that period, the applicant shall resubmit the application to the department and must again comply with notice requirements and any other requirements of law or *department* [~~board~~] rule as though the application were originally submitted to the department on that date.

SECTION 3.0024. Section 12.019(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner by rule may set a fee to be collected by the* department [~~may charge~~] for providing genetic counseling services. The fee may not exceed the actual cost of providing the services.

SECTION 3.0025. Section 12.020(e), Health and Safety Code, is amended to read as follows:

(e) The *executive* commissioner shall institute intellectual property policies for the department that establish minimum standards for:

(1) the public disclosure or availability of products, technology, and scientific information, including inventions, discoveries, trade secrets, and computer software;

(2) review by the department of products, technology, and scientific information, including consideration of ownership and appropriate legal protection;

(3) the licensing of products, technology, and scientific information;

(4) the identification of ownership and licensing responsibilities for each class of intellectual property; and

(5) royalty participation by inventors and the department.

SECTION 3.0026. Section 12.032, Health and Safety Code, is amended to read as follows:

Sec. 12.032. FEES FOR PUBLIC HEALTH SERVICES. (a) The *executive commissioner* [~~board~~] by rule may *adopt* [~~charge~~] fees *to be collected by the department from* [~~to~~] a person who receives public health services from the department.

(b) The *executive commissioner* [~~board~~] by rule may require department contractors to

collect [~~charge~~] fees for public health services provided by department contractors participating in the department's programs. A department contractor shall retain a fee collected under this subsection and shall use the fee in accordance with the contract provisions.

(c) The amount of a fee *collected* [~~charged~~] for a public health service may not exceed the cost to the department of providing the service.

(d) The *executive commissioner by rule* [~~board~~] may establish a fee schedule. In establishing the schedule, the *executive commissioner* [~~board~~] shall consider a person's ability to pay the entire amount of a fee.

(e) The *executive commissioner* [~~board~~] may not deny public health services to a person because of the person's inability to pay for the services.

SECTION 3.0027. Sections 12.033(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) Except as otherwise provided by this section, the *executive commissioner* [~~board~~] by rule shall *adopt* [~~charge~~] fees *to be collected by the department* for the distribution and administration of vaccines and sera provided under:

(1) Section 38.001, Education Code;

(2) Section 42.043, Human Resources Code;

(3) Chapter 826 (Rabies Control Act of 1981);

(4) Chapter 81 (Communicable Disease Prevention and Control Act); and

(5) Section 161.005.

(b) Except as otherwise provided by this section, the *executive commissioner* [~~board~~] by rule may require a department contractor to *collect* [~~charge~~] fees for public health services provided by a contractor participating in a department program under the laws specified by Subsection (a).

(c) Provided the *executive commissioner* [~~board~~] finds that the monetary savings of this subsection are greater than any costs associated with administering it, the *executive commissioner* [~~board~~] by rule shall establish a fee schedule for fees under this section. In establishing the fee schedule, the *executive commissioner* [~~board~~] shall consider a person's financial ability to pay all or part of the fee, including the availability of health insurance coverage. In the event the fee schedule conflicts with any federal law or regulation, the *executive commissioner* [~~board~~] shall seek a waiver from the applicable federal law or regulation to permit the fee schedule. In the event the waiver is denied, the fee schedule shall not go into effect.

SECTION 3.0028. Sections 12.034(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall establish procedures for the collection of fees for public health services. The procedures shall be used by the department and by those department contractors required by the *executive commissioner* [~~board~~] to *collect* [~~charge~~] fees.

(c) The department shall make a reasonable effort to collect fees billed after services are performed. However, the *executive commissioner* [~~board~~] by rule may waive the collection procedures if the administrative costs exceed the fees to be collected.

(d) If the *executive commissioner* [~~board~~] elects to require cash payments by program participants, the money received shall be deposited locally at the end of each day and retained by the department for not more than seven days. At the end of that time, the money shall be deposited in the state treasury.

SECTION 3.0029. Section 12.035, Health and Safety Code, is amended to read as follows:

Sec. 12.035. PUBLIC HEALTH SERVICES FEE *ACCOUNT* [~~FUND~~]. (a) The department shall deposit all money collected for fees and charges collected under Sections 12.0122(d) and 12.032(a) in the state treasury to the credit of the [~~Texas Department of Health~~] public health services fee *account in the general revenue* fund.

(b) The department shall maintain proper accounting records to allocate the *money* [~~fund~~] among the state and federal programs generating the fees and administrative costs incurred in collecting the fees.

[~~(c) The public health services fee fund is exempt from Section 403.095(b), Government Code.~~]

SECTION 3.0030. Sections 12.036(c) and (d), Health and Safety Code, are amended to read as follows:

(c) The *executive commissioner* [~~board~~] or the *executive commissioner's* [~~board's~~] designee may waive the department's right of subrogation in whole or in part if the *executive commissioner* [~~board~~] or the designee determines that:

(1) enforcement of the right would tend to defeat the purpose of the department's program; or

(2) the administrative expense of the enforcement would be greater than the expected recovery.

(d) The *executive commissioner* [~~board~~] may adopt rules for the enforcement of the department's right of subrogation.

SECTION 3.0031. Section 12.037(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall prescribe the criteria for department action under this section.

SECTION 3.0032. Section 12.038, Health and Safety Code, is amended to read as follows:

Sec. 12.038. RULES. The *executive commissioner* [~~board~~] may adopt rules necessary to implement this subchapter.

SECTION 3.0033. Sections 12.055(b) and (d), Health and Safety Code, are amended to read as follows:

(b) A state agency or local unit of government under Subsection (a)(3) shall acquire goods or services by any procurement method approved by the *commission* [~~Health and Human Services Commission~~] that provides the best value to the state agency or local unit of government. The state agency or local unit of government shall document that the state agency or local unit of government considered all relevant factors under Subsection (c) in making the acquisition.

(d) If a state agency to which this section applies acquires goods or services with a value that exceeds $100,000, the state agency shall consult with and receive approval from the *commission* [~~Health and Human Services Commission~~] before considering factors other than price and meeting specifications.

SECTION 3.0034. Subchapter F, Chapter 12, Health and Safety Code, is amended to read as follows:

SUBCHAPTER F. OFFICE OF *BORDER* [~~TEXAS-MEXICO~~] HEALTH[~~AND ENVIRONMENTAL ISSUES~~]

Sec. 12.071. OFFICE OF *BORDER* [~~TEXAS-MEXICO~~] HEALTH [~~AND ENVIRONMENTAL ISSUES~~]. The department shall establish and maintain an office in the department to coordinate and promote health and environmental issues between this state and Mexico.

SECTION 3.0035. Section 12.091, Health and Safety Code, is amended to read as follows:

Sec. 12.091. *DEFINITION* [~~DEFINITIONS~~]. In this subchapter, *"panel"*[~~:~~

[~~(1) "Medical standards division" means the Medical Standards on Motor Vehicle Operations Division of the department.~~

[~~(2) "Panel"~~] means a panel of the medical advisory board.

SECTION 3.0036. Section 12.092(a), Health and Safety Code, is amended to read as follows:

(a) The commissioner shall appoint the medical advisory board members from:

(1) persons licensed to practice medicine in this state, including physicians who are board certified in internal medicine, psychiatry, neurology, physical medicine, or ophthalmology and who are jointly recommended by the *department* [~~Texas Department of Health~~] and the Texas Medical Association; and

(2) persons licensed to practice optometry in this state who are jointly recommended by the department and the Texas Optometric Association.

SECTION 3.0037. Section 12.093, Health and Safety Code, is amended to read as follows:

Sec. 12.093. ADMINISTRATION[~~; RULES~~]. (a) The medical advisory board is administratively attached to the *department* [~~medical standards division~~].

(b) The *department* [~~medical standards division~~]:

(1) shall provide administrative support for the medical advisory board and panels of the medical advisory board; and

(2) may collect and maintain the individual medical records necessary for use by the medical advisory board and the panels under this section from a physician, hospital, or other health care provider.

SECTION 3.0038. Section 12.094(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~]:

(1) may adopt rules to govern the activities of the medical advisory board;

(2) by rule may establish a reasonable fee to pay a member of the medical advisory board for the member's professional consultation services; and

(3) if appropriate, may authorize *reimbursement for* [~~per diem and~~] travel *expenses as provided by Section 2110.004, Government Code,* [~~allowances~~] for each meeting a member attends[~~, not to exceed the amounts authorized for state employees by the General Appropriations Act~~].

SECTION 3.0039. Section 12.097(b), Health and Safety Code, is amended to read as follows:

(b) In a subsequent proceeding under Subchapter H, Chapter 411, Government Code, or Subchapter N, Chapter 521, Transportation Code, the *department* [~~medical standards division~~] may provide a copy of the report of the medical advisory board or panel and a medical record or report relating to an applicant or license holder to:

(1) the Department of Public Safety of the State of Texas;

(2) the applicant or license holder; and

(3) the officer who presides at the hearing.

SECTION 3.0040. Section 12.113(a), Health and Safety Code, is amended to read as follows:

(a) Volunteers recruited under this subchapter may include students in high school or an institution of higher education, senior citizens, participants in the *TANF* [~~AFDC~~] job opportunities and basic skills (JOBS) training program, VISTA and AmeriCorps volunteers, and volunteers from business and community networks.

SECTION 3.0041. Section 12.133(b), Health and Safety Code, is amended to read as follows:

(b) Subject to the approval of the advisory committee, the *executive commissioner* [~~board~~] shall adopt rules governing the collection of information under Subsection (a). The rules may provide for regular audits of randomly selected political subdivisions and may govern the manner in which a political subdivision is selected for an audit and the selection of an auditor.

SECTION 3.0042. Section 12.134(a), Health and Safety Code, is amended to read as follows:

(a) Subject to the approval of the advisory committee, the *executive commissioner* [~~board~~] shall adopt rules under which a political subdivision or agency of this state may dispute information submitted by a political subdivision under Section 12.133.

SECTION 3.0043. Section 12.136(a), Health and Safety Code, is amended to read as follows:

(a) If the *department, pursuant to rules adopted by the executive commissioner,* [~~board~~] finds, after an audit conducted under Section 12.133 or 12.134, that a political subdivision has overstated unreimbursed health care expenditures in the information submitted under Section 12.133 for any year, the department shall report that fact to the comptroller and shall reduce that political subdivision's percentage of the subsequent annual distribution of the earnings from the account appropriately.

SECTION 3.0044. Sections 12.137(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The tobacco settlement permanent trust account administration advisory committee shall advise the *department* [~~board~~] on the implementation of the department's duties under this subchapter.

(b) The advisory committee is composed of 11 members appointed as follows:

(1) one member appointed by the *executive commissioner* [~~board~~] to represent a public hospital or hospital district located in a county with a population of 50,000 or less or a public hospital owned or maintained by a municipality;

(2) one member appointed by the political subdivision that, in the year preceding the appointment, received the largest annual distribution paid from the account;

(3) one member appointed by the political subdivision that, in the year preceding the appointment, received the second largest annual distribution paid from the account;

(4) four members appointed by the Texas Conference of Urban Counties from nominations received from political subdivisions that in the year preceding the appointment, received the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, or 12th largest annual distribution paid from the account;

(5) one member appointed by the County Judges and Commissioners Association of Texas;

(6) one member appointed by the North and East Texas County Judges and Commissioners Association;

(7) one member appointed by the South Texas County Judges and Commissioners Association; and

(8) one member appointed by the West Texas County Judges and Commissioners Association.

SECTION 3.0045. Section 12.138, Health and Safety Code, is amended to read as follows:

Sec. 12.138. APPROVAL OF RULES. A rule to be adopted by the *executive commissioner* [~~board~~] relating to certification of a percentage of an annual distribution under Section 12.132 or collection of information under Sections 12.132, 12.133, and 12.134 must be submitted to the advisory committee and may not become effective before the rule is approved by the advisory committee. If the advisory committee disapproves a proposed rule, the advisory committee shall provide the *executive commissioner* [~~board~~] the specific reasons that the rule was disapproved.

SECTION 3.0046. Section 12.139, Health and Safety Code, is amended to read as follows:

Sec. 12.139. ANNUAL REVIEW. The advisory committee shall annually:

(1) review the results of any audit conducted under this subchapter and the results of any dispute filed under Section 12.134; and

(2) review the rules adopted by the *executive commissioner* [~~board~~] under this subchapter and propose any amendments to the rules the advisory committee considers necessary.

SECTION 3.0047. The heading to Chapter 13, Health and Safety Code, is amended to read as follows:

CHAPTER 13. [~~HEALTH~~] DEPARTMENT HOSPITALS AND RESPIRATORY FACILITIES

SECTION 3.0048. The heading to Subchapter A, Chapter 13, Health and Safety Code, is amended to read as follows:

SUBCHAPTER A. CARE AND TREATMENT IN [~~HEALTH~~] DEPARTMENT HOSPITALS

SECTION 3.0049. Sections 13.002(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~board~~] may admit to any hospital under its supervision a patient who:

(1) is eligible to receive patient services under a department program; and

(2) will benefit from hospitalization.

(c) The *executive commissioner* [~~board~~] may adopt rules and *the department may* enter into contracts as necessary to implement this section.

(d) This section does not require the *executive commissioner* [~~board~~] or department to:

(1) admit a patient to a particular hospital;

(2) guarantee the availability of space at any hospital; or

(3) provide treatment for a particular medical need at any hospital.

SECTION 3.0050. Section 13.003(b), Health and Safety Code, is amended to read as follows:

(b) The *department* [~~board~~] may establish at the Rio Grande State Center:

(1) cancer screening;

(2) diagnostic services;

(3) educational services;

(4) obstetrical services;

(5) gynecological services;

(6) other inpatient health care services; and

(7) outpatient health care services, including diagnostic, treatment, disease management, and supportive care services.

SECTION 3.0051. The heading to Section 13.004, Health and Safety Code, is amended to read as follows:

Sec. 13.004. TREATMENT OF CERTAIN *PERSONS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY* [~~MENTALLY ILL OR MENTALLY RETARDED PERSONS~~].

SECTION 3.0052. Section 13.004(a), Health and Safety Code, is amended to read as follows:

(a) The *department or the Department of Aging and Disability Services, as appropriate,* [~~Texas Department of Mental Health and Mental Retardation~~] may transfer a [~~mentally ill or mentally retarded~~] person *with mental illness or an intellectual disability* who is infected with tuberculosis to *a public health hospital as defined by Section 13.033* [~~the Texas Center for Infectious Disease~~].

SECTION 3.0053. Section 13.005, Health and Safety Code, is amended to read as follows:

Sec. 13.005. CARE AND TREATMENT OF CERTAIN PATIENTS. (a) The *department* [~~board~~] shall fully develop essential services needed for the control of tuberculosis. To provide those services, the *department* [~~board~~] may contract for the support, maintenance, care, and treatment of tuberculosis patients:

(1) admitted to facilities under the *department's* [~~board's~~] jurisdiction; or

(2) otherwise subject to the *department's* [~~board's~~] jurisdiction.

(b) The *department* [~~board~~] may contract with:

(1) municipal, county, or state hospitals;

(2) private physicians;

(3) licensed nursing *facilities* [~~homes~~] and hospitals; and

(4) hospital districts.

(c) The *department* [~~board~~] may contract for diagnostic and other services available in a community or region as necessary to prevent further spread of tuberculosis.

(d) A contract may not include the assignment of any lien accruing to the state.

(e) The *department* [~~board~~] may establish and operate outpatient clinics as necessary to provide follow-up treatment on discharged patients. A person who receives treatment as an outpatient is financially liable in the manner provided for inpatients.

SECTION 3.0054. Sections 13.033(3) and (5), Health and Safety Code, are amended to read as follows:

(3) "Physician" means a person licensed by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] to practice medicine in this state.

(5) "*Public health* [~~State chest~~] hospital" means *a hospital operated by the department to provide services under this subchapter, including* the Texas Center for Infectious Disease [~~and the Rio Grande State Center~~].

SECTION 3.0055. Section 13.034, Health and Safety Code, is amended to read as follows:

Sec. 13.034. [~~BOARD~~] DUTIES *OF EXECUTIVE COMMISSIONER AND DEPARTMENT*. (a) The *executive commissioner* [~~board~~] shall adopt rules [~~and bylaws~~] relating to:

(1) the management of *public health* [~~state chest~~] hospitals;

(2) the duties of officers and employees of those hospitals; and

(3) the enforcement of necessary discipline and restraint of patients.

(a–1) The executive commissioner may adopt rules as necessary for the proper and efficient hospitalization of tuberculosis patients.

(b) The *department* [~~board~~] shall supply each hospital with the necessary personnel for the operation and maintenance of the hospital.

(c) The *department* [~~board~~] may:

(1) prescribe the form and content of applications, certificates, records, and reports provided for under this subchapter;

(2) require reports from the administrator of a *public health* [~~state chest~~] hospital relating to the admission, examination, diagnosis, release, or discharge of a patient;

(3) visit each hospital regularly to review admitting procedures and the care and treatment of all new patients admitted since the last visit; *and*

(4) investigate by personal visit a complaint made by a patient or by another person on behalf of a patient[~~; and~~

[~~(5) adopt rules as necessary for the proper and efficient hospitalization of tuberculosis patients~~].

[~~(d) The board may delegate a power or duty of the board to an employee. The delegation does not relieve the board from its responsibility.~~]

SECTION 3.0056. Section 13.035(a), Health and Safety Code, is amended to read as follows:

(a) The department shall employ a qualified hospital administrator for each *public health* [~~state chest~~] hospital.

SECTION 3.0057. Sections 13.036(a) and (c), Health and Safety Code, are amended to read as follows:

(a) A resident of this state who has tuberculosis may be admitted to a *public health* [~~state chest~~] hospital. A person who is not a resident of this state and who has tuberculosis may be admitted to a *public health* [~~state chest~~] hospital in accordance with Section 13.046.

(c) An application for admission to a *public health* [~~state chest~~] hospital shall be accompanied by a certificate issued by a physician stating that the physician has thoroughly examined the applicant and that the applicant has tuberculosis. In the case of an applicant who is not a resident of this state, the certificate may be issued by a physician who holds a license to practice medicine in the state of residence of the applicant.

SECTION 3.0058. Section 13.038(a), Health and Safety Code, is amended to read as follows:

(a) A patient admitted to a *public health* [~~state chest~~] hospital is a public patient and classified as indigent, nonindigent, or nonresident.

SECTION 3.0059. Section 13.039(b), Health and Safety Code, is amended to read as follows:

(b) The action shall be brought on the written request of the *public health* [~~state chest~~] hospital administrator, accompanied by a certificate as to the amount owed to the state. In any action, the certificate is sufficient evidence of the amount owed to the state for the support of that patient.

SECTION 3.0060. Sections 13.041(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~board~~] may:

(1) return a nonresident patient admitted to a *public health* [~~state chest~~] hospital to the proper agency of the state of the patient's residence; and

(2) permit the return of a resident of this state who has been admitted to a tuberculosis hospital in another state.

(c) The *department* [~~board~~] may enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the states of their residence of nonresident patients admitted to *tuberculosis* [~~state chest~~] hospitals in other states.

SECTION 3.0061. Section 13.042, Health and Safety Code, is amended to read as follows:

Sec. 13.042. DISCRIMINATION PROHIBITED. (a) A *public health* [~~state chest~~] hospital may not discriminate against a patient.

(b) Each patient is entitled to equal facilities, attention, and treatment. However, a *public health* [~~state chest~~] hospital may provide different care and treatment of patients because of differences in the condition of the individual patients.

SECTION 3.0062. Sections 13.043(a) and (c), Health and Safety Code, are amended to read as follows:

(a) A patient in a *public health* [~~state chest~~] hospital may not offer an officer, agent, or employee of the hospital a tip, payment, or reward of any kind.

(c) The *department* [~~board~~] shall strictly enforce this section.

SECTION 3.0063. Sections 13.044(a), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) On the request of any charitable organization in this state, the *department* [~~board~~] may permit the erection, furnishing, and maintenance by the charitable organization of accommodations on the grounds of a *public health* [~~state chest~~] hospital for persons who have tuberculosis and who are:

(1) members of the charitable organization;

(2) members of the families of persons who are members of the charitable organization; or

(3) surviving spouses or minor children of deceased persons who are members of the charitable organization.

(d) The officers or a board or committee of the charitable organization and the *department* [~~board~~] must enter into a written agreement relating to the location, construction, style, and character, and terms of existence of buildings, and other questions arising in connection with the grant of permission to erect and maintain private accommodations. The *department must maintain as a record a copy of the* written agreement [~~must be recorded in the minutes of the board~~].

(e) Except for the preferential right to occupy vacant accommodations erected by the person's charitable organization, a person described by Subsection (a) shall be classified in the same manner as other *public health* [~~state chest~~] hospital patients and shall be admitted, maintained, cared for, and treated in those hospitals in the same manner and under the same conditions and rules that apply to other patients.

SECTION 3.0064. Section 13.045(a), Health and Safety Code, is amended to read as follows:

(a) A county may donate and convey land to the state in consideration of the establishment of a *public health* [~~state chest~~] hospital by the *executive commissioner* [~~board~~].

SECTION 3.0065. Section 13.046, Health and Safety Code, is amended to read as follows:

Sec. 13.046. ADMISSION OF NONRESIDENT PATIENTS. (a) The department may enter into an agreement with an agency of another state responsible for the care of residents of that state who have tuberculosis under which:

(1) residents of the other state who have tuberculosis may be admitted to a *public health* [~~state chest~~] hospital, subject to the availability of appropriate space after the needs of eligible tuberculosis and chronic respiratory disease patients who are residents of this state have been met; and

(2) the other state is responsible for paying all costs of the hospitalization and treatment of patients admitted under the agreement.

(b) Section 13.041 does not apply to the return of a nonresident patient admitted to a *public health* [~~state chest~~] hospital in accordance with an agreement entered into under this section. The return of that patient to the state of residence is governed by the agreement.

SECTION 3.0066. Section 31.002(a)(3), Health and Safety Code, is amended to read as follows:

(3) "Other benefit" means a benefit, other than a benefit provided under this chapter, to which an individual is entitled for payment of the costs of primary health care services, including benefits available from:

(A) an insurance policy, group health plan, or prepaid medical care plan;

(B) Title XVIII or XIX of the Social Security Act (42 U.S.C. Section 1395 et seq. or Section 1396 et seq.);

(C) the *United States Department of* Veterans *Affairs* [~~Administration~~];

(D) the *TRICARE program of the United States Department of Defense* [~~Civilian Health and Medical Program of the Uniformed Services~~];

(E) workers' compensation or any other compulsory employers' insurance program;

(F) a public program created by federal or state law, or by an ordinance or rule of a municipality or political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(G) a cause of action for medical, facility, or medical transportation expenses, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

SECTION 3.0067. Section 31.002(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule may define a word or term not defined by Subsection (a) as necessary to administer this chapter. The *executive commissioner* [~~board~~] may not define a word or term so that the word or term is inconsistent or in conflict with the purposes of this chapter, or is in conflict with the definition and conditions of practice governing a provider who is required to be licensed, registered, certified, identified, or otherwise sanctioned under the laws of this state.

SECTION 3.0068. Sections 31.003(a), (b), (c), (d), (e), and (g), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] may establish a program in the department to provide primary health care services to eligible individuals.

(b) If the program is established, the *executive commissioner* [~~board~~] shall adopt rules relating to:

(1) the type, amount, and duration of services to be provided under this chapter; and

(2) the determination by the department of the services needed in each service area.

(c) If budgetary limitations exist, the *executive commissioner* [~~board~~] by rule shall establish a system of priorities relating to the types of services provided, geographic areas covered, or classes of individuals eligible for services.

(d) The *executive commissioner* [~~board~~] shall adopt rules under Subsection (c) relating to the geographic areas covered and the classes of individuals eligible for services according to a statewide determination of the need for services.

(e) The *executive commissioner* [~~board~~] shall adopt rules under Subsection (c) relating to the types of services provided according to the set of service priorities established under this subsection. Initial service priorities shall focus on the funding of, provision of, and access to:

(1) diagnosis and treatment;

(2) emergency services;

(3) family planning services;

(4) preventive health services, including immunizations;

(5) health education; and

(6) laboratory, X-ray, nuclear medicine, or other appropriate diagnostic services.

(g) The *executive commissioner* [~~board~~] should require that the services provided under this chapter be reserved to the greatest extent possible for low-income individuals who are not eligible for similar services through any other publicly funded program.

SECTION 3.0069. Sections 31.004(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt rules necessary to administer this chapter, and the department shall administer the program in accordance with *those* [~~board~~] rules.

(b) *The executive commissioner* [~~With the advice and assistance of the commissioner and the department, the board~~] by rule shall:

(1) establish the administrative structure of the program;

(2) establish a plan of areawide administration to provide authorized services;

(3) designate, if possible, local public and private resources as providers; and

(4) prevent duplication by coordinating authorized primary health care services with existing federal, state, and local programs.

SECTION 3.0070. Sections 31.005(a), (b), (c), and (e), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt rules relating to the department's determination of whether program services are to be provided through a network of approved providers, directly by the department, or by a combination of the department and approved providers as prescribed by this section.

(b) The department shall provide services only as prescribed by *department* [~~board~~] rule.

(c) The department may provide primary health care services directly to eligible individuals to the extent that the *department* [~~board~~] determines that existing private or public providers or other resources in the service area are unavailable or unable to provide those services. In making that determination, the department shall:

(1) initially determine the proposed need for services in the service area;

(2) notify existing private and public providers and other resources in the service area of the department's initial determination of need and the services the department proposes to provide directly to eligible individuals;

(3) provide existing private and public providers and other resources in the service area a reasonable opportunity to comment on the department's initial determination of need and the availability and ability of existing private or public providers or other resources in the service area to satisfy the need;

(4) provide existing private and public providers and other resources in the service area a reasonable opportunity to obtain approval as providers under the program; and

(5) eliminate, reduce, or otherwise modify the proposed scope or type of services the department proposes to provide directly to the extent that those services may be provided by existing private or public providers or other resources in the service area that meet the *executive commissioner's* [~~board's~~] criteria for approval as providers.

(e) If after a review the *department* [~~board~~] determines that a private or public provider or other resource is available to provide services and has been approved as a provider, the department shall, immediately after approving the provider, eliminate, reduce, or modify the scope and type of services the department provides directly to the extent the private or public provider or other resource is available and able to provide the service.

SECTION 3.0071. Sections 31.006(a), (b), (d), (f), and (i), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt rules relating to:

(1) the selection and expedited selection of providers, including physicians, registered nurses, and facilities; and

(2) the denial, modification, suspension, and termination of program participation.

(b) The department shall select and approve providers to participate in the program according to the criteria and following the procedures prescribed by *department* [~~board~~] rules.

(d) The *executive commissioner* [~~board~~] may not adopt facility approval criteria that discriminate against a facility solely because it is operated for profit.

(f) The *department* [~~board~~] shall provide a due process hearing procedure *in accordance with department rules* for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, *does* [~~do~~] not apply to conflict resolution procedures adopted under this section.

(i) The notice and hearing required by this section do not apply if a grant or contract:

(1) is canceled by the department because of exhaustion of funds or because insufficient funds require the *executive commissioner* [~~board~~] to adopt service priorities; or

(2) expires according to its terms.

SECTION 3.0072. Sections 31.007(a), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt rules relating to application procedures for admission to the program.

(c) The application form must be accompanied by:

(1) a statement by the applicant, or by the person with a legal obligation to provide for the applicant's support, that the applicant or person is financially unable to pay for all or part of the cost of the necessary services; and

(2) any other assurances from the applicant or any documentary evidence required by *department rules* [~~the board~~] that is necessary to support the applicant's eligibility.

(d) Except as permitted by *department* [~~program~~] rules, the department may not provide services or authorize payment for services delivered to an individual before the eligibility date assigned to the individual by the department.

(e) The department shall determine or cause to be determined the eligibility date in accordance with *department* [~~board~~] rules. The date may not be later than the date on which the individual submits a properly completed application form and all supporting documents required by this chapter or *department* [~~board~~] rules.

SECTION 3.0073. Section 31.008, Health and Safety Code, is amended to read as follows:

Sec. 31.008. ELIGIBILITY FOR SERVICES. (a) The *executive commissioner* [~~board~~] shall adopt rules relating to eligibility criteria for an individual to receive services under the program, including health, medical, and financial criteria. The department shall determine or cause to be determined an applicant's eligibility in accordance with this chapter and *department* [~~board~~] rules.

(b) Except as modified by other rules adopted under this chapter, the *executive commissioner* [~~board~~] by rule shall provide that to be eligible to receive services, the individual must be a resident of this state.

SECTION 3.0074. Sections 31.009(c), (d), and (f), Health and Safety Code, are amended to read as follows:

(c) The *executive commissioner* [~~board~~] by rule shall provide criteria for action by the department under this section.

(d) Chapter 2001, Government Code, *does* [~~do~~] not apply to the granting, denial, modification, suspension, or termination of services. The department shall conduct hearings in accordance with the *department's* [~~board's~~] due process hearing rules.

(f) The notice and hearing required by this section do not apply if the department restricts program services to conform to budgetary limitations that require the *executive commissioner* [~~board~~] to establish service priorities.

SECTION 3.0075. Sections 31.010(b) and (e), Health and Safety Code, are amended to read as follows:

(b) Except as provided by *department* [~~board~~] rules, an individual is not eligible to receive services under this chapter to the extent that the individual, or a person with a legal obligation to support the individual, is eligible for some other benefit that would pay for all or part of the services.

(e) The *department* [~~commissioner~~] may waive enforcement of Subsections (b)–(d) [~~of this section~~] as prescribed by *department* [~~board~~] rules in certain individually considered cases in which enforcement will deny services to a class of otherwise eligible individuals because of conflicting federal, state, or local laws or rules.

SECTION 3.0076. Section 31.012, Health and Safety Code, is amended to read as follows:

Sec. 31.012. FEES. (a) The *department* [~~board~~] may charge fees for the services provided directly by the department or through approved providers in accordance with Subchapter D, Chapter 12.

(b) The *executive commissioner by rule* [~~board~~] shall adopt standards and procedures to develop and implement a schedule of allowable charges for program services.

SECTION 3.0077. Section 31.013(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by this chapter or by other law, the *department* [~~board~~] may seek, receive, and spend funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer this chapter.

SECTION 3.0078. Sections 31.015(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules relating to the information a provider is required to report to the department and shall adopt procedures to prevent unnecessary and duplicative reporting of data.

(d) The report required under Subsection (c) must include:

(1) the number of individuals receiving care under this chapter;

(2) the total cost of the program, including a delineation of the total administrative costs and the total cost for each service authorized under Section 31.003(e);

(3) the average cost per recipient of services;

(4) the number of individuals who received services in each public health region; and

(5) any other information required by the *executive commissioner* [~~board~~].

SECTION 3.0079. Section 32.002(a)(8), Health and Safety Code, is amended to read as follows:

(8) "Other benefit" means a benefit, other than a benefit provided under this chapter, to which an individual is entitled for payment of the costs of maternal and infant health improvement services, ancillary services, educational services, or transportation services, including benefits available from:

(A) an insurance policy, group health plan, or prepaid medical care plan;

(B) Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.);

(C) the *United States Department of* Veterans *Affairs* [~~Administration~~];

(D) the *TRICARE program of the United States Department of Defense* [~~Civilian Health and Medical Program of the Uniformed Services~~];

(E) workers' compensation or any other compulsory employers' insurance program;

(F) a public program created by federal or state law, other than Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.), or by an ordinance or rule of a municipality or political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(G) a cause of action for medical, facility, or medical transportation expenses, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

SECTION 3.0080. Section 32.002(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule may define a word or term not defined by Subsection (a) as necessary to administer this chapter. The *executive commissioner*

[~~board~~] may not define a word or term so that the word or term is inconsistent or in conflict with the purposes of this chapter, or is in conflict with the definition and conditions of practice governing a provider who is required to be licensed, registered, certified, identified, or otherwise sanctioned under the laws of this state.

SECTION 3.0081. Section 32.003, Health and Safety Code, is amended to read as follows:

Sec. 32.003. MATERNAL AND INFANT HEALTH IMPROVEMENT SERVICES PROGRAM. (a) The *executive commissioner* [~~board~~] may establish a maternal and infant health improvement services program in the department to provide comprehensive maternal and infant health improvement services and ancillary services to eligible women and infants.

(b) If the program is established, the *executive commissioner* [~~board~~] shall adopt rules relating to:

(1) the type, amount, and duration of services to be provided under this chapter; and

(2) the determination by the department of the services needed in each service area.

(c) If budgetary limitations exist, the *executive commissioner* [~~board~~] by rule shall establish a system of priorities relating to the types of services provided, geographic areas covered, or classes of individuals eligible for services.

(d) The *executive commissioner* [~~board~~] shall adopt the rules according to a statewide determination of the need for services.

(e) In structuring the program and adopting rules, the department and *executive commissioner* [~~board~~] shall attempt to maximize the amount of federal matching funds available for maternal and infant health improvement services while continuing to serve targeted populations.

(f) If necessary, the *executive commissioner* [~~board~~] by rule may coordinate services and other parts of the program with the medical assistance program. However, the *executive commissioner* [~~board~~] may not adopt rules relating to the services under either program that would:

(1) cause the program established under this chapter not to conform with federal law to the extent that federal matching funds would not be available; or

(2) affect the status of the single state agency to administer the medical assistance program.

SECTION 3.0082. Section 32.006(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt rules necessary to administer this chapter, and the department shall administer the program in accordance with *those* [~~board~~] rules.

SECTION 3.0083. Sections 32.011(b), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall provide criteria for action by the department under this section.

(c) Chapter 2001, Government Code, does not apply to the granting, denial, modification, suspension, or termination of services. The department shall *provide* [~~conduct~~] hearings in accordance with the *department's* [~~board's~~] due process hearing rules.

(d) The department shall render the final administrative decision *following* [~~in~~] a due process hearing to deny, modify, suspend, or terminate the receipt of services.

(e) The notice and hearing required by this section do not apply if the department restricts program services to conform to budgetary limitations that require the *executive commissioner* [~~board~~] to establish service priorities.

SECTION 3.0084. Sections 32.012(b) and (e), Health and Safety Code, are amended to read as follows:

(b) Except as provided by *department* [~~board~~] rules, an individual is not eligible to receive services under this chapter to the extent that the individual or a person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(e) The *department* [~~commissioner~~] may waive enforcement of Subsections (b)–(d) [~~of this section~~] as prescribed by *department* [~~board~~] rules in certain individually considered cases in which enforcement will deny services to a class of otherwise eligible individuals because of conflicting federal, state, or local laws or rules.

SECTION 3.0085. Section 32.014, Health and Safety Code, is amended to read as follows:

Sec. 32.014. FEES. (a) Except as prohibited by federal law or regulation, the *department* [~~board~~] may *collect* [~~charge~~] fees for the services provided directly by the department or through approved providers in accordance with Subchapter D, Chapter 12.

(b) The *executive commissioner by rule* [~~board~~] shall adopt standards and procedures to develop and implement a schedule of allowable charges for program services.

SECTION 3.0086. Section 32.015(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by this chapter or by other law, the *department* [~~board~~] may seek, receive, and spend funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer this chapter.

SECTION 3.0087. Section 32.017(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules relating to the information a provider is required to report to the department and shall adopt procedures to prevent unnecessary and duplicative reporting of data.

SECTION 3.0088. The heading to Section 32.021, Health and Safety Code, is amended to read as follows:

Sec. 32.021. REQUIREMENTS REGARDING THE WOMEN, INFANTS, AND CHILDREN PROGRAM.

SECTION 3.0089. Section 32.021(a), Health and Safety Code, is amended to read as follows:

(a) An agency, organization, or other entity that contracts with the Special Supplemental Nutrition Program for Women, Infants, and Children shall each month provide the clinical and nutritional services supported by that program during extended hours, as defined by the department.

SECTION 3.0090. The heading to Section 32.0211, Health and Safety Code, is amended to read as follows:

Sec. 32.0211. WOMEN, INFANTS, AND CHILDREN PROGRAM OUTREACH CAMPAIGN TO PROMOTE FATHERS' INVOLVEMENT.

SECTION 3.0091. Sections 32.0211(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) The attorney general shall:

(1) subject to Subsections (b) and (c), develop and periodically update a publication that:

(A) describes the importance and long-term positive effects on children of a father's involvement during a mother's pregnancy; and

(B) provides guidance to prospective fathers on the positive actions that they can take to support the pregnant mother during pregnancy and the effect those actions have on pregnancy outcomes; and

(2) make the publication described by Subdivision (1) available to any agency, organization, or other entity that contracts with the Special Supplemental Nutrition

Program for Women, Infants, and Children and on the attorney general's Internet website in a format that allows the public to download and print the publication.

(c) In developing the publication required by Subsection (a), the attorney general shall consult with:

(1) the department as the state agency responsible for administering the Special Supplemental Nutrition Program for Women, Infants, and Children and this state's program under the Maternal and Child Health Services Block Grant Act (42 U.S.C. Section 701 et seq.); and

(2) the Texas Council on Family Violence.

(d) An agency, organization, or other entity that contracts with the Special Supplemental Nutrition Program for Women, Infants, and Children shall make the publication described by Subsection (a) available to each client receiving clinical or nutritional services under the program.

SECTION 3.0092. The heading to Section 32.042, Health and Safety Code, is amended to read as follows:

Sec. 32.042. DUTIES OF *EXECUTIVE COMMISSIONER* [~~BOARD~~]; RULES.

SECTION 3.0093. Section 32.042(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall adopt:

(1) minimum standards and objectives to implement voluntary perinatal health care systems; and

(2) policies for health promotion and education, risk assessment, access to care, and perinatal system structure, including the transfer and transportation of pregnant women and infants.

SECTION 3.0094. Section 32.044(a), Health and Safety Code, is amended to read as follows:

(a) Each voluntary perinatal health care system must have:

(1) a coordinating board responsible for ensuring, providing, or coordinating planning access to services, data collection, and provider education;

(2) access to appropriate emergency medical services;

(3) risk assessment, transport, and transfer protocols for perinatal patients;

(4) one or more health care facilities categorized according to perinatal care capabilities using standards adopted by *department* [~~board~~] rule; and

(5) documentation of broad-based participation in planning by providers of perinatal services and community representatives throughout the defined geographic region.

SECTION 3.0095. Sections 32.045(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~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 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 need for emergency transportation of perinatal patients and the extent to which the system meets the identified needs; and

(6) the stage of development of a perinatal health care system.

(c) The department may approve grants according to rules adopted by the *executive commissioner* [~~board~~]. A grant awarded under this section is governed by Chapter 783, Government Code, and rules adopted under that chapter.

SECTION 3.0096. Section 32.062, Health and Safety Code, is amended to read as follows:

Sec. 32.062. ESTABLISHMENT; PRESIDING OFFICER. (a) The task force is composed of 25 members appointed by the executive commissioner [~~of the Health and Human Services Commission~~] as follows:

(1) four representatives of family violence centers, as defined by Section 51.002, Human Resources Code, from different geographic regions in this state, including both rural and urban areas;

(2) one representative of a statewide family violence advocacy organization;

(3) one representative of a statewide association of obstetricians and gynecologists;

(4) two representatives of the family and community health programs in the *department* [~~Department of State Health Services~~];

(5) one representative of a statewide sexual assault advocacy organization;

(6) one representative of the *commission's* [~~Health and Human Services Commission~~] Texas Home Visiting Program;

(7) one representative of a statewide association of midwifery;

(8) one representative of a statewide family physician's association;

(9) one representative of a statewide nursing association;

(10) one representative of a statewide hospital association;

(11) one representative of a statewide pediatric medical association;

(12) one representative of a statewide medical association;

(13) one representative of The University of Texas School of Social Work Institute on Domestic Violence and Sexual Assault;

(14) one representative of The University of Texas School of Law Domestic Violence Clinic;

(15) one representative of the governor's EMS and Trauma Advisory Council;

(16) one representative of a Department of Family and Protective Services prevention and early intervention program;

(17) one representative of a statewide osteopathic medical association;

(18) one representative of a statewide association of community health centers;

(19) one representative of the office of the attorney general;

(20) one representative from a medical school or a teaching hospital in the state who is either an attending physician of the hospital or a faculty member of the medical school; and

(21) one representative of the *commission's* [~~Health and Human Services Commission's~~] Family Violence Program.

(b) The executive commissioner [~~of the Health and Human Services Commission~~] shall appoint a task force member to serve as presiding officer of the task force.

SECTION 3.0097. Section 32.064, Health and Safety Code, is amended to read as follows:

Sec. 32.064. REPORT. Not later than September 1, 2015, the task force shall submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, the presiding officers of the standing committees of the legislature having primary jurisdiction over health and human services, the executive commissioner [~~of the Health and Human Services Commission~~], and the commissioner [~~of state health services~~] containing:

(1) the findings and legislative, policy, and research recommendations of the task force; and

(2) a description of the activities of the task force.

SECTION 3.0098. Section 33.001(3), Health and Safety Code, is amended to read as follows:

(3) "Other benefit" means a benefit, other than a benefit under this chapter, to which an individual is entitled for the payment of the costs of services. The term includes:

(A) benefits available under:

(i) an insurance policy, group health plan, or prepaid medical care plan;

(ii) Title XVIII of the Social Security Act (42 U.S.C. Section 1395 *et seq.*);

(iii) Title XIX of the Social Security Act (42 U.S.C. Section 1396 *et seq.*);

(iv) the *United States Department of Veterans Affairs* [~~Veterans' Administration~~];

(v) the *TRICARE program of the United States Department of Defense* [~~Civilian Health and Medical Program of the Uniformed Services~~]; or

(vi) workers' compensation or any other compulsory employers insurance program;

(B) a public program created by federal or state law or by ordinance or rule of a municipality or political subdivision of the state, except those benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or by the facilities of a publicly supported medical school; and

(C) benefits resulting from a cause of action for health care expenses, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

SECTION 3.0099. Section 33.002(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules necessary to carry out the program, including a rule specifying other heritable diseases covered by this chapter.

SECTION 3.0100. Section 33.004, Health and Safety Code, is amended to read as follows:

Sec. 33.004. [~~STUDY ON~~] NEWBORN SCREENING *PROGRAM; FEES* [~~METHODOLOGY AND EQUIPMENT~~]. [~~(a) Not later than March 1, 2006, the department shall:~~

[~~(1) conduct a study to determine the most cost-effective method of conducting newborn screening, including screening for disorders listed in the core uniform panel of newborn screening conditions recommended in the 2005 report by the American College of Medical Genetics entitled "Newborn Screening: Toward a Uniform Screening Panel and System" or another report determined by the department to provide more appropriate newborn screening guidelines, to protect the health and welfare of this state's newborns and to maximize the number of newborn screenings that may be conducted with the funding available for the screening;~~

[~~(2) determine the disorders to be studied under Subdivision (1) and ensure the study does not examine screening and services provided under Chapter 47; and~~

[~~(3) obtain proposals or information regarding the conduct of newborn screening and compare the costs of the department performing newborn screening services to the costs of outsourcing screening to a qualified laboratory with at least two years' experience performing newborn screening tests.~~]

(b) In accordance with rules adopted by the executive commissioner [~~of the Health and Human Services Commission~~], the department *shall* [~~may~~] implement a newborn screening program.

(c) *In implementing the newborn screening program* [~~If the department determines under Subsection (a) that the department's performance of newborn screening services is more cost-effective than outsourcing newborn screening~~], the department shall obtain

the use of screening methodologies[~~, including tandem mass spectrometers,~~] and hire the employees necessary to administer newborn screening under this chapter.

[~~(d) If the department determines under Subsection (a) that outsourcing of newborn screening is more cost-effective, the department shall contract for the resources and services necessary to conduct newborn screening using a competitive procurement process.~~]

(e) The department shall periodically review the newborn screening program [~~as revised under this section~~] to determine the efficacy and cost-effectiveness of the program and determine whether adjustments to the program are necessary to protect the health and welfare of this state's newborns and to maximize the number of newborn screenings that may be conducted with the funding available for the screening.

(f) The *executive commissioner by rule* [~~department~~] may *establish* [~~adjust~~] the amounts charged for newborn screening fees, including fees assessed for follow-up services, tracking confirmatory testing, and diagnosis.

SECTION 3.0101. Section 33.011(a–1), Health and Safety Code, is amended to read as follows:

(a–1) Except as provided by this subsection and to the extent funding is available for the screening, the department shall require newborn screening tests to screen for disorders listed as core and secondary conditions in the [~~December 2011~~] Recommended Uniform Screening Panel of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children or another report determined by the department to provide more stringent newborn screening guidelines to protect the health and welfare of this state's newborns. The department, with the advice of the Newborn Screening Advisory Committee, may require additional newborn screening tests under this subsection to screen for other disorders or conditions. The department may exclude from the newborn screening tests required under this subsection screenings for galactose epimerase and galactokinase.

SECTION 3.0102. Section 33.0112, Health and Safety Code, is amended to read as follows:

Sec. 33.0112. DESTRUCTION OF GENETIC MATERIAL. (a) The department shall destroy any genetic material obtained from a child under this chapter not later than the second anniversary of the date the department receives the genetic material unless a parent, managing conservator, or guardian of the child consents to disclosure under Section *33.018(c–1)* [~~33.017(c–1)~~].

(b) The department shall destroy any genetic material obtained from a child under this chapter not later than the second anniversary of the date the department receives the genetic material if:

(1) a parent, managing conservator, or guardian of the child consents to disclosure under Section *33.018(c–1)* [~~33.017(c–1)~~];

(2) the parent, managing conservator, or guardian who consented to the disclosure revokes the consent under Section *33.018(i)* [~~33.017(i)~~]; and

(3) the department receives the written revocation of consent under Section *33.018(i)* [~~33.017(i)~~] not later than the second anniversary of the date the department received the genetic material.

(c) The department shall destroy any genetic material obtained from a child under this chapter not later than the 60th day after the date the department receives a written revocation of consent under Section *33.018(i)* [~~33.017(i)~~] if:

(1) a parent, managing conservator, or guardian of the child consented to disclosure under Section *33.018(c–1)* [~~33.017(c–1)~~];

(2) the parent, managing conservator, or guardian who consented to the disclosure or the child revokes the consent under Section *33.018(i)* [~~33.017(i)~~]; and

(3) the department receives the written revocation of consent later than the second anniversary of the date the department received the genetic material.

[~~(d) A reference in this section to Section 33.017 means Section 33.017 as added by Chapter 179 (H.B. 1672), Acts of the 81st Legislature, Regular Session, 2009.~~]

SECTION 3.0103. Sections 33.016(a), (d), and (f), Health and Safety Code, are amended to read as follows:

(a) The department may develop a program to approve any laboratory that wishes to perform the tests required to be administered under this chapter. To the extent that they are not otherwise provided in this chapter, the *executive commissioner* [~~board~~] may adopt rules prescribing procedures and standards for the conduct of the program.

(d) The department may extend or renew any approval in accordance with reasonable procedures prescribed by the *executive commissioner* [~~board~~].

(f) Hearings under this section shall be conducted in accordance with the *department's* hearing rules [~~adopted by the board~~] and the applicable provisions of Chapter 2001, Government Code.

SECTION 3.0104. Sections 33.017(b) and (f), Health and Safety Code, are amended to read as follows:

(b) The advisory committee consists of members appointed by the commissioner [~~of state health services~~]. The advisory committee must include the following members:

(1) at least four physicians licensed to practice medicine in this state, including at least two physicians specializing in neonatal-perinatal medicine;

(2) at least two hospital representatives;

(3) at least two persons who have family members affected by a condition for which newborn screening is or may be required under this subchapter; and

(4) at least two health care providers who are involved in the delivery of newborn screening services, follow-up, or treatment in this state.

(f) The advisory committee shall meet at least three times each year and at other times at the call of the commissioner [~~of state health services~~].

SECTION 3.0105. Section 33.032, Health and Safety Code, is amended to read as follows:

Sec. 33.032. PROGRAM SERVICES. (a) Within the limits of funds available for this purpose and in cooperation with the individual's physician, the department may provide services directly or through approved providers to individuals of any age who meet the eligibility criteria specified by *department* [~~board~~] rules on the confirmation of a positive test for phenylketonuria, other heritable diseases, hypothyroidism, or another disorder for which the screening tests are required.

(b) The *executive commissioner* [~~board~~] may adopt:

(1) rules specifying the type, amount, and duration of program services to be offered;

(2) rules establishing the criteria for eligibility for services, including the medical and financial criteria;

(3) rules establishing the procedures necessary to determine the medical, financial, and other eligibility of the individual;

(4) substantive and procedural rules for applying for program services and processing those applications;

(5) rules for providing services according to a sliding scale of financial eligibility;

(6) substantive and procedural rules for the denial, modification, suspension, and revocation of an individual's approval to receive services; and

(7) substantive and procedural rules for the approval of providers to furnish program services.

(c) The department may select providers according to the criteria in the *department's* [~~board's~~] rules.

(d) The *executive commissioner by rule* [~~board~~] may *establish* [~~charge~~] fees *to be collected by the department* for the provision of services, except that services may not be denied to an individual because of the individual's inability to pay the fees.

SECTION 3.0106. Section 33.035(d), Health and Safety Code, is amended to read as follows:

(d) The *executive commissioner* [~~board~~] by rule shall provide criteria for actions taken under this section.

SECTION 3.0107. Section 33.036(c), Health and Safety Code, is amended to read as follows:

(c) Chapter 2001, Government Code, *does* [~~do~~] not apply to the notice and hearing required by this section.

SECTION 3.0108. Section 33.037(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~board~~] may require an individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, or other person with a legal obligation to support the individual to pay or reimburse the department for all or part of the cost of the services provided.

SECTION 3.0109. Sections 33.038(b) and (d), Health and Safety Code, are amended to read as follows:

(b) This section creates a separate and distinct cause of action, and the *department* [~~commissioner~~] may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department.

(d) The *executive commissioner* [~~board~~] by rule shall provide criteria for actions taken under this section.

SECTION 3.0110. Sections 35.0021(6), (7), (10), (11), and (12), Health and Safety Code, are amended to read as follows:

(6) "Other benefit" means a benefit, other than a benefit provided under this chapter, to which a person is entitled for payment of the costs of services provided under the program, including benefits available from:

(A) an insurance policy, group health plan, health maintenance organization, or prepaid medical or dental care plan;

(B) Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. Sec. 1395 et seq., 42 U.S.C. Sec. 1396 et seq., and 42 U.S.C. Sec. 1397aa et seq.), as amended;

(C) the *United States* Department of Veterans Affairs;

(D) the *TRICARE program of the United States Department of Defense* [~~Civilian Health and Medical Program of the Uniformed Services~~];

(E) workers' compensation or any other compulsory employers' insurance program;

(F) a public program created by federal or state law or the ordinances or rules of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(G) a cause of action for the cost of care, including medical care, dental care, facility care, and medical supplies, required for a person applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

(7) "Physician" means a person licensed by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] to practice medicine in this state.

(10) "Rehabilitation services" means the process of the physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury and includes:

(A) facility care, medical and dental care, and occupational, speech, and physical therapy;

(B) the provision of braces, artificial appliances, durable medical equipment, and other medical supplies; and

(C) other types of care specified by *department* [~~the board in the program~~] rules.

(11) "Services" means the care, activities, and supplies provided under this chapter or *department* [~~program~~] rules, including medical care, dental care, facility care, medical supplies, occupational, physical, and speech therapy, and other care specified by *department* [~~program~~] rules.

(12) "Specialty center" means a facility and staff that meet minimum standards established under the program and are designated by the *department* [~~board~~] for program use in the comprehensive diagnostic and treatment services for a specific medical condition.

SECTION 3.0111. Sections 35.003(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall:

(1) specify the type, amount, and duration of services to be provided under this chapter; and

(2) permit the payment of insurance premiums for eligible children.

(c) If budgetary limitations exist, the *executive commissioner* [~~board~~] by rule shall establish a system of priorities relating to the types of services or the classes of persons eligible for the services. A waiting list of eligible persons may be established if necessary for the program to remain within the budgetary limitations. The department shall collect from each applicant for services who is placed on a waiting list appropriate information to facilitate contacting the applicant when services become available and to allow efficient enrollment of the applicant in those services. The information collected must include:

(1) the applicant's name, address, and phone number;

(2) the name, address, and phone number of a contact person other than the applicant;

(3) the date of the applicant's earliest application for services;

(4) the applicant's functional needs;

(5) the range of services needed by the applicant; and

(6) a date on which the applicant is scheduled for reassessment.

SECTION 3.0112. Section 35.0033(b), Health and Safety Code, is amended to read as follows:

(b) Except as required by [~~the~~] department *rule*, a health benefits plan provider under this chapter is not subject to a law that requires coverage or the offer of coverage of a health care service or benefit.

SECTION 3.0113. Sections 35.004(a), (b), (d), (e), (f), (h), and (i), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt substantive and procedural rules for the selection of providers to participate in the program, including rules for the selection of specialty centers and rules requiring that providers accept program payments as payment in full for services provided.

(b) The *department* [~~board~~] shall approve physicians, dentists, licensed dietitians, facilities, specialty centers, and other providers to participate in the program according to the criteria and following the procedures prescribed by *department rules* [~~the board~~].

(d) Except as specified in the *department* [~~program~~] rules, a recipient of services may select any provider approved by the *department* [~~board~~]. If the recipient is a minor, the person legally authorized to consent to the treatment may select the provider.

(e) The *executive commissioner* [~~board~~] shall adopt substantive and procedural rules for the modification, suspension, or termination of the approval of a provider.

(f) The *department* [~~board~~] shall provide a due process hearing procedure *in accordance with department rules* for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, *does* [~~do~~] not apply to conflict resolution procedures adopted under this section.

(h) Subsection (f) does not apply if a contract:

(1) is canceled by the department because services are restricted to conform to budgetary limitations and service priorities are adopted by the *executive commissioner* [~~board~~] regarding types of services to be provided; or

(2) expires according to its terms.

(i) The Interagency Cooperation Act, *Chapter 771, Government Code,* [~~(Article 4413(32), Vernon's Texas Civil Statutes)~~] does not apply to a payment made by the department for services provided by a publicly supported medical school facility to an eligible child. A publicly supported medical school facility receiving payment under this chapter shall deposit the payment in local funds.

SECTION 3.0114. Sections 35.0041(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule shall develop and *the department shall* implement policies permitting reimbursement of a provider for services under the program performed using telemedicine medical services.

(c) In developing and implementing the policies required by this section, the *executive commissioner and the* department shall consult with:

(1) The University of Texas Medical Branch at Galveston;

(2) Texas Tech University Health Sciences Center;

(3) the *commission* [~~Health and Human Services Commission~~], including the state Medicaid office;

(4) providers of telemedicine medical services and telehealth services hub sites in this state;

(5) providers of services to children with special health care needs; and

(6) representatives of consumer or disability groups affected by changes to services for children with special health care needs.

SECTION 3.0115. Section 35.005, Health and Safety Code, is amended to read as follows:

Sec. 35.005. ELIGIBILITY FOR SERVICES. (a) The *executive commissioner* [~~board~~] by rule shall:

(1) define medical, financial, and other criteria for eligibility to receive services; and

(2) establish a system for verifying eligibility information submitted by an applicant for or recipient of services.

(b) In defining medical and financial criteria for eligibility under Subsection (a), the *executive commissioner* [~~board~~] may not:

(1) establish an exclusive list of coverable medical conditions; or

(2) consider as a source of support to provide services assets legally owned or available to a child's household.

(c) A child is not eligible to receive rehabilitation services unless:

(1) the child is a resident of this state;

(2) at least one physician or dentist certifies to the department that the physician or dentist has examined the child and finds the child to be a child with special health care needs whose disability meets the medical criteria established by the *executive commissioner* [~~board~~];

(3) the department determines that the persons who have any legal obligation to provide services for the child are unable to pay for the entire cost of the services;

(4) the child has a family income that is less than or equal to 200 percent of the federal poverty level; and

(5) the child meets all other eligibility criteria established by *department* [~~board~~] rules.

(d) A child is not eligible to receive services, other than rehabilitation services, unless the child:

(1) is a resident of this state; and

(2) meets all other eligibility criteria established by *department* [~~board~~] rules.

(e) Notwithstanding Subsection (c)(4), a child with special health care needs who has a family income that is greater than 200 percent of the federal poverty level and who meets all other eligibility criteria established by this section and by *department* [~~board~~] rules is eligible for services if the department determines that the child's family is or will be responsible for medical expenses that are equal to or greater than the amount by which the family's income exceeds 200 percent of the federal poverty level.

SECTION 3.0116. Sections 35.006(a), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt substantive and procedural rules for the denial of applications and the modification, suspension, or termination of services.

(c) The *executive commissioner* [~~board~~] by rule shall provide criteria for action by the department under this section.

(d) The department shall conduct hearings under this section in accordance with the *department's* [~~board's~~] due process hearing rules. Chapter 2001, Government Code, *does* [~~do~~] not apply to the granting, denial, modification, suspension, or termination of services.

(e) This section does not apply if the department restricts services to conform to budgetary limitations that require the *executive commissioner* [~~board~~] to adopt service priorities regarding types of services to be provided.

SECTION 3.0117. Sections 35.007(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~board~~] shall require a child receiving services, or the person who has a legal obligation to support the child, to pay for or reimburse the department for that part of the cost of the services that the child or person is financially able to pay.

(b) A child is not eligible to receive services under this chapter to the extent that the child or a person with a legal obligation to support the child is eligible for some other benefit that would pay for all or part of the services. The *executive commissioner* [~~board~~] may waive this subsection if its enforcement will deny services to a class of children because of conflicting state and federal laws or rules and regulations.

SECTION 3.0118. Section 35.008(b), Health and Safety Code, is amended to read as follows:

(b) This section creates a separate cause of action, and the *department* [~~commissioner~~] may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department.

SECTION 3.0119. Section 35.009, Health and Safety Code, is amended to read as follows:

Sec. 35.009. FEES. The *executive commissioner by rule* [~~board~~] may adopt reasonable procedures and standards for the determination of fees and charges for program services.

SECTION 3.0120. Sections 36.004(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall require screening of individuals who attend public or private preschools or schools to detect vision and hearing disorders and any other special senses or communication disorders specified by the *executive commissioner* [~~board~~]. In developing the rules, the *executive commissioner* [~~board~~] may consider the number of individuals to be screened and the availability of:

(1) personnel qualified to administer the required screening;

(2) appropriate screening equipment; and

(3) state and local funds for screening activities.

(c) The *executive commissioner* [~~board~~] shall adopt a schedule for implementing the screening requirements and shall give priority to the age groups that may derive the greatest educational and social benefits from early identification of special senses and communication disorders.

SECTION 3.0121. Sections 36.005(a) and (c), Health and Safety Code, are amended to read as follows:

(a) An individual required to be screened shall undergo approved screening for vision and hearing disorders and any other special senses and communication disorders specified by the *executive commissioner* [~~board~~]. The individual shall comply with the requirements as soon as possible after the individual's admission to a preschool or school and within the period set by the *executive commissioner* [~~board~~]. The individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, may substitute professional examinations for the screening.

(c) The chief administrator of each preschool or school shall ensure that each individual admitted to the preschool or school complies with the screening requirements set by the *executive commissioner* [~~board~~] or submits an affidavit of exemption.

SECTION 3.0122. Sections 36.006(a) and (d), Health and Safety Code, are amended to read as follows:

(a) The chief administrator of each preschool or school shall maintain, on a form prescribed by the department *in accordance with department rules*, screening records for each individual in attendance, and the records are open for inspection by the department or the local health department.

(d) Each preschool or school shall submit to the department an annual report on the screening status of the individuals in attendance during the reporting year and shall include in the report any other information required by the *executive commissioner* [~~board~~]. The report must be on a form prescribed by the department *in accordance with department rules* and must be submitted according to the [~~board's~~] rules.

SECTION 3.0123. Sections 36.007(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall:

(1) describe the type, amount, and duration of remedial services that the department provides;

(2) establish medical, financial, and other criteria to be applied by the department in determining an individual's eligibility for the services;

(3) establish criteria for the selection by the department of providers of remedial services; and

(4) establish procedures necessary to provide remedial services.

(c) The *executive commissioner* [~~board~~] may establish a schedule to determine financial eligibility.

SECTION 3.0124. Sections 36.008(d) and (e), Health and Safety Code, are amended to read as follows:

(d) The department may modify, suspend, or terminate the eligibility of an applicant for or recipient of remedial services after notice to the affected individual and an opportunity for a fair hearing that is conducted in accordance with the *department's* informal hearing rules [~~adopted by the board~~].

(e) The *executive commissioner* [~~board~~] by rule shall provide criteria for actions taken under this section.

SECTION 3.0125. Section 36.009(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] may require an individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, to pay or reimburse the department for a part of the cost of the remedial services provided.

SECTION 3.0126. Section 36.010(d), Health and Safety Code, is amended to read as follows:

(d) The *executive commissioner* [~~board~~] by rule shall provide criteria for actions taken under this section.

SECTION 3.0127. Section 36.011(a), Health and Safety Code, is amended to read as follows:

(a) The department *in accordance with department rules* may require that persons who administer special senses and communication disorders screening complete an approved training program, and the department may train those persons and approve training programs.

SECTION 3.0128. Sections 37.001(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~], in cooperation with the Texas Education Agency, shall adopt rules for the mandatory spinal screening of children in grades 6 and 9 attending public or private schools. The department shall coordinate the spinal screening program with any other screening program conducted by the department on those children.

(c) The *executive commissioner* [~~board~~] shall adopt substantive and procedural rules necessary to administer screening activities.

(d) A rule adopted by the *executive commissioner* [~~board~~] under this chapter may not require any expenditure by a school, other than an incidental expense required for certification training for nonhealth practitioners and for notification requirements under Section 37.003.

SECTION 3.0129. Sections 37.002(a) and (c), Health and Safety Code, are amended to read as follows:

(a) Each individual required by *a department* [~~board~~] rule to be screened shall undergo approved screening for abnormal spinal curvature. The individual's parent, managing conservator, or guardian may substitute professional examinations for the screening.

(c) The chief administrator of each school shall ensure that each individual admitted to the school complies with the screening requirements set by the *executive commissioner* [~~board~~] or submits an affidavit of exemption.

SECTION 3.0130. Section 39.002, Health and Safety Code, is amended to read as follows:

Sec. 39.002. CHILDREN'S OUTREACH HEART PROGRAM. The department, with approval of the *executive commissioner* [~~board~~], may establish a children's outreach heart program to provide:

(1) prediagnostic cardiac screening and follow-up evaluation services to persons under 21 years of age who are from low-income families and who may have a heart disease or defect; and

(2) training to local physicians and public health nurses in screening and diagnostic procedures for heart disease or defect.

SECTION 3.0131. Section 39.003, Health and Safety Code, is amended to read as follows:

Sec. 39.003. RULES. The *executive commissioner* [~~board~~] shall adopt rules *the executive commissioner* [~~it~~] considers necessary to define the scope of the children's outreach heart program and the medical and financial standards for eligibility.

SECTION 3.0132. Section 39.004, Health and Safety Code, is amended to read as follows:

Sec. 39.004. FEES. Recipients of services or training provided by the program may

be charged a fee for services or training according to rules adopted by the *executive commissioner* [~~board~~].

SECTION 3.0133. Section 40.002, Health and Safety Code, is amended to read as follows:

Sec. 40.002. EPILEPSY PROGRAM. [~~(a)~~] The department, with approval of the *executive commissioner* [~~board~~], may establish an epilepsy program to provide diagnostic services, treatment, and support services to eligible persons who have epilepsy.

[~~(b) The commissioner may appoint an epilepsy advisory board to assist the department in developing the epilepsy program.~~]

SECTION 3.0134. Section 40.003, Health and Safety Code, is amended to read as follows:

Sec. 40.003. RULES. The *executive commissioner* [~~board~~] may adopt rules *the executive commissioner* [~~it~~] considers necessary to define the scope of the epilepsy program and the medical and financial standards for eligibility.

SECTION 3.0135. Section 40.004(a), Health and Safety Code, is amended to read as follows:

(a) The commissioner, with the approval of the *executive commissioner* [~~board~~], may appoint an administrator to carry out the epilepsy program.

SECTION 3.0136. Section 40.005, Health and Safety Code, is amended to read as follows:

Sec. 40.005. FEES. Program patients may be charged a fee for services according to rules adopted by the *executive commissioner* [~~board~~].

SECTION 3.0137. Sections 41.001(1) and (2), Health and Safety Code, are amended to read as follows:

(1) "Hemophilia" means a human physical condition characterized by bleeding resulting from a genetically *or hereditarily* determined deficiency of a blood coagulation factor [~~or hereditarily~~] resulting in an abnormal or deficient plasma procoagulant.

(2) "Other benefit" means a benefit, other than a benefit under this chapter, to which a person is entitled for payment of the costs of blood *factor replacement products* [~~, blood derivatives and concentrates,~~] and other substances provided under this chapter, including benefits available from:

(A) an insurance policy, group health plan, or prepaid medical or dental care plan;

(B) Title XVIII or Title XIX of the Social Security Act (42 U.S.C. Sec. 1395 et seq. or 42 U.S.C. Sec. 1396 et seq.);

(C) the *United States Department of* Veterans *Affairs* [~~Administration~~];

(D) the *TRICARE program of the United States Department of Defense* [~~Civilian Health and Medical Program of the Uniformed Services~~];

(E) workers' compensation or any compulsory employers' insurance program;

(F) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(G) a cause of action for medical or dental expenses to a person applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

SECTION 3.0138. Section 41.002, Health and Safety Code, is amended to read as follows:

Sec. 41.002. HEMOPHILIA ASSISTANCE PROGRAM. (a) The hemophilia assis-

tance program is in the department to assist persons who have hemophilia and who require continuing treatment with blood *factor replacement* [~~, blood derivatives, or manufactured pharmaceutical~~] products, but who are unable to pay the entire cost of the treatment.

(b) The *executive commissioner* [~~department~~] shall establish standards of eligibility for assistance under this chapter in accordance with Section 41.004.

(c) The department shall provide, through approved providers, financial assistance for medically eligible persons in obtaining blood *factor replacement products* [~~, blood derivatives and concentrates,~~] and other substances for use in medical or dental facilities or in the home.

SECTION 3.0139. Section 41.007(b), Health and Safety Code, is amended to read as follows:

(b) The department shall *identify* [~~investigate~~] any potential sources of funding from federal grants or programs.

SECTION 3.0140. Sections 42.001(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The state finds that one of the most serious and tragic problems facing the public health and welfare is the death each year from *end stage renal* [~~chronic kidney~~] disease of hundreds of persons in this state, when the present state of medical art and technology could return many of those individuals to a socially productive life. Patients may die for lack of personal financial resources to pay for the expensive equipment and care necessary for survival. The state therefore recognizes a responsibility to allow its citizens to remain healthy without being pauperized and a responsibility to use the resources and organization of the state to gather and disseminate information on the prevention and treatment of *end stage renal* [~~chronic kidney~~] disease.

(c) A comprehensive program to combat *end stage renal* [~~kidney~~] disease must be implemented through the combined and correlated efforts of individuals, state and local governments, persons in the field of medicine, universities, and nonprofit organizations. The program provided by this chapter is designed to direct the use of resources and to coordinate the efforts of the state in this vital matter of public health.

SECTION 3.0141. Section 42.002(2), Health and Safety Code, is amended to read as follows:

(2) "Other benefit" means a benefit, other than one provided under this chapter, to which a person is entitled for payment of the costs of medical care and treatment, services, pharmaceuticals, transportation, and supplies, including benefits available from:

(A) an insurance policy, group health plan, or prepaid medical care plan;

(B) Title XVIII or Title XIX of the Social Security Act (42 U.S.C. Sec. 1395 et seq. and 42 U.S.C. Sec. 1396 et seq.);

(C) the *United States Department of* Veterans *Affairs* [~~Administration~~];

(D) the *TRICARE program of the United States Department of Defense* [~~Civilian Health and Medical Program of the Uniformed Services~~];

(E) workers' compensation or other compulsory employers' insurance *programs* [~~program~~];

(F) a public program created by federal law, state law, or the ordinances or rules of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, or a hospital district; or

(G) a cause of action for medical expenses brought by an applicant for or recipient of services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

SECTION 3.0142. Section 42.003, Health and Safety Code, is amended to read as

follows:

Sec. 42.003. KIDNEY HEALTH CARE *PROGRAM* [~~DIVISION~~]. (a) The kidney health care *program* [~~division~~] is in the department to carry out this chapter. [~~The board shall administer the division.~~]

(b) The *department* [~~division~~] may *develop and expand* [~~assist in the development and expansion of~~] programs for the care and treatment of persons with *end stage renal* [~~chronic kidney~~] disease, including dialysis and other lifesaving medical procedures and techniques.

(c) The *executive commissioner* [~~board~~] may adopt rules necessary to carry out this chapter and to provide adequate kidney care and treatment for citizens of this state.

SECTION 3.0143. Section 42.004, Health and Safety Code, is amended to read as follows:

Sec. 42.004. SERVICES. (a) The *department* [~~division~~] shall provide kidney care services directly or through public or private resources to persons *the department determines* [~~determined by the board~~] to be eligible for services authorized under this chapter.

(b) The *department* [~~division~~] may cooperate with other departments, agencies, political subdivisions, and public and private institutions to provide the services authorized by this chapter to eligible persons, to study the public health and welfare needs involved, and to plan, establish, develop, and provide programs or facilities and services that are necessary or desirable, including any that are jointly administered with state agencies.

(c) The *department* [~~division~~] may conduct research and compile statistics relating to the provision of kidney care services and the need for the services by [~~disabled or handicapped~~] persons *with disabilities*.

(d) The *department* [~~division~~] may contract with schools, hospitals, corporations, agencies, and individuals, including doctors, nurses, and technicians, for training, physical restoration, transportation, and other services necessary to treat and care for persons with *end stage renal* [~~kidney~~] disease.

SECTION 3.0144. Sections 42.0045(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) Sections 483.041(a) and 483.042 *of this code*, Subtitle J, Title 3, Occupations Code, and other applicable laws establishing prohibitions do not apply to a dialysate, device, or drug exclusively used or necessary to perform dialysis that a physician prescribes or orders for administration or delivery to a person with *end stage renal disease* [~~chronic kidney failure~~] if:

(1) the dialysate, device, or drug is lawfully held by a manufacturer or wholesaler *licensed by the department* [~~registered with the board~~];

(2) the manufacturer or wholesaler delivers the dialysate, device, or drug to:

(A) a person with *end stage renal disease* [~~chronic kidney failure~~] for self-administration at the person's home or a specified address, as ordered by a physician; or

(B) a physician for administration or delivery to a person with *end stage renal disease* [~~chronic kidney failure~~]; and

(3) the manufacturer or wholesaler has sufficient and qualified supervision to adequately protect the public health.

(b) The *executive commissioner* [~~board~~] shall adopt rules necessary to ensure the safe distribution, without the interruption of supply, of a dialysate, device, or drug covered by Subsection (a). The rules must include provisions regarding manufacturer and wholesaler licensing, record keeping, evidence of a delivery to a patient or a patient's designee, patient training, specific product and quantity limitation, physician prescriptions or order forms, adequate facilities, and appropriate labeling to ensure that necessary information is affixed to or accompanies the dialysate, device, or drug.

(c) If the *department* [~~board~~] determines that a dialysate, device, or drug distributed

under this chapter is ineffective or unsafe for its intended use, the *department* [~~board~~] may immediately recall the dialysate, device, or drug distributed to an individual patient.

SECTION 3.0145. Sections 42.005(a), (b), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] may establish [~~and maintain~~] standards for the accreditation of all facilities designed or intended to deliver care or treatment for persons with *end stage renal* [~~chronic kidney~~] disease, *and the department shall maintain all established standards.*

(b) The *department* [~~division~~] may conduct surveys of existing facilities in this state that diagnose, evaluate, and treat patients with *end stage renal* [~~kidney~~] disease and may prepare and submit its findings and a specific program of action.

(c) The *department* [~~division~~] may evaluate the need to create local or regional facilities and to establish a major kidney research center.

(d) The *department* [~~division~~] may:

(1) establish or construct rehabilitation facilities and workshops;

(2) make grants to public agencies and make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities; and

(3) operate facilities to carry out this chapter.

SECTION 3.0146. Sections 42.006(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The department shall select providers to furnish kidney health care services under the program according to the criteria and procedures adopted by the *executive commissioner* [~~board~~].

(b) The *department* [~~board~~] shall provide a hearing procedure *in accordance with department rules* for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, *does* [~~do~~] not apply to conflict resolution procedures adopted under this section.

(d) Subsections (b) and (c) do not apply if a contract:

(1) is canceled because program services are restricted to conform to budgetary limitations that require the *executive commissioner* [~~board~~] to adopt service priorities regarding types of services to be furnished or classes of eligible individuals; or

(2) expires according to its terms.

SECTION 3.0147. Section 42.007, Health and Safety Code, is amended to read as follows:

Sec. 42.007. ELIGIBILITY FOR SERVICES. The *executive commissioner* [~~board~~] may determine the terms, conditions, and standards, including medical and financial standards, for the eligibility of persons with *end stage renal* [~~chronic kidney~~] disease to receive the aid, care, or treatment provided under this chapter.

SECTION 3.0148. Sections 42.008(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) The program rules adopted by the *executive commissioner* [~~board~~] must contain the criteria for the department's action under this section.

(c) Chapter 2001, Government Code, *does* [~~do~~] not apply to the granting, denial, modification, suspension, or termination of services provided under this chapter. Hearings under this section must be conducted in accordance with the *department's* [~~board's~~] hearing rules.

(d) This section does not apply if program services are restricted to conform to budgetary limitations that require the *executive commissioner* [~~board~~] to adopt service priorities regarding types of services to be furnished or classes of eligible persons.

SECTION 3.0149. Section 42.009(d), Health and Safety Code, is amended to read as follows:

(d) The *executive commissioner* [~~board~~] may waive the provisions of Subsection (a) in certain individually considered cases when the enforcement of that provision will deny services to a class of end stage renal disease patients because of conflicting state or federal laws or rules.

SECTION 3.0150. Sections 42.011(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~division~~] may receive and use gifts to carry out this chapter.

(b) The *department* [~~board~~] may comply with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportions possible to carry out this chapter.

SECTION 3.0151. Section 42.012(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~division~~] may enter into contracts and agreements with persons, colleges, universities, associations, corporations, municipalities, and other units of government as necessary to carry out this chapter.

SECTION 3.0152. Section 42.013, Health and Safety Code, is amended to read as follows:

Sec. 42.013. COOPERATION. (a) The *department* [~~division~~] may cooperate with private or public agencies to facilitate the availability of adequate care for all citizens with *end stage renal* [~~chronic kidney~~] disease.

(b) The *department* [~~board~~] shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this chapter or of any federal statute or rule relating to the prevention, care, or treatment of *end stage renal* [~~kidney~~] disease or the care, treatment, or rehabilitation of persons with *end stage renal* [~~kidney~~] disease. The *executive commissioner* [~~board~~] may adopt rules and methods of administration found by the federal government to be necessary for the proper and efficient operation of the agreements, arrangements, or plans.

(c) The *department* [~~division~~] may enter into reciprocal agreements with other states.

SECTION 3.0153. Section 42.014, Health and Safety Code, is amended to read as follows:

Sec. 42.014. SCIENTIFIC INVESTIGATIONS. (a) The *department* [~~division~~] may develop and administer scientific investigations into the cause, prevention, methods of treatment, and cure of *end stage renal* [~~kidney~~] disease, including research into kidney transplantation.

(b) The *department* [~~division~~] may develop techniques for an effective method of mass testing to detect *end stage renal* [~~kidney~~] disease and urinary tract infections.

SECTION 3.0154. Section 42.015, Health and Safety Code, is amended to read as follows:

Sec. 42.015. EDUCATIONAL PROGRAMS. (a) The *department* [~~division~~] may *develop, implement* [~~institute, carry on~~], and supervise educational programs for the public and health providers, including physicians, hospitals, and public health departments, concerning *end stage renal* [~~chronic kidney~~] disease, including prevention and methods of care and treatment.

(b) The *department* [~~division~~] may use existing public or private programs or groups for the educational programs.

SECTION 3.0155. Section 42.016, Health and Safety Code, is amended to read as follows:

Sec. 42.016. REPORTS. The *department* [~~board~~] shall report to the governor and the legislature not later than February 1 of each year concerning its findings, progress, and activities under this chapter and the state's total need in the field of kidney health care.

SECTION 3.0156. Section 42.017, Health and Safety Code, is amended to read as follows:

Sec. 42.017. INSURANCE PREMIUMS. The *department* [~~board~~] may provide for payment of the premiums required to maintain coverage under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) for certain classes of persons with end stage renal disease, in individually considered instances according to criteria established by *department* [~~board~~] rules.

SECTION 3.0157. Section 42.018, Health and Safety Code, is amended to read as follows:

Sec. 42.018. FREEDOM OF SELECTION. The freedom of an eligible person to select a treating physician, a treatment facility, or a treatment modality is not limited by Section 42.009 if the physician, facility, or modality is approved by the *department* [~~board~~] as required by this chapter.

SECTION 3.0158. Section 43.003(a)(3), Health and Safety Code, is amended to read as follows:

(3) "Other benefit" means a benefit, other than a benefit provided under this chapter, to which an individual is entitled for the payment of the costs of oral health treatment services, including benefits available from:

(A) an insurance policy, group oral health plan, or prepaid oral care plan;

(B) Title XVIII or Title XIX of the Social Security Act, as amended (42 U.S.C. Sec. 1395 et seq. and 42 U.S.C. Sec. 1396 et seq.);

(C) the *United States Department of* Veterans *Affairs* [~~Administration~~];

(D) the *TRICARE program of the United States Department of Defense* [~~Civilian Health and Medical Program of the Uniformed Services~~];

(E) workers' compensation or any other compulsory employer's insurance program;

(F) a public program created by federal law, state law, or the ordinances or rules of a municipality or other political subdivision of the state; or

(G) a cause of action for the expenses of dental or oral health treatment services, or a settlement or judgment based on the cause of action, if the expenses are related to the need for treatment services provided under this chapter.

SECTION 3.0159. Section 43.003(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule may define a word or term not defined by Subsection (a) as necessary to administer this chapter. The *executive commissioner* [~~board~~] may not define a word or term so that the word or term is inconsistent or in conflict with the purposes of this chapter.

SECTION 3.0160. Sections 43.004(b) and (e), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules to govern the program, to prescribe the type, amount, and duration of oral health services to be provided, and, if necessary to conform to budgetary limitations, to prescribe a system of program priorities regarding the types of services to be furnished, the geographic areas to be covered, or the classes of individuals eligible for services.

(e) The department may provide services only as prescribed by *department* [~~board~~] rules.

SECTION 3.0161. Section 43.005(a), Health and Safety Code, is amended to read as follows:

(a) The department shall:

(1) administer the program of oral health services [~~established by the board~~]; and

(2) *develop* [~~adopt~~] the design and content of all forms necessary for the program.

SECTION 3.0162. Sections 43.006(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] may adopt substantive and procedural rules relating to:

(1) the selection of dentists, physicians, facilities, and other providers to furnish program services, including criteria for the emergency selection of providers; and

(2) the denial, modification, suspension, or termination of a provider's program participation.

(b) The department shall approve providers to participate in the program according to the criteria, rules, and procedures adopted by the *executive commissioner* [~~board~~].

(d) The *department* [~~board~~] shall provide a due process hearing procedure *in accordance with department rules* for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, *does* [~~do~~] not apply to conflict resolution procedures adopted under this section.

SECTION 3.0163. Section 43.007, Health and Safety Code, is amended to read as follows:

Sec. 43.007. INDIVIDUAL REFERRAL AND APPLICATION FOR SERVICES. (a) The *executive commissioner* [~~board~~] may adopt substantive and procedural rules to govern the application for admission to the program and the receipt of treatment services, including the dental, financial, and other criteria for eligibility to receive treatment services.

(b) An applicant for treatment services must be referred to the program by a person who knows the individual's economic condition, such as a school administrator or school nurse, social worker, municipal or county official, dentist, physician, public health clinic, community health center, hospital, or any other source acceptable to the *executive commissioner* [~~board~~].

(c) An applicant for treatment services must complete or cause to be completed an application form prescribed *under Section 43.005* [~~by the department~~].

(d) The application form must include or be accompanied by:

(1) a statement by the individual, or by the person with a legal obligation to support the individual, that the individual or the person is financially unable to pay for all or part of the cost of the necessary treatment services;

(2) a statement from the referring person that the treatment services are necessary to prevent or reduce the probability of pain, infection, or disease; and

(3) any other assurances from the applicant or any other documentary evidence required by the *department* [~~board~~] to support the applicant's eligibility.

SECTION 3.0164. Section 43.008, Health and Safety Code, is amended to read as follows:

Sec. 43.008. ELIGIBILITY FOR SERVICES. (a) The department shall determine an individual's eligibility for treatment services according to this chapter and *department* [~~the program~~] rules.

(b) An individual is not eligible to receive treatment services provided under this chapter unless:

(1) the individual is a resident of this state;

(2) the department has determined that neither the individual nor a person with a legal obligation to support the individual is financially able to pay for all or part of the treatment services provided by this chapter;

(3) the individual complies with any other requirements stated in the *department* [~~program~~] rules; and

(4) at least one licensed dentist or licensed physician has certified to the department that the dentist or physician has examined the individual and has found that:

(A) the individual meets the *department's* [~~board's~~] dental criteria; and

(B) the dentist or physician has reason to expect that the treatment services provided by or through the department will prevent or reduce the probability of the individual's experiencing pain, infection, or disease.

(c) Except as permitted by *department* [~~program~~] rules, the department may not provide treatment services before an individual's eligibility date assigned by the department or authorize payment for treatment services furnished by a provider before that date.

SECTION 3.0165. Sections 43.009(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall provide criteria for action by the department under this section.

(c) Chapter 2001, Government Code, *does* [~~do~~] not apply to the granting, denial, modification, suspension, or termination of treatment services. The department shall conduct hearings in accordance with the *department's* [~~board's~~] due process hearing rules.

SECTION 3.0166. Section 43.010(e), Health and Safety Code, is amended to read as follows:

(e) The commissioner may waive the enforcement of Subsection (b) as prescribed by *department* [~~board~~] rules in certain individually considered cases in which enforcement will deny treatment services to a class of otherwise eligible individuals because of conflicting federal, state, or local laws or rules.

SECTION 3.0167. Section 43.012, Health and Safety Code, is amended to read as follows:

Sec. 43.012. FEES. The *department, in accordance with department rules,* [~~board~~] may charge fees for the oral health services provided directly by the department or through approved providers in accordance with Subchapter D, Chapter 12.

SECTION 3.0168. Section 43.013(a), Health and Safety Code, is amended to read as follows:

(a) *The department* [~~Subject to limitations or conditions prescribed by the legislature, the board~~] may seek, receive, and spend funds received from any public or private source for the purposes of this chapter, *subject to:*

(1) the limitations or conditions prescribed by the legislature; and

(2) any limitations or conditions prescribed by the executive commissioner.

SECTION 3.0169. Section 45.003, Health and Safety Code, is amended to read as follows:

Sec. 45.003. RULES. The *executive commissioner* [~~board~~] may adopt rules governing eligibility for a child passenger safety seat system from the program established under Section 45.002.

SECTION 3.0170. Sections 47.001(3), (4), (6), and (9), Health and Safety Code, are amended to read as follows:

(3) "Health care provider" means a registered nurse recognized as an advanced practice *registered* nurse by the Texas Board of Nursing or a physician assistant licensed by the Texas Physician Assistant Board.

(4) "Hearing loss" means a hearing loss of 30 dB HL or greater in the frequency region important for speech recognition and comprehension in one or both ears, approximately 500 through 4,000 Hz. As technological advances permit the detection of less severe hearing loss, the *executive commissioner* [~~department~~] may modify this definition by rule.

(6) "Intervention or follow-up care" means the early intervention services described in Part C, Individuals with Disabilities Education Act (20 U.S.C. Sections *1431–1443)* [~~1431–1445), as amended by Pub. L. No. 105–17~~].

(9) "Physician" means a person licensed to practice medicine by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~].

SECTION 3.0171. Sections 47.004(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~department or the department's designee~~] shall establish certification criteria for implementing a program.

(b) In order to be certified, the program must:

(1) provide hearing screening using equipment recommended by the department;

(2) use appropriate staff to provide the screening;

(3) maintain and report data electronically as required by [~~the~~] department *rule*;

(4) distribute family, health care provider, and physician educational materials standardized by the department;

(5) provide information, as recommended by the department, to the parents on follow-up services for newborns and infants who do not pass the screening; and

(6) be supervised by:

(A) a physician;

(B) an audiologist;

(C) a registered nurse; or

(D) a physician assistant.

(d) The department may renew the certification of a program on a periodic basis as established by *department* [~~board~~] rule in order to ensure quality services to newborns, infants, and families.

SECTION 3.0172. Section 47.007, Health and Safety Code, as amended by Chapters 1273 (H.B. 411) and 601 (S.B. 229), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended to read as follows:

Sec. 47.007. INFORMATION MANAGEMENT, REPORTING, AND TRACKING SYSTEM. (a) The department shall provide each birthing facility that provides newborn hearing screening under the state's medical assistance program provided under Chapter 32, Human Resources Code, with access to the appropriate information management, reporting, and tracking system for the program. The information management, reporting, and tracking system must be capable of providing the department with information and data necessary to plan, monitor, and evaluate the program, including the program's screening, follow-up, diagnostic, and intervention components.

(b) Subject to Section 47.008, a qualified hearing screening provider, hospital, health care provider, physician, audiologist, or intervention specialist shall access the information management, reporting, and tracking system to provide information to the department and may obtain information from the department relating to:

(1) the results of each hearing screening performed under Section 47.003(a) or 47.0031(a);

(2) the results of each diagnostic audiological evaluation required under Section 47.0031(b)(2);

(3) infants who receive follow-up care;

(4) infants identified with hearing loss;

(5) infants who are referred for intervention services; and

(6) case level information necessary to report required statistics to:

(A) the *federal* Maternal and Child Health Bureau on an annual basis; and

(B) the federal Centers for Disease Control and Prevention.

(c) A birthing facility described by Subsection (a) shall report the resulting information in the format and within the time frame specified by the department.

(d) [~~A birthing facility described by Subsection (a) shall report the resulting information in the format and within the time frame specified by the department.~~

[~~(d) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who receives a referral from a program under this chapter shall:~~

~~[(1) provide the services needed by the child or refer the child to a person who provides the services needed by the child; and~~

~~[(2) provide, with the consent of the child's parent, the following information to the department or the department's designee:~~

~~[(A) results of follow-up care;~~

~~[(B) results of audiologic testing of infants identified with hearing loss; and~~

~~[(C) reports on the initiation of intervention services.~~

[~~(e)~~] A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who receives a referral from a program under this chapter shall:

(1) provide the services needed by the newborn or infant or refer the newborn or infant to a person who provides the services needed by the newborn or infant; and

(2) provide, with the consent of the newborn's or infant's parent, the following information to the department or the department's designee:

(A) results of follow-up care;

(B) results of audiologic testing of an infant identified with hearing loss; and

(C) reports on the initiation of intervention services.

(e) ~~[A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who provides services to infants who are diagnosed with hearing loss shall provide, with the consent of the infant's parent, the following information to the department or the department's designee:~~

~~[(1) results of follow-up services;~~

~~[(2) results of audiologic testing of infants identified with hearing loss; and~~

~~[(3) reports on the initiation of intervention services.~~

[~~(f)~~] A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who provides services to an infant who is diagnosed with hearing loss shall provide, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of follow-up care;

(2) results of audiologic testing; and

(3) reports on the initiation of intervention services.

(f) ~~[A hospital that provides services under this chapter shall use the information management, reporting, and tracking system, which the department has provided the hospital with access to, to report, with the consent of the infant's parent, the following information to the department or the department's designee:~~

~~[(1) results of all follow-up services for infants who do not pass the birth admission screening if the hospital provides the follow-up services; or~~

~~[(2) the name of the provider or facility where the hospital refers an infant who does not pass the birth admission screening for follow-up services.~~

[~~(g)~~] A hospital that provides services under this chapter shall use the information management, reporting, and tracking system described by this section, access to which has been provided to the hospital by the department, to report, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of all follow-up services for an infant who does not pass the screening described by Section 47.003(a) if the hospital provides the follow-up services; or

(2) the name of the provider or facility to which the hospital refers an infant who does not pass the screening described by Section 47.003(a) for follow-up services.

(g) The department shall ensure that the written consent of a parent is obtained before any information individually identifying the newborn or infant is released through the information management, reporting, and tracking system.

(h) Subject to Section 47.008, a qualified hearing screening provider, hospital, health care provider, physician, audiologist, or intervention specialist may obtain information from the department relating to:

(1) the results of each hearing screening performed under Section 47.003(a) or 47.0031(a);

(2) the results of each diagnostic audiological evaluation required under Section 47.0031(b)(2);

(3) infants who receive follow-up care;

(4) infants identified with hearing loss; and

(5) infants who are referred for intervention services.

SECTION 3.0173. Section 47.008(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~department~~] by rule shall develop guidelines to protect the confidentiality of patients in accordance with Chapter 159, Occupations Code, and require the written consent of a parent or guardian of a patient before any individually identifying information is provided to the department as set out in this chapter. The department shall permit a parent or guardian at any time to withdraw information provided to the department under this chapter.

SECTION 3.0174. Section 47.010(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [~~of the Health and Human Services Commission~~] may adopt rules for the department to implement this chapter.

SECTION 3.0175. Section 61.003(f), Health and Safety Code, is amended to read as follows:

(f) For purposes of this chapter, a person who is an inmate or resident of a state *supported living center, as defined by Section 531.002,* [~~school~~] or institution operated by the Texas Department of Criminal Justice, Department of Aging and Disability Services, Department of State Health Services, Texas *Juvenile Justice Department* [~~Youth Commission~~], Texas School for the Blind *and Visually Impaired*, Texas School for the Deaf, or any other state agency or who is an inmate, patient, or resident of a school or institution operated by a federal agency is not considered a resident of a hospital district or of any governmental entity except the state or federal government.

SECTION 3.0176. Section 61.004(b), Health and Safety Code, is amended to read as follows:

(b) The provider of assistance and the governmental entity or hospital district shall submit all relevant information to the department in accordance with the application, documentation, and verification procedures established by [~~the~~] department *rule* under Section 61.006.

SECTION 3.0177. Sections 61.006(c) and (e), Health and Safety Code, are amended to read as follows:

(c) The department shall also define the services and establish the payment standards for the categories of services listed in Sections 61.028(a) and 61.0285 in accordance with *commission* [~~Texas Department of Human Services~~] rules relating to the Temporary Assistance for Needy Families–Medicaid program.

(e) The department shall ensure that each person who meets the basic income and resources requirements for Temporary Assistance for Needy Families program payments but who is categorically ineligible for Temporary Assistance for Needy Families will be eligible for assistance under Subchapter B. Except as provided by Section 61.023(b), the *executive commissioner* [~~department~~] by rule shall also provide that a person who receives or is eligible to receive Temporary Assistance for Needy Families, Supplemental Security Income, or Medicaid benefits is not eligible for assistance under Subchapter B even if the person has exhausted a part or all of that person's benefits.

SECTION 3.0178. Section 61.007, Health and Safety Code, is amended to read as

follows:

Sec. 61.007. INFORMATION PROVIDED BY APPLICANT. The *executive commissioner* [~~department~~] by rule shall require each applicant to provide at least the following information:

(1) the applicant's full name and address;

(2) the applicant's social security number, if available;

(3) the number of persons in the applicant's household, excluding persons receiving Temporary Assistance for Needy Families, Supplemental Security Income, or Medicaid benefits;

(4) the applicant's county of residence;

(5) the existence of insurance coverage or other hospital or health care benefits for which the applicant is eligible;

(6) any transfer of title to real property that the applicant has made in the preceding 24 months;

(7) the applicant's annual household income, excluding the income of any household member receiving Temporary Assistance for Needy Families, Supplemental Security Income, or Medicaid benefits; and

(8) the amount of the applicant's liquid assets and the equity value of the applicant's car and real property.

SECTION 3.0179. Section 61.008(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule shall provide that in determining eligibility:

(1) a county may not consider the value of the applicant's homestead;

(2) a county must consider the equity value of a car that is in excess of the amount exempted under department guidelines as a resource;

(3) a county must subtract the work-related and child care expense allowance allowed under department guidelines;

(4) a county must consider as a resource real property other than a homestead and, except as provided by Subsection (b), must count that property in determining eligibility;

(5) if an applicant transferred title to real property for less than market value to become eligible for assistance under this chapter, the county may not credit toward eligibility for state assistance an expenditure for that applicant made during a two-year period beginning on the date on which the property is transferred; and

(6) if an applicant is a sponsored alien, a county may include in the income and resources of the applicant:

(A) the income and resources of a person who executed an affidavit of support on behalf of the applicant; and

(B) the income and resources of the spouse of a person who executed an affidavit of support on behalf of the applicant, if applicable.

SECTION 3.0180. Section 61.011, Health and Safety Code, is amended to read as follows:

Sec. 61.011. SERVICES BY STATE HOSPITAL OR CLINIC. A state hospital or clinic shall be entitled to payment for services rendered to an eligible resident under the provisions of this chapter applicable to other providers. The *executive commissioner* [~~department~~] may adopt rules as necessary to implement this section.

SECTION 3.0181. Section 61.0285(b), Health and Safety Code, is amended to read as follows:

(b) A county must notify the department of the county's intent to provide services

specified by Subsection (a). If the services are approved *in accordance with* [~~by the department under~~] Section 61.006, or if the department fails to notify the county of the department's disapproval before the 31st day after the date the county notifies the department of its intent to provide the services, the county may credit the services toward eligibility for state assistance under this subchapter.

SECTION 3.0182. Section 61.034(b), Health and Safety Code, is amended to read as follows:

(b) A county may contract with a provider of assistance to provide a health care service at a rate below the payment standard set by [~~the~~] department *rule*.

SECTION 3.0183. Sections 61.036(c) and (d), Health and Safety Code, are amended to read as follows:

(c) Regardless of the application, documentation, and verification procedures or eligibility standards established [~~by the department~~] under Subchapter A, a county may credit an expenditure for an eligible resident toward eligibility for state assistance if the eligible resident received the health care services at:

(1) a hospital maintained or operated by a state agency that has a contract with the county to provide health care services;

(2) a federally qualified health center delivering federally qualified health center services, as those terms are defined in 42 U.S.C. Sections 1396d(l)(2)(A) and (B), that has a contract with the county to provide health care services; or

(3) a hospital or other health care provider if the eligible resident is an inmate of a county jail or another county correctional facility.

(d) Regardless of the application, documentation, and verification procedures or eligibility standards established [~~by the department~~] under Subchapter A, a county may credit an intergovernmental transfer to the state toward eligibility for state assistance if the transfer was made to provide health care services as part of the Texas Healthcare Transformation and Quality Improvement Program waiver issued under 42 U.S.C. Section 1315.

SECTION 3.0184. Section 61.037(h), Health and Safety Code, is amended to read as follows:

(h) The *executive commissioner* [~~department~~] shall adopt rules governing the circumstances under which a waiver may be granted under Subsection (g) and the procedures to be used by a county to apply for the waiver. The procedures must provide that the department shall make a determination with respect to an application for a waiver not later than the 90th day after the date the application is submitted to the department in accordance with the procedures established by [~~the~~] department *rule*. To be eligible for state assistance under Subsection (g), a county must submit monthly financial reports, in the form required by the department, covering the 12–month period preceding the date on which the assistance is sought.

SECTION 3.0185. Section 61.0395(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~department~~] may adopt rules governing the distribution of state assistance under this chapter that establish a maximum annual allocation for each county eligible for assistance under this chapter in compliance with Subsection (a).

SECTION 3.0186. Section 61.042(a), Health and Safety Code, is amended to read as follows:

(a) A county may establish procedures consistent with those used by the *commission* [~~Texas Department of Human Services~~] under Chapter 31, Human Resources Code, for administering an employment services program and requiring an applicant or eligible resident to register for work with the Texas *Workforce* [~~Employment~~] Commission.

SECTION 3.0187. Section 61.065(c), Health and Safety Code, is amended to read as follows:

(c) If the contract for the sale of the hospital provides for the provision by the hospital of health care services to county residents, the value of the health care services credited or paid in a state fiscal year under the contract is included as part of the computation of a county expenditure under Section 61.037 to the extent that the value of the services does not exceed the payment standard established by [~~the~~] department *rule* for allowed inpatient and outpatient services.

SECTION 3.0188. Section 61.067(g), Health and Safety Code, is amended to read as follows:

(g) The lien does not attach to a claim under the workers' compensation law of this state, the Federal *Employers'* [~~Employees~~] Liability Act, or the Federal Longshore and Harbor Workers' Compensation Act.

SECTION 3.0189. Section 61.068(a), Health and Safety Code, is amended to read as follows:

(a) A public hospital or hospital district may establish procedures consistent with those used by the *commission* [~~Health and Human Services Commission~~] under Chapter 31, Human Resources Code, for administering an employment services program and requiring an applicant or eligible resident to register for work with the Texas Workforce Commission.

SECTION 3.0190. Section 62.002(4), Health and Safety Code, is amended to read as follows:

(4) "*Household* [~~Net family~~] income" means the *sum* [~~amount~~] of *the individual incomes of each individual in an applicant's or enrollee's household, minus the standard income disregard prescribed by federal law* [~~income established for a family after reduction for offsets for child care expenses, in accordance with standards applicable under the Medicaid program~~].

SECTION 3.0191. Section 62.004, Health and Safety Code, is amended to read as follows:

Sec. 62.004. FEDERAL LAW AND REGULATIONS. The *executive* commissioner shall monitor federal legislation affecting Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.) and changes to the federal regulations implementing that law. If the *executive* commissioner determines that a change to Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.) or the federal regulations implementing that law conflicts with this chapter, the *executive* commissioner shall report the changes to the governor, lieutenant governor, and speaker of the house of representatives, with recommendations for legislation necessary to implement the federal law or regulations, seek a waiver, or withdraw from participation.

SECTION 3.0192. Sections 62.051 and 62.052, Health and Safety Code, are amended to read as follows:

Sec. 62.051. DUTIES OF *EXECUTIVE COMMISSIONER AND* COMMISSION *IN GENERAL*. (a) The *executive commissioner* [~~commission~~] shall *administer* [~~develop~~] a state-designed child health plan program to obtain health benefits coverage for children in low-income families. The *executive commissioner* [~~commission~~] shall ensure that the child health plan program is designed and administered in a manner that qualifies for federal funding under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations.

(b) The *executive commissioner* [~~commission~~] is [~~the agency~~] responsible for making policy for the child health plan program, including policy related to covered benefits provided under the child health plan. The *executive commissioner* [~~commission~~] may not delegate this duty to another agency or entity.

(c) The *executive commissioner* [~~commission~~] shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the [~~Texas Department of Health, Texas Department of Human Services, and~~] Texas Department of Insurance.

(d) The *executive commissioner* [~~commission~~] shall adopt rules as necessary to imple-

ment this chapter. [~~The commission may require the Texas Department of Health, the Texas Department of Human Services, or any other health and human services agency to adopt, with the approval of the commission, any rules that may be necessary to implement the program. With the consent of another agency, including the Texas Department of Insurance, the commission may delegate to that agency the authority to adopt, with the approval of the commission, any rules that may be necessary to implement the program.~~]

(e) The commission shall conduct a review of each entity that enters into a contract under Section 62.055 or [~~Section~~] 62.155[~~,~~] to ensure that the entity is available, prepared, and able to fulfill the entity's obligations under the contract in compliance with the contract, this chapter, and rules adopted under this chapter.

(f) The commission shall ensure that the amounts spent for administration of the child health plan program do not exceed any limit on those expenditures imposed by federal law.

Sec. 62.052. *AUTHORITY OF COMMISSION RELATING TO HEALTH PLAN PROVIDER CONTRACTS* [~~DUTIES OF TEXAS DEPARTMENT OF HEALTH~~]. [~~(a)~~] The commission may [~~direct the Texas Department of Health to~~]:

(1) implement contracts with health plan providers under Section 62.155;

(2) monitor the health plan providers, through reporting requirements and other means, to ensure performance under the contracts and quality delivery of services;

(3) monitor the quality of services delivered to enrollees through outcome measurements including:

(A) rate of hospitalization for ambulatory sensitive conditions, including asthma, diabetes, epilepsy, dehydration, gastroenteritis, pneumonia, and UTI/kidney infection;

(B) rate of hospitalization for injuries;

(C) percent of enrolled adolescents reporting risky health behavior such as injuries, tobacco use, alcohol/drug use, dietary behavior, physical activity, or other health related behaviors; and

(D) percent of adolescents reporting attempted suicide; and

(4) provide payment under the contracts to the health plan providers.

[~~(b) The commission, or the Texas Department of Health under the direction of and in consultation with the commission, shall adopt rules as necessary to implement this section.~~]

SECTION 3.0193. Subchapter B, Chapter 62, Health and Safety Code, is amended by amending Section 62.053 and adding Section 62.0531 to read as follows:

Sec. 62.053. *AUTHORITY OF COMMISSION RELATING TO ELIGIBILITY AND MEDICAID COORDINATION* [~~DUTIES OF TEXAS DEPARTMENT OF HUMAN SERVICES~~]. *The commission* [~~(a) Under the direction of the commission, the Texas Department of Human Services~~] may:

(1) accept applications for coverage under the child health plan and implement the child health plan program eligibility screening and enrollment procedures;

(2) resolve grievances relating to eligibility determinations; and

(3) coordinate the child health plan program with the Medicaid program.

Sec. 62.0531. AUTHORITY OF COMMISSION RELATING TO THIRD PARTY ADMINISTRATOR. [~~(b)~~] If the commission contracts with a third party administrator under Section 62.055, the commission may [~~direct the Texas Department of Human Services to~~]:

(1) implement the contract;

(2) monitor the third party administrator, through reporting requirements and other means, to ensure performance under the contract and quality delivery of services; and

(3) provide payment under the contract to the third party administrator.

[~~(c) The commission, or the Texas Department of Human Services under the direction of and in consultation with the commission, shall adopt rules as necessary to implement this section.~~]

SECTION 3.0194. Sections 62.054(a) and (b), Health and Safety Code, are amended to read as follows:

(a) At the request of the commission, the Texas Department of Insurance shall provide any necessary assistance with the [~~development of the~~] child health plan. The department shall monitor the quality of the services provided by health plan providers and resolve grievances relating to the health plan providers.

(b) The commission and the Texas Department of Insurance may adopt a memorandum of understanding that addresses the responsibilities of each agency *with respect to* [~~in developing~~] the plan.

SECTION 3.0195. Section 62.055, Health and Safety Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) The *executive commissioner* [~~commission~~] shall[~~:~~

[~~(1)~~] retain all policymaking authority over the state child health plan.[~~;~~]

(f) The commission shall:

(1) [~~(2)~~] procure all contracts with a third party administrator through a competitive procurement process in compliance with all applicable federal and state laws or regulations; and

(2) [~~(3)~~] ensure that all contracts with child health plan providers under Section 62.155 are procured through a competitive procurement process in compliance with all applicable federal and state laws or regulations.

SECTION 3.0196. Sections 62.101(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) A child is eligible for health benefits coverage under the child health plan if the child:

(1) is younger than 19 years of age;

(2) is not eligible for medical assistance under the Medicaid program;

(3) is not covered by a health benefits plan offering adequate benefits, as determined by the commission;

(4) has a *household* [~~family~~] income that is less than or equal to the income eligibility level established under Subsection (b); and

(5) satisfies any other eligibility standard imposed under the child health plan program in accordance with 42 U.S.C. Section 1397bb, as amended, and any other applicable law or regulations.

(b) The *executive commissioner* [~~commission~~] shall establish income eligibility levels consistent with Title XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, and subject to the availability of appropriated money, so that a child who is younger than 19 years of age and whose *household* [~~net family~~] income is at or below 200 percent of the federal poverty level is eligible for health benefits coverage under the program. [~~In addition, the commission may establish eligibility standards regarding the amount and types of allowable assets for a family whose net family income is above 150 percent of the federal poverty level.~~]

(c) The *executive* commissioner shall evaluate enrollment levels and program impact [~~every six months during the first 12 months of implementation and~~] at least annually [~~thereafter~~] and shall submit a finding of fact to the Legislative Budget Board and the Governor's Office of Budget, [~~and~~] Planning, *and Policy* as to the adequacy of funding and the ability of the program to sustain enrollment at the eligibility level established by Subsection (b). In the event that appropriated money is insufficient to sustain enrollment at the authorized eligibility level, the *executive* commissioner shall:

(1) suspend enrollment in the child health plan;

(2) establish a waiting list for applicants for coverage; and

(3) establish a process for periodic or continued enrollment of applicants in the child health plan program as the availability of money allows.

SECTION 3.0197. Section 62.1011, Health and Safety Code, is amended to read as follows:

Sec. 62.1011. VERIFICATION OF INCOME. The commission shall continue employing methods of verifying the *individual incomes* [~~net income~~] of the individuals considered in the calculation of an applicant's *household* [~~net family~~] income. The commission shall verify income under this section unless the applicant reports a *household* [~~net family~~] income that exceeds the income eligibility level established under Section 62.101(b).

SECTION 3.0198. Sections 62.1015(a) and (c), Health and Safety Code, are amended to read as follows:

(a) In this section:

(1) "Charter school"[~~, "charter school," "employee,"~~] and "regional education service center" have the meanings assigned by Section *1579.002* [~~2, Article 3.50-7~~], Insurance Code.

(2) "Employee" has the meaning assigned by Section 1579.003, Insurance Code.

(c) The cost of health benefits coverage for children enrolled in the child health plan under this section shall be paid as provided in the General Appropriations Act. Expenditures made to provide health benefits coverage under this section may not be included for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended, unless the *commission* [~~Health and Human Services Commission~~], after consultation with the appropriate federal agencies, determines that the expenditures may be included without adversely affecting federal matching funding for the child health plan provided under this chapter.

SECTION 3.0199. Sections 62.102(b) and (c), Health and Safety Code, are amended to read as follows:

(b) During the sixth month following the date of initial enrollment or reenrollment of an individual whose *household* [~~net family~~] income exceeds 185 percent of the federal poverty level, the commission shall:

(1) review the individual's *household* [~~net family~~] income and may use electronic technology if available and appropriate; and

(2) continue to provide coverage if the individual's *household* [~~net family~~] income does not exceed the income eligibility limits prescribed by this chapter.

(c) If, during the review required under Subsection (b), the commission determines that the individual's *household* [~~net family~~] income exceeds the income eligibility limits prescribed by this chapter, the commission may not disenroll the individual until:

(1) the commission has provided the family an opportunity to demonstrate that the family's *household* [~~net family~~] income is within the income eligibility limits prescribed by this chapter; and

(2) the family fails to demonstrate such eligibility.

SECTION 3.0200. Sections 62.103(a) and (d), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~commission, or the Texas Department of Human Services at the direction of and in consultation with the commission,~~] shall adopt an application form and application procedures for requesting child health plan coverage under this chapter.

(d) The *executive commissioner* [~~commission~~] may permit application to be made by mail, over the telephone, or through the Internet.

SECTION 3.0201. Sections 62.104(a) and (g), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~commission, or the Texas Department of Human Services at the direction of and in consultation with the commission,~~] shall develop eligibility screening and enrollment procedures for children that comply with the requirements of 42 U.S.C. Section 1397bb, as amended, and any other applicable law or regulations. The procedures shall ensure that Medicaid-eligible children are identified and referred to the Medicaid program.

(g) *The executive commissioner* [~~In the first year of implementation of the child health plan, enrollment shall be open. Thereafter, the commission~~] may establish enrollment periods *for the child health plan.*

SECTION 3.0202. Sections 62.151(b), (c), (e), and (f), Health and Safety Code, are amended to read as follows:

(b) In *modifying* [~~developing~~] the covered benefits, the *executive commissioner* [~~commission~~] shall consider the health care needs of healthy children and children with special health care needs.

(c) In *modifying* [~~developing~~] the plan, the *executive commissioner* [~~commission~~] shall ensure that primary and preventive health benefits do not include reproductive services, other than prenatal care and care related to diseases, illnesses, or abnormalities related to the reproductive system.

(e) In *modifying* [~~developing~~] the covered benefits, the *executive commissioner* [~~commission~~] shall seek input from the Public Assistance Health Benefit Review and Design Committee established under Section 531.067, Government Code.

(f) *If the executive commissioner* [~~The commission, if it~~] determines the policy to be cost-effective, *the executive commissioner* may ensure that an enrolled child does not, unless authorized by the commission in consultation with the child's attending physician or advanced practice nurse, receive under the child health plan:

(1) more than four different outpatient brand-name prescription drugs during a month; or

(2) more than a 34–day supply of a brand-name prescription drug at any one time.

SECTION 3.0203. Sections 62.153(a) and (c), Health and Safety Code, are amended to read as follows:

(a) To the extent permitted under 42 U.S.C. Section 1397cc, as amended, and any other applicable law or regulations, the *executive commissioner* [~~commission~~] shall require enrollees to share the cost of the child health plan, including provisions requiring enrollees under the child health plan to pay:

(1) a copayment for services provided under the plan;

(2) an enrollment fee; or

(3) a portion of the plan premium.

(c) If cost-sharing provisions imposed under Subsection (a) include requirements that enrollees pay a portion of the plan premium, the *executive commissioner* [~~commission~~] shall specify the manner in which the premium is paid. The commission may require that the premium be paid to the [~~Texas Department of Health, the Texas Department of Human Services, or the~~] health plan provider.

SECTION 3.0204. Section 62.154(b), Health and Safety Code, is amended to read as follows:

(b) A child is not subject to a waiting period adopted under Subsection (a) if:

(1) the family lost coverage for the child as a result of:

(A) termination of employment because of a layoff or business closing;

(B) termination of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99–272);

(C) change in marital status of a parent of the child;

(D) termination of the child's Medicaid eligibility because:

(i) the child's family's earnings or resources increased; or

(ii) the child reached an age at which Medicaid coverage is not available; or

(E) a similar circumstance resulting in the involuntary loss of coverage;

(2) the family terminated health benefits plan coverage for the child because the cost to the child's family for the coverage exceeded *9.5* [~~10~~] percent of the family's *household* [~~net~~] income;

(3) the child has access to group-based health benefits plan coverage and is required to participate in the health insurance premium payment reimbursement program administered by the commission; [~~or~~]

(4) the commission has determined that other grounds exist for a good cause exception*; or*

(5) federal law provides that the child is not subject to a waiting period adopted under Subsection (a).

SECTION 3.0205. Sections 62.155(a) and (d), Health and Safety Code, are amended to read as follows:

(a) The commission[~~, or the Texas Department of Health at the direction of and in consultation with the commission,~~] shall select the health plan providers under the program through a competitive procurement process. A health plan provider, other than a state administered primary care case management network, must hold a certificate of authority or other appropriate license issued by the Texas Department of Insurance that authorizes the health plan provider to provide the type of child health plan offered and must satisfy, except as provided by this chapter, any applicable requirement of the Insurance Code or another insurance law of this state.

(d) The *executive* commissioner may authorize an exception to Subsection (c)(2) if there is only one acceptable applicant to become a health plan provider in the service area.

SECTION 3.0206. Section 62.1551, Health and Safety Code, is amended to read as follows:

Sec. 62.1551. INCLUSION OF CERTAIN HEALTH CARE PROVIDERS IN PROVIDER NETWORKS. Notwithstanding any other law, including Sections 843.312 and 1301.052, Insurance Code, the executive commissioner [~~of the commission~~] shall adopt rules to require a managed care organization or other entity to ensure that advanced practice registered nurses and physician assistants are available as primary care providers in the organization's or entity's provider network. The rules must require advanced practice registered nurses and physician assistants to be treated in the same manner as primary care physicians with regard to:

(1) selection and assignment as primary care providers;

(2) inclusion as primary care providers in the provider network; and

(3) inclusion as primary care providers in any provider network directory maintained by the organization or entity.

SECTION 3.0207. Section 62.156, Health and Safety Code, is amended to read as follows:

Sec. 62.156. HEALTH CARE PROVIDERS. Health care providers who provide health care services under the child health plan must satisfy certification and licensure requirements, as required by [~~the~~] commission *rules and*[~~,~~] consistent with *other* law.

SECTION 3.0208. Section 62.1561, Health and Safety Code, is amended to read as follows:

Sec. 62.1561. PROHIBITION OF CERTAIN HEALTH CARE PROVIDERS. The executive commissioner [~~of the commission~~] shall adopt rules for prohibiting a person from

participating in the child health plan program as a health care provider for a reasonable period, as determined by the executive commissioner, if the person:

(1) fails to repay overpayments under the program; or

(2) owns, controls, manages, or is otherwise affiliated with and has financial, managerial, or administrative influence over a provider who has been suspended or prohibited from participating in the program.

SECTION 3.0209. Sections 62.157(b) and (c), Health and Safety Code, as added by Chapter 959 (S.B. 1536), Acts of the 77th Legislature, Regular Session, 2001, are amended to read as follows:

(b) The policies must provide for:

(1) the availability of covered benefits appropriately provided through telemedicine medical services and telehealth services that are comparable to the same types of covered benefits provided without the use of telemedicine medical services and telehealth services; and

(2) the availability of covered benefits for different services performed by multiple health care providers during a single telemedicine medical services and telehealth services session, if the *executive commissioner* [~~commission~~] determines that delivery of the covered benefits in that manner is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services and telehealth services, including the costs of transportation and lodging and other direct costs.

(c) In developing the policies required by Subsection (a), the *executive commissioner* [~~commission~~] shall consult with:

(1) The University of Texas Medical Branch at Galveston;

(2) Texas Tech University Health Sciences Center;

(3) the [~~Texas~~] Department of *State* Health *Services*;

(4) providers of telemedicine hub sites in this state;

(5) providers of services to children with special health care needs; and

(6) representatives of consumer or disability groups affected by changes to services for children with special health care needs.

SECTION 3.0210. Section 62.157, Health and Safety Code, as added by Chapter 1255 (S.B. 789), Acts of the 77th Legislature, Regular Session, 2001, is redesignated as Section 62.1571, Health and Safety Code, and amended to read as follows:

Sec. *62.1571* [~~62.157~~]. TELEMEDICINE MEDICAL SERVICES. (a) In providing covered benefits to a child, a health plan provider must permit benefits to be provided through telemedicine medical services in accordance with policies developed by the commission.

(b) The policies must provide for:

(1) the availability of covered benefits appropriately provided through telemedicine medical services that are comparable to the same types of covered benefits provided without the use of telemedicine medical services; and

(2) the availability of covered benefits for different services performed by multiple health care providers during a single session of telemedicine medical services, if the *executive commissioner* [~~commission~~] determines that delivery of the covered benefits in that manner is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services, including the costs of transportation and lodging and other direct costs.

(c) In developing the policies required by Subsection (a), the *executive commissioner* [~~commission~~] shall consult with the telemedicine *and telehealth* advisory committee.

(d) In this section, "telemedicine medical service" has the meaning assigned by Section *531.001, Government* [~~57.042, Utilities~~] Code.

SECTION 3.0211. Section 62.159, Health and Safety Code, is amended to read as follows:

Sec. 62.159. DISEASE MANAGEMENT SERVICES. (a) In this section, "disease management services" means services to assist a child manage a disease or other chronic health condition, such as heart disease, diabetes, respiratory illness, end-stage renal disease, HIV infection, or AIDS, and with respect to which the *executive commissioner* [~~commission~~] identifies populations for which disease management would be cost-effective.

(b) The child health plan must provide disease management services or coverage for disease management services in the manner required by the *executive commissioner* [~~commission~~], including:

(1) patient self-management education;

(2) provider education;

(3) evidence-based models and minimum standards of care;

(4) standardized protocols and participation criteria; and

(5) physician-directed or physician-supervised care.

SECTION 3.0212. Section 63.003, Health and Safety Code, is amended to read as follows:

Sec. 63.003. HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN CHILDREN. The *executive commissioner* [~~commission~~] shall develop and implement a program to provide health benefits plan coverage for a child who:

(1) is a qualified alien, as that term is defined by 8 U.S.C. Section 1641(b);

(2) is younger than 19 years of age;

(3) entered the United States after August 22, 1996;

(4) has resided in the United States for less than five years; and

(5) meets the income eligibility requirement of, but is not eligible for assistance under:

(A) the child health plan program under Chapter 62; or

(B) the medical assistance program under Chapter 32, Human Resources Code.

SECTION 3.0213. Section 63.005(b), Health and Safety Code, is amended to read as follows:

(b) Except as required by the *executive commissioner* [~~commission~~], a health benefits plan provider under this chapter is not subject to a law that requires coverage or the offer of coverage of a health care service or benefit.

SECTION 3.0214. Section 63.006, Health and Safety Code, is amended to read as follows:

Sec. 63.006. COST–SHARING PAYMENTS. (a) Except as provided by Subsection (b), the *executive commissioner* [~~commission~~] may not require a child who is provided health benefits plan coverage under Section 63.003 and who meets the income eligibility requirement of the medical assistance program under Chapter 32, Human Resources Code, to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage under this chapter.

(b) The *executive commissioner* [~~commission~~] may require a child described by Subsection (a) to pay a copayment as a condition of health benefits plan coverage under this chapter that is equal to any copayment required under the child health plan program under Chapter 62.

(c) The *executive commissioner* [~~commission~~] may require a child who is provided health benefits plan coverage under Section 63.003 and who meets the income eligibility requirement of the child health plan program under Chapter 62 to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits

plan coverage under this chapter. The payment must be equal to any premium, deductible, coinsurance, or other cost-sharing payment required under the child health plan program under Chapter 62.

SECTION 3.0215. Section 64.001, Health and Safety Code, is amended to read as follows:

Sec. 64.001. TEACHING HOSPITAL ACCOUNT. The [~~Texas~~] Department of *State* Health *Services* state-owned multi-categorical teaching hospital account is an account in the general revenue fund. Money in the account may be appropriated only to the department to provide funding for indigent health care.

SECTION 3.0216. Section 81.003(5), Health and Safety Code, is amended to read as follows:

(5) "Physician" means a person licensed to practice medicine by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~].

SECTION 3.0217. Sections 81.004(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] may adopt rules necessary for the effective administration and implementation of this chapter.

(c) A designee of the *executive commissioner* [~~board~~] may exercise a power granted to or perform a duty imposed on the *executive commissioner* [~~board~~] under this chapter except as otherwise required by law.

SECTION 3.0218. Section 81.008, Health and Safety Code, is amended to read as follows:

Sec. 81.008. COMMUNICABLE DISEASE IN ANIMALS; EXCHANGE OF INFORMATION. The Texas Animal Health Commission and the Texas A&M University Veterinary *Medical* Diagnostic Laboratory shall each adopt by rule a memorandum of understanding, *adopted also by rule by the executive commissioner, governing the* [~~with the department to~~] exchange *of* information on communicable diseases in animals *between the department and those entities*.

SECTION 3.0219. Sections 81.010(c), (e), (h), (i), and (k), Health and Safety Code, are amended to read as follows:

(c) The council consists of one representative from each of the following agencies appointed by the executive director or commissioner of each agency:

(1) the Department of State Health Services;

(2) the Department of Aging and Disability Services;

(3) the Department of Assistive and Rehabilitative Services;

(4) the Department of Family and Protective Services;

(5) [~~the Texas Youth Commission;~~

[~~(6)~~] the Texas Department of Criminal Justice;

(6) [~~(7)~~] the Texas Juvenile *Justice Department* [~~Probation Commission~~];

(7) [~~(8)~~] the Texas Medical Board;

(8) [~~(9)~~] the Texas Board of Nursing;

(9) [~~(10)~~] the State Board of Dental Examiners;

(10) [~~(11)~~] the Health and Human Services Commission;

(11) [~~(12)~~] the Texas Workforce Commission; and

(12) [~~(13)~~] the Texas Higher Education Coordinating Board.

(e) The representative from the *commission* [~~Health and Human Services Commission~~] serves as chairperson of the council.

(h) The council shall:

(1) coordinate communication among the member agencies listed in Subsection (c)

concerning each agency's programs in providing services related to AIDS, HIV, and hepatitis;

(2) develop a plan that facilitates coordination of agency programs based on statistical information regarding this state for:

(A) prevention of AIDS, HIV infection, and hepatitis; and

(B) provision of services to individuals who have hepatitis or are infected with HIV;

(3) identify all statewide plans related to AIDS, HIV, and hepatitis;

(4) compile a complete inventory of all federal, state, and local money spent in this state on HIV infection, AIDS, and hepatitis prevention and health care services, including services provided through or covered under Medicaid and Medicare;

(5) identify the areas with respect to which state agencies interact on HIV, AIDS, and hepatitis issues and the policy issues arising from that interaction;

(6) assess gaps in prevention and health care services for HIV infection, AIDS, and hepatitis in this state, including gaps in services that result from provision of services by different state agencies, and develop strategies to address these gaps through service coordination;

(7) identify barriers to prevention and health care services for HIV infection, AIDS, and hepatitis faced by marginalized populations;

(8) identify the unique health care service and other service needs of persons who are infected with HIV or who have AIDS or hepatitis;

(9) evaluate the level of service and quality of health care in this state for persons who are infected with HIV or who have AIDS or hepatitis as compared to national standards;

(10) identify issues that emerge related to HIV, AIDS, and hepatitis and the potential impact on delivery of prevention and health care services; and

(11) provide the information required under Subdivisions (1) through (10) to the *department* [~~Department of State Health Services~~].

(i) Not later than September 1 of each year, the *department* [~~Department of State Health Services~~] shall file a report with the legislature and the governor containing policy recommendations based on information reported to the council in Subsection (h) relating to:

(1) prevention of AIDS, HIV infection, and hepatitis; and

(2) delivery of health services to individuals who have AIDS or hepatitis or are infected with HIV.

(k) The *commission* [~~Health and Human Services Commission~~] shall provide administrative support to the council.

SECTION 3.0220. Section 81.021, Health and Safety Code, is amended to read as follows:

Sec. 81.021. *PROTECTION OF PUBLIC HEALTH* [~~BOARD'S DUTY~~]. The *executive commissioner and department* [~~board~~] shall exercise *their powers* [~~its power~~] in matters relating to protecting the public health to prevent the introduction of disease into the state.

SECTION 3.0221. Section 81.023, Health and Safety Code, is amended to read as follows:

Sec. 81.023. IMMUNIZATION. (a) The *department* [~~board~~] shall develop immunization requirements for children.

(b) The *department* [~~board~~] shall cooperate with the Department of *Family and* Protective [~~and Regulatory~~] Services in formulating and implementing the immunization requirements for children admitted to child-care facilities.

(c) The *department* [~~board~~] shall cooperate with the State Board of Education in

formulating and implementing immunization requirements for students admitted to public or private primary or secondary schools.

SECTION 3.0222. Section 81.024, Health and Safety Code, is amended to read as follows:

Sec. 81.024. REPORTS BY *DEPARTMENT* [~~BOARD~~]. The *department* [~~board~~] shall provide regular reports of the incidence, prevalence, and medical and economic effects of each disease that the *department* [~~board~~] determines is a threatening risk to the public health. A disease may be a risk because of its indirect complications.

SECTION 3.0223. Section 81.041, Health and Safety Code, is amended to read as follows:

Sec. 81.041. REPORTABLE DISEASES. (a) The *executive commissioner* [~~board~~] shall identify each communicable disease or health condition that shall be reported under this chapter.

(b) The *executive commissioner* [~~board~~] shall classify each reportable disease according to its nature and the severity of its effect on the public health.

(c) The *executive commissioner* [~~board~~] shall maintain and revise as necessary the list of reportable diseases.

(d) The *executive commissioner* [~~board~~] may establish registries for reportable diseases and other communicable diseases and health conditions. The provision to the department of information relating to a communicable disease or health condition that is not classified as reportable is voluntary only.

(e) Acquired immune deficiency syndrome and human immunodeficiency virus infection are reportable diseases under this chapter for which the *executive commissioner* [~~board~~] shall require reports.

(f) In a public health disaster, the commissioner may require reports of communicable diseases or other health conditions from providers without *the adoption of a* [~~board~~] rule or *other* action *by the executive commissioner*. The commissioner shall issue appropriate instructions relating to complying with the reporting requirements of this section.

SECTION 3.0224. Sections 81.042(c) and (d), Health and Safety Code, are amended to read as follows:

(c) A local school authority shall report a child attending school who is suspected of having a reportable disease. The *executive commissioner* [~~board~~] by rule shall establish procedures to determine if a child should be suspected and reported and to exclude the child from school pending appropriate medical diagnosis or recovery.

(d) A person in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of a specimen derived from a human body yields microscopical, cultural, serological, or other evidence of a reportable disease shall report the findings, in accordance with this section and procedures adopted by the *executive commissioner* [~~board~~], in the jurisdiction in which:

(1) the physician's office is located, if the laboratory examination was requested by a physician; or

(2) the laboratory is located, if the laboratory examination was not requested by a physician.

SECTION 3.0225. Section 81.043(b), Health and Safety Code, is amended to read as follows:

(b) *A* [~~Except as provided by Subsection (c), a~~] health authority shall report reportable diseases to the department's central office at least as frequently as the interval set by *department* [~~board~~] rule.

SECTION 3.0226. Sections 81.044(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall prescribe the form and method of reporting under this chapter, which may be in writing, by telephone, by electronic data transmission, or by other means.

(b) The *executive commissioner* [~~board~~] may require the reports to contain any information relating to a case that is necessary for the purposes of this chapter, including:

(1) the patient's name, address, age, sex, race, and occupation;

(2) the date of onset of the disease or condition;

(3) the probable source of infection; and

(4) the name of the attending physician or dentist.

(d) For a case of acquired immune deficiency syndrome or human immunodeficiency virus infection, the *executive commissioner* [~~department~~] shall require the reports to contain:

(1) the information described by Subsection (b); and

(2) the patient's ethnicity, national origin, and city and county of residence.

SECTION 3.0227. Sections 81.048(a) and (g), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall:

(1) designate certain reportable diseases for notification under this section; and

(2) define the conditions that constitute possible exposure to those diseases.

(g) A hospital that gives notice of a possible exposure under Subsection (c) or a local health authority that receives notice of a possible exposure under Subsection (c) may give notice of the possible exposure to a person other than emergency medical personnel, a peace officer, a detention officer, a county jailer, or a fire fighter if the person demonstrates that the person was exposed to the reportable disease while providing emergency care. The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules to implement this subsection.

SECTION 3.0228. Sections 81.050(a), (b), (c), (d), (e), (g), (j), (k), and (l), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall prescribe the criteria that constitute exposure to reportable diseases[~~, including HIV infection~~]. The criteria must be based on activities that the United States Public Health Service determines pose a risk of infection.

(b) A person whose occupation or whose volunteer service is included in one or more of the following categories may request the department or a health authority to order testing of another person who may have exposed the person to a reportable disease[~~, including HIV infection~~]:

(1) a law enforcement officer;

(2) a fire fighter;

(3) an emergency medical service employee or paramedic;

(4) a correctional officer;

(5) an employee, contractor, or volunteer, other than a correctional officer, who performs a service in a correctional facility as defined by Section 1.07, Penal Code, or a secure correctional facility or secure detention facility as defined by Section 51.02, Family Code; or

(6) an employee of a juvenile probation department.

(c) A request under this section may be made only if the person:

(1) has experienced the exposure in the course of the person's employment or volunteer service;

(2) believes that the exposure places the person at risk of a reportable disease[~~, including HIV infection~~]; and

(3) presents to the department or health authority a sworn affidavit that delineates the reasons for the request.

(d) The department or the department's designee who meets the minimum training requirements prescribed by *department* [~~board~~] rule shall review the person's request and inform the person whether the request meets the criteria establishing risk of infection with a reportable disease[~~, including HIV infection~~].

(e) The department or the department's designee shall give the person who is subject to the order prompt and confidential written notice of the order. The order must:

(1) state the grounds and provisions of the order, including the factual basis for its issuance;

(2) refer the person to appropriate health care facilities where the person can be tested for reportable diseases[~~, including HIV infection~~]; and

(3) inform the person who is subject to the order of that person's right to refuse to be tested and the authority of the department or health authority to ask for a court order requiring the test.

(g) In reviewing the order, the court shall determine whether exposure occurred and whether that exposure presents a possible risk of infection as defined by *department* [~~board~~] rule. The attorney for the state and the attorney for the person subject to the order may introduce evidence at the hearing in support of or opposition to the testing of the person. On conclusion of the hearing, the court shall either issue an appropriate order requiring counseling and testing of the person for reportable diseases[~~, including HIV infection,~~] or refuse to issue the order if the court has determined that the counseling and testing of the person is unnecessary. The court may assess court costs against the person who requested the test if the court finds that there was not reasonable cause for the request.

(j) For the purpose of qualifying for workers' compensation or any other similar benefits for compensation, an employee who claims a possible work-related exposure to a reportable disease[~~, including HIV infection,~~] must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease[~~, including HIV infection~~].

(k) A person listed in Subsection (b) who may have been exposed to a reportable disease[~~, including HIV infection,~~] may not be required to be tested.

(l) In this section, [~~"HIV" and~~] "test result" *has* [~~have~~] the *meaning* [~~meanings~~] assigned by Section 81.101.

SECTION 3.0229. Section 81.051(j), Health and Safety Code, is amended to read as follows:

(j) A partner notification program shall routinely evaluate the performance of counselors and other program personnel to ensure that high quality services are being delivered. A program shall adopt quality assurance and training guidelines according to recommendations of the Centers for Disease Control *and Prevention* of the United States Public Health Service for professionals participating in the program.

SECTION 3.0230. Section 81.062(b), Health and Safety Code, is amended to read as follows:

(b) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to appear at a hearing or proceeding under this section conducted outside the witness's or deponent's county of residence is entitled to a travel and per diem allowance. The *executive commissioner* [~~board~~] by rule shall set the allowance in an amount not to exceed the travel and per diem allowance authorized for state employees traveling in this state on official business.

SECTION 3.0231. Section 81.064(a), Health and Safety Code, is amended to read as follows:

(a) The department or a health authority may enter at reasonable times and inspect within reasonable limits a public place in the performance of that person's duty to prevent or control the entry into or spread in this state of communicable disease by enforcing this chapter or the rules [~~of the board~~] adopted under this chapter.

SECTION 3.0232. Section 81.081, Health and Safety Code, is amended to read as follows:

Sec. 81.081. *DEPARTMENT'S* [~~BOARD'S~~] DUTY. The *department* [~~board~~] shall impose control measures to prevent the spread of disease in the exercise of its power to protect the public health.

SECTION 3.0233. Sections 81.082(a) and (c–1), Health and Safety Code, are amended to read as follows:

(a) A health authority has supervisory authority and control over the administration of communicable disease control measures in the health authority's jurisdiction unless specifically preempted by the department. Control measures imposed by a health authority must be consistent with, and at least as stringent as, the control measure standards in rules adopted by the *executive commissioner* [~~board~~].

(c–1) A health authority may designate health care facilities within the health authority's jurisdiction that are capable of providing services for the examination, observation, quarantine, isolation, treatment, or imposition of control measures during a public health disaster or during an area quarantine under Section 81.085. A health authority may not designate a nursing *facility* [~~home~~] or other institution licensed under Chapter 242.

SECTION 3.0234. Section 81.084(d), Health and Safety Code, is amended to read as follows:

(d) The department or health authority shall remove the quarantine and return control of the property to the person who owns or controls it if the control measures are effective. If the control measures are ineffective or if there is not a technically feasible control measure available for use, the department or health authority may continue the quarantine and order the person who owns or controls the property:

(1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination;

(2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or

(3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the quarantine is removed by the *department* [~~board~~] or health authority.

SECTION 3.0235. Sections 81.086(d), (e), and (h), Health and Safety Code, are amended to read as follows:

(d) The owner or operator of a carrier or conveyance placed in quarantine by order of the department or health authority, or of a county or district court under Section 81.083 or 81.084, shall bear the expense of the control measures employed to disinfect or decontaminate the carrier or conveyance. The department or health authority, as appropriate, shall charge and be reimbursed for the cost of control measures performed by the department's or health authority's employees. The *department* [~~board~~] shall deposit the reimbursements to the credit of the general revenue fund to be used to administer this chapter. A health authority shall distribute the reimbursements to each county, municipality, or other governmental entity in an amount proportional to that entity's contribution to the quarantine and control expense.

(e) The owner or claimant of cargo or an object on board the carrier or conveyance shall pay the expense of the control measures employed in the manner provided by Section 81.084. The cost of services rendered or provided by the *department* [~~board~~] or health authority is subject to reimbursement as provided by Subsection (d).

(h) If the department or health authority has reasonable cause to believe that a carrier or conveyance is transporting cargo or an object that is or may be infected or contaminated with a communicable disease, the department or health authority may:

(1) require that the cargo or object be transported in secure confinement or sealed in a car, trailer, hold, or compartment, as appropriate, that is secured on the order

and instruction of the *department* [~~board~~] or health authority, if the cargo or object is being transported through this state;

(2) require that the cargo or object be unloaded at an alternate location equipped with adequate investigative and disease control facilities if the cargo or object is being transported to an intermediate or ultimate destination in this state that cannot provide the necessary facilities; and

(3) investigate and, if necessary, quarantine the cargo or object and impose any required control measure as authorized by Section 81.084.

SECTION 3.0236. Sections 81.091(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) A physician, nurse, midwife, or other person in attendance at childbirth shall use or cause to be used prophylaxis approved by the *executive commissioner* [~~board~~] to prevent ophthalmia neonatorum.

(c) Subject to the availability of funds, the department shall furnish prophylaxis approved by the *executive commissioner* [~~board~~] free of charge to:

(1) health care providers if the newborn's financially responsible adult is unable to pay; and

(2) a midwife identified under Chapter 203, Occupations Code, who requests prophylaxis for administration under standing delegation orders issued by a licensed physician under Subsection (b) and subject to the provisions of Subchapter A, Chapter 157, Occupations Code.

(d) If a physician is not available to issue a standing delegation order or if no physician will agree to issue a standing delegation order, a midwife shall administer or cause to be administered by an appropriately trained and licensed individual prophylaxis approved by the *executive commissioner* [~~Texas Board of Health~~] to prevent ophthalmia neonatorum to each infant that the midwife delivers.

SECTION 3.0237. Section 81.0955(b), Health and Safety Code, is amended to read as follows:

(b) A hospital, certified emergency medical services personnel, or a physician on behalf of the person exposed, following a report of the exposure incident, shall take reasonable steps to test the deceased person for communicable diseases. The hospital, certified emergency medical services personnel, or physician shall provide the test results to the department or to the local health authority responsible for following the procedures prescribed by Section 81.050(h) to inform the person exposed and, if applicable, the next of kin of the deceased person regarding the test results. The hospital, certified emergency medical services personnel, or physician shall follow applicable reporting requirements prescribed by Subchapter C. This subsection does not impose a duty on a hospital, certified emergency medical services personnel, or a physician to provide any further testing, treatment, or services or to perform further procedures. The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules to implement this subsection.

SECTION 3.0238. Sections 81.101(1) and (4), Health and Safety Code, are amended to read as follows:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control *and Prevention* of the United States Public Health Service.

(4) "Blood bank" means a blood bank, blood center, regional collection center, tissue bank, transfusion service, or other similar facility licensed by the *Center for* [~~Bureau of~~] Biologics *Evaluation and Research* of the United States Food and Drug Administration, accredited for membership in the *AABB (formerly known as the* American Association of Blood Banks*)*, or qualified for membership in the American Association of Tissue Banks.

SECTION 3.0239. Sections 81.102(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) A person may not require another person to undergo a medical procedure or test designed to determine or help determine if a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless:

(1) the medical procedure or test is required under Subsection (d), under Section 81.050, or under Article 21.31, Code of Criminal Procedure;

(2) the medical procedure or test is required under Section 81.090, and no objection has been made under Section 81.090(l);

(3) the medical procedure or test is authorized under Chapter 545, Insurance Code;

(4) a medical procedure is to be performed on the person that could expose health care personnel to AIDS or HIV infection, according to *department rules* [~~board guidelines~~] defining the conditions that constitute possible exposure to AIDS or HIV infection, and there is sufficient time to receive the test result before the procedure is conducted; or

(5) the medical procedure or test is necessary:

(A) as a bona fide occupational qualification and there is not a less discriminatory means of satisfying the occupational qualification;

(B) to screen blood, blood products, body fluids, organs, or tissues to determine suitability for donation;

(C) in relation to a particular person under this chapter;

(D) to manage accidental exposure to blood or other body fluids, but only if the test is conducted under written infectious disease control protocols adopted by the health care agency or facility;

(E) to test residents and clients of residential facilities of the *department or the Department of Aging and Disability Services* [~~Texas Department of Mental Health and Mental Retardation~~], but only if:

(i) the test result would change the medical or social management of the person tested or others who associated with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the residential facility or *rules of* the *appropriate department* [~~Texas Department of Mental Health and Mental Retardation and approved by the department~~]; or

(F) to test residents and clients of residential facilities of the Texas *Juvenile Justice Department* [~~Youth Commission~~], but only if:

(i) the test result would change the medical or social management of the person tested or others who associate with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the Texas *Juvenile Justice Department* [~~Youth Commission~~].

(c) Protocols adopted under Subsection *(a)(5)(D)* [~~(a)(4)(D)~~] must clearly establish procedural guidelines with criteria for testing that respect the rights of the person with the infection and the person who may be exposed to that infection. The protocols may not require the person who may have been exposed to be tested and must ensure the confidentiality of the person with the infection in accordance with this chapter.

(d) The *executive commissioner* [~~board~~] may adopt emergency rules for mandatory testing for HIV infection if the commissioner files a certificate of necessity with the *executive commissioner* [~~board~~] that contains supportive findings of medical and scientific fact and that declares a sudden and imminent threat to public health. The rules must provide for:

(1) the narrowest application of HIV testing necessary for the protection of the public health;

(2) procedures and guidelines to be followed by an affected entity or state agency that clearly specify the need and justification for the testing, specify methods to be used to assure confidentiality, and delineate responsibility and authority for carrying out the recommended actions;

(3) counseling of persons with seropositive test results; and

(4) confidentiality regarding persons tested and their test results.

SECTION 3.0240. Section 81.107(a), Health and Safety Code, is amended to read as follows:

(a) In a case of accidental exposure to blood or other body fluids under Section *81.102(a)(5)(D)* [~~81.102(a)(4)(D)~~], the health care agency or facility may test a person who may have exposed the health care worker to HIV without the person's specific consent to the test.

SECTION 3.0241. Section 81.108, Health and Safety Code, is amended to read as follows:

Sec. 81.108. TESTING BY INSURERS. The Insurance Code and any rules adopted by the *commissioner of insurance for the Texas Department* [~~State Board~~] of Insurance exclusively govern all practices of insurers in testing applicants to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.

SECTION 3.0242. Section 81.159(a), Health and Safety Code, is amended to read as follows:

(a) The commissioner shall designate health care facilities throughout the state that are capable of providing services for the examination, observation, isolation, or treatment of persons having or suspected of having a communicable disease. However, the commissioner may not designate:

(1) a nursing *facility* [~~home~~] or custodial care home required to be licensed under Chapter 242; or

(2) an *ICF-IID* [~~intermediate care facility for the mentally retarded~~] required to be licensed under Chapter 252.

SECTION 3.0243. Section 81.166(d), Health and Safety Code, is amended to read as follows:

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, *20*____ [~~19~~____], the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that *the proposed patient* [~~(s)he~~] presents a substantial risk of serious harm to self or others.

The proposed patient and *the proposed patient's* [~~his or her~~] attorney _____ have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on _____ (date of notice).

I have examined the affidavit of medical evaluation and _____ (other evidence considered). Based on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to *self* [~~himself or herself~~] (yes _____ or no _____) or others (yes _____ or no _____) such that *the proposed patient* [~~(s)he~~] cannot be at liberty pending final hearing because *the proposed patient* [~~(s)he~~] is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and *the proposed patient* [~~(s)he~~] has failed or refused to comply with the orders of the health authority or the [~~Texas~~] Department of *State* Health *Services* delivered on _____ (date of service) _____.

SECTION 3.0244. Section 81.178(d), Health and Safety Code, is amended to read as follows:

(d) The appropriate courts of this state retain jurisdiction to inquire at any time into the person's [~~mental~~] condition and the necessity of the person's continued commitment.

SECTION 3.0245. Sections 81.211(a) and (b), Health and Safety Code, are amended to read as follows:

(a) In the case of a person who is not a resident of this state and who may be admitted to a *public health* [~~state chest~~] hospital in accordance with Section 13.046, the attorney general, at the request of the department, shall file a copy of an order issued by a court of another state that authorizes the commitment of the person to a health care facility for inpatient care in the manner provided by Chapter 35, Civil Practice and Remedies Code, for enforcement of foreign judgments.

(b) The application must be filed with the district court in the county in which the *public health* [~~state chest~~] hospital to which the person will be admitted is located.

SECTION 3.0246. Section 81.304, Health and Safety Code, is amended to read as follows:

Sec. 81.304. MINIMUM STANDARDS. The *executive commissioner* [~~board~~] by rule shall adopt minimum standards to implement the exposure control plan and the other provisions of this subchapter. The rules shall be analogous to standards adopted by the federal Occupational Safety and Health Administration. Each governmental unit shall comply with the minimum standards adopted under this subchapter.

SECTION 3.0247. Section 81.305(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall recommend that governmental units implement needleless systems and sharps with engineered sharps injury protection for employees.

SECTION 3.0248. Sections 81.306(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall require that information concerning exposure incidents be recorded in a written or electronic sharps injury log to be maintained by a governmental unit. This information must be reported to the department and must include:

(1) the date and time of the exposure incident;

(2) the type and brand of sharp involved in the exposure incident; and

(3) a description of the exposure incident, including:

(A) the job classification or title of the exposed employee;

(B) the department or work area where the exposure incident occurred;

(C) the procedure that the exposed employee was performing at the time of the incident;

(D) how the incident occurred;

(E) the employee's body part that was involved in the exposure incident; and

(F) whether the sharp had engineered sharps injury protection and, if so, whether the protective mechanism was activated and whether the injury occurred before, during, or after the activation of the protective mechanism.

(c) All information and materials obtained or compiled by the department in connection with a report under this section are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release by the department. The department shall make available, in aggregate form, the information described in Section 81.305(b) and this section, provided that the name and other information identifying the facility is deleted and the information is provided according to public health regions established by the *executive commissioner* [~~department~~].

SECTION 3.0249. Sections 81.307(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The department, in accordance with rules adopted by the *executive commissioner*

[~~board~~], shall implement a registration program for existing needleless systems and sharps with engineered sharps injury protection.

(c) The department shall *collect* [~~charge~~] a fee to register a device in an amount established *by rule* by the *executive commissioner* [~~board~~]. The fees collected under this section may be appropriated only to the department to implement this subchapter.

SECTION 3.0250. Section 81.352(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~department~~] shall adopt rules to govern:

(1) the form and content of the sign required by Subsection (a) and the manner and place of posting of the sign; and

(2) the form and content of the written warning required by Subsection (a).

SECTION 3.0251. Sections 81.353(a) and (d), Health and Safety Code, are amended to read as follows:

(a) The department may assess an administrative penalty if a person violates this *subchapter* [~~section~~] or a rule adopted under this *subchapter* [~~section~~].

(d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the *department* [~~board~~] to contest the affidavit as provided by those rules.

SECTION 3.0252. Section 82.004, Health and Safety Code, is amended to read as follows:

Sec. 82.004. REGISTRY REQUIRED. The *department* [~~board~~] shall maintain a cancer registry for the state.

SECTION 3.0253. Section 82.005(b), Health and Safety Code, is amended to read as follows:

(b) The cancer registry must include:

(1) a record of the cases of cancer that occur in the state; and

(2) information concerning cancer cases as the *executive commissioner* [~~board~~] considers necessary and appropriate for the recognition, prevention, cure, or control of cancer.

SECTION 3.0254. Section 82.006, Health and Safety Code, is amended to read as follows:

Sec. 82.006. *EXECUTIVE COMMISSIONER AND DEPARTMENT* [~~BOARD~~] POWERS. *(a)* To implement this chapter, the *executive commissioner* [~~board~~] may [~~:~~

[~~(1)~~] adopt rules that the *executive commissioner* [~~board~~] considers necessary. [~~;~~]

(b) To implement this chapter, the department may:

(1) [~~(2)~~] execute contracts *considered* [~~that the board considers~~] necessary;

(2) [~~(3)~~] receive the data from medical records of cases of cancer that are in the custody or under the control of clinical laboratories, health care facilities, and health care practitioners to record and analyze the data directly related to those diseases;

(3) [~~(4)~~] compile and publish statistical and other studies derived from the patient data obtained under this chapter to provide, in an accessible form, information that is useful to physicians, other medical personnel, and the general public;

(4) [~~(5)~~] comply with requirements as necessary to obtain federal funds in the maximum amounts and most advantageous proportions possible;

(5) [~~(6)~~] receive and use gifts made for the purpose of this chapter; and

(6) [~~(7)~~] limit cancer reporting activities under this chapter to specified geographic areas of the state to ensure optimal use of funds available for obtaining the data.

SECTION 3.0255. Sections 82.008(a), (b), and (e), Health and Safety Code, are amended to read as follows:

(a) To ensure an accurate and continuing source of data concerning cancer, each health care facility, clinical laboratory, and health care practitioner shall furnish to the *department* [~~board or its representative~~], on request, data the *executive commissioner* [~~board~~] considers necessary and appropriate that is derived from each medical record pertaining to a case of cancer that is in the custody or under the control of the health care facility, clinical laboratory, or health care practitioner. The department may not request data that is more than three years old unless the department is investigating a possible cancer cluster.

(b) A health care facility, clinical laboratory, or health care practitioner shall furnish the data requested under Subsection (a) in a reasonable format prescribed by [~~the~~] department *rule* and within six months of the patient's admission, diagnosis, or treatment for cancer unless a different period is prescribed by the United States Department of Health and Human Services.

(e) The *executive commissioner* [~~board~~] shall adopt procedures that ensure adequate notice is given to the health care facility, clinical laboratory, or health care practitioner before the department accesses data under Subsection (d).

SECTION 3.0256. Section 82.009(b), Health and Safety Code, is amended to read as follows:

(b) Medical or epidemiological information may be released:

(1) for statistical purposes in a manner that prevents identification of individuals, health care facilities, clinical laboratories, or health care practitioners;

(2) with the consent of each person identified in the information; or

(3) to promote cancer research, including release of information to other cancer registries and appropriate state and federal agencies, under rules adopted by the *executive commissioner* [~~board~~] to ensure confidentiality as required by state and federal laws.

SECTION 3.0257. Section 82.011, Health and Safety Code, is amended to read as follows:

Sec. 82.011. EXAMINATION AND SUPERVISION NOT REQUIRED. This chapter does not require an individual to submit to any medical examination or supervision or to examination or supervision by the *department* [~~board or its representatives~~].

SECTION 3.0258. Sections 84.003(b), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(b) Blood lead levels in adults are laboratory findings that are reportable to the department as provided by *department* [~~board~~] rule.

(c) The *executive commissioner* [~~board~~] may adopt rules that require other occupational conditions to be reported under this chapter. Before the *executive commissioner* [~~board~~] requires another occupational condition to be reported, the *executive commissioner* [~~board~~] must find that the condition:

(1) has a well-understood etiology;

(2) results predominantly from occupational exposures; and

(3) is preventable.

(d) The *executive commissioner* [~~board~~] shall maintain a list of reportable conditions.

(e) The *executive commissioner* [~~board~~] shall adopt rules necessary to administer and implement this chapter.

SECTION 3.0259. Section 84.004(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~board~~] shall prescribe the form and method of reporting. The *executive commissioner* [~~board~~] may require the reports to contain any in-

formation necessary to achieve the purposes of this chapter, including the person's name, address, age, sex, race, occupation, employer, and attending physician.

SECTION 3.0260. Section 84.005(b), Health and Safety Code, is amended to read as follows:

(b) The department may seek, receive, and spend any funds received through appropriations, grants, or donations from public or private sources for the purpose of identifying, reporting, or preventing those occupational conditions that have been determined by the *executive commissioner* [~~board~~] to be injurious or to be a threat to the public health, subject to any limitations or conditions prescribed by the legislature.

SECTION 3.0261. Section 84.006(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules establishing procedures to ensure that all information and records maintained by the department under this chapter are kept confidential and protected from release to unauthorized persons.

SECTION 3.0262. Section 84.007(b), Health and Safety Code, is amended to read as follows:

(b) In performing the *department's* [~~commissioner's~~] duty to prevent an occupational condition, the *department's* [~~commissioner or the commissioner's~~] designee may enter at reasonable times and inspect within reasonable limits all or any part of an area, structure, or conveyance, regardless of ownership, that is not used for private residential purposes.

SECTION 3.0263. Sections 85.002(1), (2), and (6), Health and Safety Code, are amended to read as follows:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control *and Prevention* of the United States Public Health Service.

(2) "Communicable disease" has the meaning assigned by Section 81.003 [~~(Communicable Disease Prevention and Control Act)~~].

(6) "Testing program" means a [~~medical~~] program *using a diagnostic test approved by the United States Food and Drug Administration to indicate the presence of HIV* [~~to test for AIDS, HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS~~].

SECTION 3.0264. The heading to Subchapter A, Chapter 85, Health and Safety Code, is amended to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS AND *EDUCATIONAL MATERIALS* [~~EDUCATION PROGRAMS~~]

SECTION 3.0265. Sections 85.004 and 85.005, Health and Safety Code, are amended to read as follows:

Sec. 85.004. *EDUCATIONAL MATERIALS* [~~EDUCATION PROGRAMS~~]. (a) The department shall develop model *educational materials* [~~education programs~~] to be available *on the department's Internet website* to educate the public about AIDS and HIV infection.

(b) *The* [~~As part of the programs, the department shall develop a model~~] educational *materials must:*

(1) include information [~~pamphlet~~] about methods of transmission and prevention of HIV infection, [~~about~~] state laws relating to the transmission, and [~~to~~] conduct that may result in the transmission of HIV*; and* [~~.~~]

(2) [~~(c) The programs must~~] be scientifically accurate and factually correct and designed to:

(A) [~~(1)~~] communicate to the public knowledge about methods of transmission and prevention of HIV infection; *and*

(B) [~~(2)~~] educate the public about transmission risks in social, employment, and educational situations[~~;~~

[~~(3) educate health care workers and health facility employees about methods of transmission and prevention in their particular workplace environments; and~~

[~~(4) educate the public about state laws relating to the transmission and conduct that may result in the transmission of HIV~~].

Sec. 85.005. *EDUCATIONAL MATERIALS DESIGNED FOR CERTAIN PERSONS; SPECIFIC INFORMATION* [~~SPECIAL COMPONENTS OF EDUCATION PROGRAMS~~]. (a) The department shall include in the *educational materials specific information* [~~education programs special components~~] designed to reach:

(1) persons with behavior conducive to HIV transmission;

(2) persons younger than 18 years of age; and

(3) minority groups.

(b) In *developing educational materials* [~~designing education programs~~] for ethnic minorities and in assisting local community organizations in developing *educational materials* [~~education programs~~] for minority groups, the department shall ensure that the *educational materials* [~~programs~~] reflect the nature and spread of HIV infection in minorities in this state.

SECTION 3.0266. The heading to Section 85.006, Health and Safety Code, is amended to read as follows:

Sec. 85.006. *EDUCATIONAL MATERIALS* [~~EDUCATION PROGRAMS~~] FOR [~~DISABLED~~] PERSONS *WITH DISABILITIES*.

SECTION 3.0267. Sections 85.006(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The department shall develop and promote *the availability of educational materials concerning* HIV [~~education~~] and prevention *of HIV infection* [~~programs~~] specifically designed to address the concerns of persons with physical or mental disabilities.

(b) In *developing* [~~designing~~] those *educational materials* [~~programs~~], the department shall consult persons with disabilities or consult experts in the appropriate professional disciplines.

SECTION 3.0268. The heading to Section 85.007, Health and Safety Code, is amended to read as follows:

Sec. 85.007. *EDUCATIONAL MATERIALS* [~~EDUCATION PROGRAMS~~] FOR MINORS.

SECTION 3.0269. Sections 85.007(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The department shall give priority to developing model *educational materials for* education programs for persons younger than 18 years of age.

(c) In addition, the *educational* materials [~~in the education program~~] intended for persons younger than 18 years of age must:

(1) teach that sexual activity before marriage is likely to have harmful psychological and physical consequences;

(2) teach adolescents ways to recognize and respond to unwanted physical and verbal sexual advances;

(3) teach that the use of alcohol or drugs increases a person's vulnerability to unwanted sexual advances; and

(4) emphasize the importance of attaining self-sufficiency before engaging in sexual activity.

SECTION 3.0270. Sections 85.008, 85.009, 85.010, and 85.011, Health and Safety Code, are amended to read as follows:

Sec. 85.008. *PROMOTION* [~~DISTRIBUTION~~] OF *AVAILABILITY OF EDUCATIONAL MATERIALS* [~~EDUCATION PROGRAMS~~]. [~~(a)~~] The department shall

determine where HIV education efforts are needed in this state and shall *promote the availability of educational materials on the department's Internet website* [~~initiate programs~~] in those areas [~~by identifying local resources~~].

[~~(b) The department shall assist communities, especially those in rural areas, in establishing self-sustaining education programs, using public and private resources.~~]

Sec. 85.009. *AVAILABILITY OF EDUCATIONAL MATERIALS* [~~EDUCATION PROGRAMS AVAILABLE ON REQUEST~~]. The department shall make *the educational materials* [~~the education programs~~] available *on the department's Internet website for* [~~to~~] local governments and private businesses [~~on request~~].

Sec. 85.010. EDUCATIONAL COURSE FOR EMPLOYEES AND CLIENTS OF HEALTH CARE FACILITIES. A health care facility licensed by the department *or* [~~,~~] the [~~Texas~~] Department of *Aging and Disability Services* [~~Mental Health and Mental Retardation, or the Texas Department of Human Services~~] shall require its employees to complete an educational course about HIV infection based on the model *educational materials* [~~education programs~~] developed by the department.

Sec. 85.011. CONTRACTS FOR *EDUCATIONAL MATERIALS* [~~EDUCATION PROGRAMS~~]. (a) The department may contract with any person, other than a person who advocates or promotes conduct that violates state law, for the design *and*[~~,~~] development[~~, and distribution~~] of *educational materials* [~~education programs~~].

(b) This section does not restrict *the inclusion in educational materials of* [~~an education program from providing~~] accurate information about different ways to reduce the risk of exposure to or the transmission of HIV.

SECTION 3.0271. Sections 85.012(b) and (e), Health and Safety Code, are amended to read as follows:

(b) The model workplace guidelines must include provisions stating that:

(1) all employees will receive some education about methods of transmission and prevention of HIV infection and related conditions;

(2) accommodations will be made to keep persons with HIV infection employed and productive for as long as possible;

(3) the confidentiality of employee medical records will be protected;

(4) HIV-related policies will be consistent with current information from public health authorities, such as the Centers for Disease Control *and Prevention* of the United States Public Health Service, and with state and federal law and regulations;

(5) persons with HIV infection are entitled to the same rights and opportunities as persons with other communicable diseases; and

(6) employers and employees should not engage in discrimination against persons with HIV infection unless based on accurate scientific information.

(e) Employers should be encouraged to adopt HIV-related workplace guidelines that incorporate, at a minimum, the guidelines established by the *department* [~~board~~] under this section.

SECTION 3.0272. Section 85.015(b), Health and Safety Code, is amended to read as follows:

(b) Subsection (a)(2) does not restrict *the inclusion in educational materials of* [~~an education program from providing~~] accurate information about ways to reduce the risk of exposure to or transmission of HIV.

SECTION 3.0273. Section 85.016, Health and Safety Code, is amended to read as follows:

Sec. 85.016. RULES. The *executive commissioner* [~~board~~] may adopt rules necessary to implement Subchapters A through F.

SECTION 3.0274. Sections 85.032 and 85.033, Health and Safety Code, are amended to read as follows:

Sec. 85.032. RULES; PROGRAM STRUCTURE. (a) The *executive commissioner* [~~board~~] may adopt rules relating to:

(1) the services that may be furnished under the program;

(2) a system of priorities regarding the types of services provided, geographic areas covered, or classes of individuals or communities targeted for services under the program; and

(3) a process for resolving conflicts between the department and a program receiving money under this subchapter.

(b) *Executive commissioner* [~~Board~~] or department actions relating to service, geographic, and other priorities shall be based on the set of priorities and guidelines established under this section.

(c) In structuring the program and adopting rules, the department and the *executive commissioner, as appropriate,* [~~board~~] shall attempt to:

(1) coordinate the use of federal, local, and private funds;

(2) encourage the provision of community-based services;

(3) address needs that are not met by other sources of funding;

(4) provide funding as extensively as possible across the regions of the state in amounts that reflect regional needs; and

(5) encourage cooperation among local service providers.

Sec. 85.033. COORDINATION OF SERVICES. (a) To prevent unnecessary duplication of services, the *executive commissioner* [~~board~~] and the department shall seek to coordinate the services provided by eligible programs under Subchapters A through G with existing federal, state, and local programs.

(b) The department shall consult with the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services *and the commission* to ensure that programs funded under this subchapter complement and do not unnecessarily duplicate services provided through the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services *and the commission.*

SECTION 3.0275. Section 85.041(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] may adopt rules relating to the information a program is required to report to the department and shall adopt procedures and forms for reporting the information to prevent unnecessary and duplicative reporting of data.

SECTION 3.0276. Section 85.044, Health and Safety Code, is amended to read as follows:

Sec. 85.044. ADVISORY COMMITTEE. The *executive commissioner* [~~board~~] may appoint an advisory committee to assist in the development of procedures and guidelines required by this subchapter.

SECTION 3.0277. Section 85.061(b), Health and Safety Code, is amended to read as follows:

(b) The program shall assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the *commissioner* [~~board~~] that have been shown to be effective in reducing hospitalizations due to HIV-related conditions.

SECTION 3.0278. Section 85.062(a), Health and Safety Code, is amended to read as follows:

(a) To be eligible for the program, an individual:

(1) must not be eligible for Medicaid benefits;

(2) must meet financial eligibility criteria set by *department* [~~board~~] rule;

(3) must not qualify for any other state or federal program available for financing the purchase of the prescribed medication; and

(4) must be diagnosed by a licensed physician as having AIDS or an HIV-related condition or illness of at least the minimal severity set by the *executive commissioner* [~~board~~].

SECTION 3.0279. Section 85.063, Health and Safety Code, is amended to read as follows:

Sec. 85.063. PROCEDURES AND ELIGIBILITY GUIDELINES. The *executive commissioner* [~~board~~] by rule shall establish:

(1) application and distribution procedures;

(2) eligibility guidelines to ensure the most appropriate distribution of funds available each year; and

(3) appellate procedures to resolve any eligibility or funding conflicts.

SECTION 3.0280. Section 85.064(d), Health and Safety Code, is amended to read as follows:

(d) The department shall deposit money received under this section in the state treasury to the credit of the *general revenue fund* [~~HIV medication fund and to the credit of a special account in that fund that shall be established for each entity sending funds under this section~~].

SECTION 3.0281. Section 85.081(a), Health and Safety Code, is amended to read as follows:

(a) The department shall develop, *and the executive commissioner shall adopt,* model protocols for counseling and testing related to HIV infection. The protocols shall be made available to health care providers on request.

SECTION 3.0282. Section 85.087(d), Health and Safety Code, is amended to read as follows:

(d) The *executive commissioner by rule* [~~board~~] shall set the fee in an amount that is reasonable and necessary to cover the costs of providing the course.

SECTION 3.0283. Section 85.088(a), Health and Safety Code, is amended to read as follows:

(a) State-funded primary health, women's reproductive health, and sexually transmitted disease clinics shall:

(1) make available to patients and clients information and educational materials concerning the prevention of HIV infection; and

(2) provide *or refer patients and clients to* voluntary[~~, anonymous,~~] and affordable counseling and *HIV* testing *services, including the patient's or client's choice of anonymous or confidential HIV testing or counseling* [~~programs concerning HIV infection or provide referrals to those programs~~].

SECTION 3.0284. Sections 85.111(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) Each state agency annually shall provide to each state employee [~~an~~] educational *information* [~~pamphlet~~] about:

(1) methods of transmission and prevention of HIV infection;

(2) state laws relating to the transmission of HIV infection; and

(3) conduct that may result in the transmission of HIV infection.

(b) The educational *information* [~~pamphlet~~] shall be provided to a newly hired state employee on the first day of employment.

(c) The educational *information* [~~pamphlet~~] shall be based on the model developed by the department and shall include the workplace guidelines adopted by the state agency.

SECTION 3.0285. Section 85.113, Health and Safety Code, is amended to read as follows:

Sec. 85.113. WORKPLACE GUIDELINES FOR STATE CONTRACTORS. An entity

that contracts with or is funded by any of the following state agencies to operate a program involving direct client contact shall adopt and implement workplace guidelines similar to the guidelines adopted by the agency that funds or contracts with the entity:

(1) the *Department of Assistive and Rehabilitative Services* [~~Texas Commission on Alcohol and Drug Abuse~~;

[~~(2) the Texas Commission for the Blind;~~

[~~(3) the Texas Commission for the Deaf and Hard of Hearing~~];

(2) [~~(4)~~] the Texas Juvenile *Justice Department* [~~Probation Commission~~];

(3) [~~(5)~~] the Texas Department of Criminal Justice;

(4) [~~(6) the Texas Youth Commission;~~

[~~(7)~~] the department;

(5) [~~(8)~~] the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services; *and*

(6) [~~(9)~~] the *commission* [~~Texas Department of Mental Health and Mental Retardation; and~~

[~~(10) the Texas Rehabilitation Commission~~].

SECTION 3.0286. Section 85.114(b), Health and Safety Code, is amended to read as follows:

(b) Education available under this section shall be based on the model *educational materials* [~~education program~~] developed by the department and tailored to the cultural, educational, language, and developmental needs of the clients, inmates, patients, or residents, including the use of Braille or telecommunication devices for the deaf.

SECTION 3.0287. Sections 85.116(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall prescribe the criteria that constitute possible exposure to HIV under this section. The criteria must be based on activities the United States Public Health Service determines pose a risk of HIV infection.

(d) The cost of a state employee's testing and counseling shall be paid from funds appropriated for payment of workers' compensation benefits to state employees. The *State Office of Risk Management* [~~director of the workers' compensation division of the attorney general's office~~] shall adopt rules necessary to administer this subsection.

SECTION 3.0288. Section 85.201(a), Health and Safety Code, is amended to read as follows:

(a) The legislature finds that:

(1) the Centers for Disease Control *and Prevention* of the United States Public Health Service have made recommendations for preventing transmission of human immunodeficiency virus (HIV) and hepatitis B virus (HBV) to patients in the health care setting;

(2) the Centers for Disease Control *and Prevention* of the United States Public Health Service have found that when health care workers adhere to recommended infection-control procedures, the risk of transmitting HBV from an infected health care worker to a patient is small, and the risk of transmitting HIV is likely to be even smaller;

(3) the risk of transmission of HIV and HBV in health care settings will be minimized if health care workers adhere to the Centers for Disease Control *and Prevention* of the United States Public Health Service recommendations; and

(4) health care workers who perform exposure-prone procedures should know their HIV antibody status; health care workers who perform exposure-prone procedures and who do not have serologic evidence of immunity to HBV from vaccination or from previous infection should know their HBsAg status and, if that is positive, should also know their HBeAg status.

SECTION 3.0289. Section 85.202(4), Health and Safety Code, is amended to read as follows:

(4) "Universal precautions" means procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control *and Prevention* of the United States Public Health Service.

SECTION 3.0290. Sections 85.257(c) and (d), Health and Safety Code, are amended to read as follows:

(c) Counseling provided by a service provider, including written information provided under Subsection (a) and referrals, must conform with counseling protocols adopted by the *executive commissioner* [~~board~~]. Except as provided by Section 85.256, the counseling protocols must be consistent with the requirements of Section 81.109 and the protocols adopted under Section 85.081.

(d) Counseling provided by a service provider under this section must be provided in English and in Spanish. The *department* [~~board~~] may require a service provider to provide counseling in another language if the *department* [~~board~~] finds that the service provider is marketing home collection kits in a community in which a significant portion of the population speaks a language other than English or Spanish.

SECTION 3.0291. Section 85.258(c), Health and Safety Code, is amended to read as follows:

(c) In addition to the labeling requirements in Subsections (a) and (b), a home collection kit labeled in Spanish must also be available. The *department* [~~board~~] may require a service provider to label a home collection kit in another language if the *department* [~~board~~] finds that the service provider is marketing home collection kits in a community in which a significant portion of the population speaks a language other than English or Spanish.

SECTION 3.0292. Section 85.275(f), Health and Safety Code, is amended to read as follows:

(f) The assistant presiding officer shall:

(1) perform the duties of the presiding officer if the presiding officer is absent or *is not able to perform those duties because of disability* [~~becomes disabled~~]; and

(2) complete the unexpired portion of the presiding officer's term if the office of the presiding officer becomes vacant.

SECTION 3.0293. Section 87.001(7), Health and Safety Code, is amended to read as follows:

(7) "Health facility" includes:

(A) a general or special hospital licensed by the department under Chapter 241;

(B) a physician-owned or physician-operated clinic;

(C) a publicly or privately funded medical school;

(D) a state hospital *operated by the department* or *a* state *supported living center operated* [~~school maintained and managed~~] by the [~~Texas~~] Department of *Aging and Disability Services* [~~Mental Health and Mental Retardation~~];

(E) a genetic evaluation and counseling center;

(F) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Chapter 121;

(G) a physician peer review organization; and

(H) another facility specified by *department* [~~board~~] rule.

SECTION 3.0294. Sections 87.002(c) and (d), Health and Safety Code, are amended to read as follows:

(c) The department may release medical, epidemiological, or toxicological information:

(1) for statistical purposes, if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information or, if the person is a minor, the minor's parents, managing conservator, guardian, or other person who is legally authorized to consent;

(3) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this chapter and *department* [~~board~~] rules relating to the identification, monitoring, and referral of children with birth defects;

(4) to appropriate federal agencies, such as the Centers for Disease Control *and Prevention* of the United States Public Health Service; or

(5) to medical personnel to the extent necessary to protect the health or life of the child identified in the information.

(d) *The executive commissioner* [~~A board member~~], the commissioner, another employee of the department, or an authorized agent may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of or reports or information about a child identified or monitored for a birth defect by the department without the consent of the child's parents, managing conservator, guardian, or other person authorized by law of this state or another state or by a court order to give consent.

SECTION 3.0295. Section 87.021, Health and Safety Code, is amended to read as follows:

Sec. 87.021. SURVEILLANCE PROGRAM; REGISTRY ESTABLISHED. (a) The *executive commissioner* [~~board~~] shall establish in the department a program to:

(1) identify and investigate certain birth defects in children; and

(2) maintain a central registry of cases of birth defects.

(b) The *executive commissioner* [~~board~~] may authorize the department to implement a statewide program or to limit the program to a part or all of one or more public health regions, depending on the funding available to the department. In establishing the program, the *executive commissioner* [~~board~~] shall consider:

(1) the number and geographic distribution of births in the state;

(2) the trained personnel and other departmental resources that may be assigned to the program activities; and

(3) the occurrence or probable occurrence of an urgent situation that requires or will require an unusual commitment of the department's personnel and other resources.

(c) The [~~board and the~~] department shall design the program so that the program will:

(1) provide information to identify risk factors and causes of birth defects;

(2) provide information on other possible causes of birth defects;

(3) provide for the development of strategies to prevent birth defects;

(4) provide for interview studies about the causes of birth defects;

(5) together with other departmental programs, contribute birth defects data to a central registry;

(6) provide for the appointment of authorized agents to collect birth defects information; and

(7) provide for the active collection of birth defects information.

(d) The *executive commissioner* [~~board~~] shall adopt rules to govern the operation of the program and carry out the intent of this chapter. At a minimum, the rules shall:

(1) use a medically recognized system to specify the birth defects to be identified and investigated;

(2) select a system for classifying the birth defects according to the public health significance of each defect to prioritize the use of resources;

(3) develop a system to select and specify the cases to be investigated;

(4) specify a system for selecting the demographic areas in which the department may undertake investigations; and

(5) prescribe the training and experience a person must have for appointment as an authorized agent of the department.

(e) In adopting the rules required by Subsection (d), the *executive commissioner* [~~board~~] shall consider at least:

(1) the known incidence and prevalence rates of a birth defect in the state or portions of the state;

(2) the known incidence and prevalence rates of a particular birth defect in specific population groups who live in the state or portions of the state;

(3) the morbidity and mortality resulting from the birth defect; and

(4) the existence, cost, and availability of a strategy to prevent and treat the birth defect.

(f) In addition to providing for the active collection of birth defects information under Subsection (c)(7), the [~~board and the~~] department may design the program to also provide for the passive collection of that information.

SECTION 3.0296. Section 87.022, Health and Safety Code, is amended to read as follows:

Sec. 87.022. DATA COLLECTION. (a) To ensure an accurate source of data necessary to investigate the incidence, prevalence, and trends of birth defects, the *executive commissioner* [~~board~~] may require a health facility, health professional, or midwife to make available for review by the department or by an authorized agent medical records or other information that is in the facility's, professional's, or midwife's custody or control and that relates to the occurrence of a birth defect specified by the *executive commissioner* [~~board~~].

(b) The *executive commissioner* [~~board~~] by rule shall prescribe the manner in which records and other information are made available to the department.

(c) The *executive commissioner* [~~board~~] shall adopt procedural rules to facilitate cooperation between the health care facility, health professional, or midwife and a department employee or authorized agent, including rules for notice, requests for medical records, times for record reviews, and record management during review.

SECTION 3.0297. Section 87.023, Health and Safety Code, is amended to read as follows:

Sec. 87.023. REFERRAL FOR SERVICES. A child who meets the medical criteria prescribed by *department* [~~board~~] rule, and the child's family, shall be referred to the department's case management program for guidance in applying for financial or medical assistance available through existing state and federal programs.

SECTION 3.0298. Sections 87.061(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The department shall use the registry to:

(1) investigate the causes of birth defects and other health conditions as authorized by Texas statutes;

(2) design and evaluate measures to prevent the occurrence of birth defects and other health conditions; and

(3) conduct other investigations and activities necessary for the *executive commissioner* [~~board~~] and department to fulfill their obligation to protect the health of the public.

(c) The department may store in the central registry information that is obtained from the section of the birth certificate entitled "For Medical and Health Use Only." This information may be used only as provided by Section *192.002(b),* [~~191.002(b),~~] relating to the form and contents of the birth certificate.

SECTION 3.0299. Section 87.063(a), Health and Safety Code, is amended to read as follows:

(a) The commissioner and the department's committee for the protection of human subjects shall review each research proposal that requests the use of information in the central registry. The *executive commissioner* [~~board~~] shall adopt rules establishing criteria to be used in deciding if the research design should be approved. A proposal that meets the approval criteria is considered to establish a valid interest as required by Section 87.062(a), and the commissioner and the committee shall authorize the researcher to review the records relevant to the research proposal and to contact cases and controls.

SECTION 3.0300. Sections 88.001(6), (7), (9), and (11), Health and Safety Code, are amended to read as follows:

(6) *"Reference level"* [~~"Blood lead levels of concern"~~] means the presence of blood lead concentrations suspected to be associated with mental and physical disorders due to absorption, ingestion, or inhalation of lead as specified in the most recent *reference value* [~~criteria~~] issued by the [~~United States Department of Health and Human Services, United States Public Health Service,~~] Centers for Disease Control and Prevention of the United States Public Health Service.

(7) "Lead poisoning" means the presence of a confirmed venous blood level established by *department* [~~board~~] rule in the range specified for medical evaluation and possible pharmacologic treatment in the most recent criteria issued by the [~~United States Department of Health and Human Services, United States Public Health Service,~~] Centers for Disease Control and Prevention of the United States Public Health Service.

(9) "Physician" means a person licensed to practice medicine by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~].

(11) "Regional director" means a physician appointed *under Section 121.007* [~~by the board~~] as the chief administrative officer of a public health region *as designated* under Chapter 121.

SECTION 3.0301. Sections 88.002(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) Except as specifically authorized by this chapter, reports, records, and information furnished to a health authority, a regional director, or the department that relate to cases or suspected cases of children with *reportable* blood lead levels [~~of concern or lead poisoning~~] are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of childhood lead poisoning and children with *reportable* blood lead levels [~~of concern~~] are not public information under the open records law, Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(d) The commissioner, a regional director or other department employee, a health authority or employee of a public health district, a health authority or employee of a county or municipal health department, or a public official of a county or municipality may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of or reports or information about a child identified, examined, or treated for lead poisoning or about a child possessing *reportable* blood lead levels [~~of concern~~] by the department, a public health district, a local health department, or a health authority without the consent of the child's parents, managing conservator, guardian, or other person authorized by law to give consent.

SECTION 3.0302. Section 88.0025, Health and Safety Code, is amended to read as follows:

Sec. 88.0025. CHILDHOOD LEAD POISONING PREVENTION. The *executive commissioner may adopt* [~~board may implement~~] policies and procedures to promote the elimination of childhood lead poisoning within the state, *and the department shall implement all adopted policies and procedures*. The *executive commissioner* [~~board~~] may adopt measures to:

(1) significantly reduce the incidence of childhood lead poisoning throughout the state;

(2) improve public awareness of lead safety issues and educate both property owners and tenants about practices that can reduce the incidence of lead poisoning; and

(3) encourage the testing of children likely to suffer the consequences of lead poisoning so that prompt diagnosis and treatment and the prevention of harm are possible.

SECTION 3.0303. Section 88.003, Health and Safety Code, is amended to read as follows:

Sec. 88.003. REPORTABLE HEALTH CONDITION. (a) Childhood blood lead levels *that exceed the reference level* [~~of concern~~] are reportable.

(b) The *executive commissioner* [~~board~~] by rule may designate:

(1) blood lead concentrations in children that must be reported; and

(2) the ages of children for whom the reporting requirements apply.

(c) The *executive commissioner* [~~board~~] may adopt rules that establish a registry of children with blood lead levels *that exceed the reference level* [~~of concern~~] and lead poisoning.

SECTION 3.0304. Section 88.004, Health and Safety Code, is amended to read as follows:

Sec. 88.004. PERSONS REQUIRED TO REPORT. (a) A person required to report childhood blood lead levels [~~of concern~~] shall report to the department in the manner specified by *department* [~~board~~] rule. Except as provided by this section, a person required by this section to report must make the report immediately after the person gains knowledge of [~~the case or suspected case of~~] a child with a *reportable* blood lead level [~~of concern~~].

(b) A physician shall report a case or suspected case of childhood lead poisoning or of a child with a *reportable* blood lead level [~~of concern~~] after the physician's first examination of a child for whom reporting is required by *this chapter or department* [~~board~~] rule.

(c) A person in charge of an independent clinical laboratory, a hospital or clinic laboratory, or other facility in which a laboratory examination of a specimen derived from the human body yields evidence of a child with a *reportable* blood lead level [~~of concern~~] shall report the findings to the department as required by *department* [~~board~~] rule.

(d) If a report is not made as required by Subsection (b) or (c), the following persons shall report [~~a case or suspected case of a child with lead poisoning or~~] a *child's reportable* blood lead level [~~of concern~~] and all information known concerning the child:

(1) the administrator of a hospital licensed under Chapter 241;

(2) a [~~professional~~] registered nurse;

(3) an administrator or director of a public or private child care facility;

(4) an administrator of a home *and community support services* [~~health~~] agency;

(5) an administrator or health official of a public or private institution of higher education;

(6) a superintendent, manager, or health official of a public or private camp, home, or institution;

(7) a parent, managing conservator, or guardian; and

(8) a health professional.

SECTION 3.0305. Sections 88.005(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall prescribe the form and method of reporting under this chapter, including a report in writing, by telephone, or by electronic data transmission.

(b) *The executive commissioner by rule* [~~Board rules~~] may require the reports to contain

any information relating to a case that is necessary for the purposes of this chapter, including:

(1) the child's name, address, age, sex, and race;

(2) the child's blood lead concentration;

(3) the procedure used to determine the child's blood lead concentration; and

(4) the name of the attending physician.

SECTION 3.0306. Section 88.006(a), Health and Safety Code, is amended to read as follows:

(a) A physician who attends a child during the child's hospitalization shall immediately notify the department if the physician knows or suspects that the child has lead poisoning or a blood lead level *that exceeds the reference level* [~~of concern~~] and the physician believes the lead poisoning or blood lead level [~~of concern~~] resulted from the child's exposure to a dangerous level of lead that may be a threat to the public health.

SECTION 3.0307. Section 88.007, Health and Safety Code, is amended to read as follows:

Sec. 88.007. DEPARTMENT RULES FOR FOLLOW-UP CARE; COORDINATION OF CARE. (a) The *executive commissioner* [~~department~~] may adopt rules establishing standards for follow-up care provided to children with a confirmed blood lead level *that exceeds the reference level* [~~of concern~~].

(b) Rules adopted under this section must meet any federal requirements for coordinated follow-up care for children with confirmed blood lead levels *that exceed the reference level* [~~of concern~~] and may include, in a manner consistent with current federal guidelines:

(1) an environmental lead investigation of all or parts of a child's home environment, child-care facility, or child-occupied facility that may be a source of a lead hazard causing or contributing to the child's lead exposure; and

(2) guidance to parents, guardians, and consulting physicians on how to eliminate or control lead exposures that may be contributing to the child's blood lead level.

SECTION 3.0308. Section 88.009, Health and Safety Code, is amended to read as follows:

Sec. 88.009. ENVIRONMENTAL LEAD INVESTIGATION PROCEDURES. The *executive commissioner* [~~department~~] may adopt rules establishing procedures for environmental lead investigations of dwellings and other premises subject to this chapter. The rules must meet, but may not exceed, any requirements established under regulations adopted by the federal Environmental Protection Agency under Subchapter IV, Toxic Substances Control Act (15 U.S.C. Section 2681 et seq.).

SECTION 3.0309. Section 89.001(5), Health and Safety Code, is amended to read as follows:

(5) "Jail" means:

(A) a county jail; or

(B) a facility for the confinement of persons accused of an offense that is:

(i) operated by a municipality or a vendor under contract with a municipality under Subchapter *F* [~~E~~], Chapter 351, Local Government Code; or

(ii) operated by a vendor under contract with a community supervision and corrections department under Chapter 76, Government Code.

SECTION 3.0310. Section 89.011(a), Health and Safety Code, is amended to read as follows:

(a) The governing body of a jail or community corrections facility, through the community supervision and corrections department, shall require that each employee or volunteer working or providing services in a jail or a community corrections facility, who meets the screening guidelines prescribed by *department* [~~board~~] rule, present to the governing body a certificate signed by a physician that states that:

(1) the employee or volunteer has been tested for tuberculosis infection in accordance with *department* [~~board~~] rules; and

(2) the results of the test indicate that the person does not have tuberculosis.

SECTION 3.0311. Section 89.051(a), Health and Safety Code, is amended to read as follows:

(a) Each inmate in a jail or community corrections facility shall undergo a screening test for tuberculosis infection approved by the *executive commissioner* [~~board~~] if:

(1) the inmate will probably be confined in jail or a community corrections facility for more than seven days; and

(2) the inmate meets the screening guidelines prescribed by *department* [~~board~~] rules.

SECTION 3.0312. Section 89.073, Health and Safety Code, is amended to read as follows:

Sec. 89.073. ADOPTION OF LOCAL STANDARDS. (a) The standards prescribed by this chapter and the rules adopted by the *executive commissioner* [~~board~~] relating to screening tests or examinations for tuberculosis required for certain employees and volunteers are minimum standards.

(b) With the prior approval of the department:

(1) a governing body may adopt and enforce standards for carrying out this chapter if the standards are compatible with and equal to or more stringent than the standards prescribed by this chapter and *department* [~~the board's~~] rules; and

(2) a private facility may adopt and enforce standards for carrying out this chapter if the standards are compatible with and equal to or more stringent than the standards prescribed by this chapter and *department* [~~the board's~~] rules.

(c) The *executive commissioner* [~~board~~] shall adopt substantive and procedural rules to govern the submission of standards adopted under Subsection (b). At a minimum these rules must contain:

(1) a procedure for the submission of standards for departmental review; and

(2) an internal departmental appeal process by which a governing body or private entity may seek a review of the department's decision to reject proposed standards.

SECTION 3.0313. Section 89.101(1), Health and Safety Code, is amended to read as follows:

(1) "Corrections facility" means:

(A) a jail or community corrections facility, without regard to whether the jail or facility satisfies the requirements of Section 89.002;

(B) any correctional facility operated by or under contract with a division of the Texas Department of Criminal Justice; or

(C) a detention facility operated by the Texas *Juvenile Justice Department* [~~Youth Commission~~].

SECTION 3.0314. Section 92.002, Health and Safety Code, is amended to read as follows:

Sec. 92.002. REPORTABLE INJURY; RULES. (a) Spinal cord injuries, traumatic brain injuries, and submersion injuries are reportable to the department. The *executive commissioner* [~~board~~] by rule shall define those terms for reporting purposes.

(b) The *executive commissioner* [~~board~~] may adopt rules that require other injuries to be reported under this subchapter.

(c) The *executive commissioner* [~~board~~] shall maintain and revise, as necessary, the list of reportable injuries.

(d) The *executive commissioner* [~~board~~] shall adopt rules necessary to administer this subchapter.

SECTION 3.0315. Section 92.003(c), Health and Safety Code, is amended to read as follows:

(c) The *department* [~~board~~] shall prescribe the form and method of reporting. The *department* [~~board~~] may require the reports to contain any information, including the person's name, address, age, sex, race, occupation, employer, and attending physician, necessary to achieve the purposes of this subchapter.

SECTION 3.0316. Section 92.004(b), Health and Safety Code, is amended to read as follows:

(b) The department may seek, receive, and spend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purpose of identifying, reporting, or preventing those injuries [~~that have been~~] determined by the *executive commissioner* [~~board~~] to be harmful or to be a threat to the public health.

SECTION 3.0317. Sections 92.006(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules establishing procedures to ensure that all information and records maintained by the department under this subchapter are kept confidential and protected from release to unauthorized persons.

(c) The *commissioner* [~~director~~], the *commissioner's* [~~director's~~] designee, *the executive commissioner,* or an employee of the department *or commission* may not be examined in a judicial or other proceeding about the existence or contents of pertinent records of, investigation reports of, or reports or information about a person examined or treated for an injury without that person's consent.

SECTION 3.0318. Sections 92.007(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *department* [~~director or the director's designee~~] may enter at reasonable times and inspect within reasonable limits a public place or building, including a public conveyance, in the *department's* [~~director's~~] duty to prevent an injury.

(c) The *department* [~~director or the director's designee~~] may not enter a private residence to conduct an investigation about the causes of injuries without first receiving permission from a lawful adult occupant of the residence.

SECTION 3.0319. Section 92.010, Health and Safety Code, is amended to read as follows:

Sec. 92.010. COORDINATION WITH *DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES* [~~TEXAS REHABILITATION COMMISSION~~]. The department and the *Department of Assistive and Rehabilitative Services* [~~Texas Rehabilitation Commission~~] shall enter into a memorandum of understanding to:

(1) exchange relevant injury data on an ongoing basis notwithstanding Section 92.006;

(2) maintain the confidentiality of injury data provided to the department by the *Department of Assistive and Rehabilitative Services* [~~commission~~] in accordance with Section 92.006 and Section 111.057, Human Resources Code; and

(3) cooperate in conducting investigations of spinal cord and traumatic brain injuries.

SECTION 3.0320. Section 92.011(a), Health and Safety Code, is amended to read as follows:

(a) The department and the Texas Traumatic Brain Injury Advisory Council established [~~within the department~~] under Subchapter B shall:

(1) exchange relevant injury data on an ongoing basis to the extent allowed by Section 92.006;

(2) maintain the confidentiality of injury data provided to the council by the department in accordance with Section 92.006;

(3) permit the council to review and comment on the *department's* [~~board's~~] rules under Section 92.002(b) before the rules are proposed; and

(4) cooperate in conducting investigations of traumatic brain injuries.

SECTION 3.0321. Section 92.052, Health and Safety Code, is amended to read as follows:

Sec. 92.052. ADVISORY COUNCIL[~~; ASSOCIATED AGENCY~~]. [~~(a)~~] The Texas Traumatic Brain Injury Advisory Council is an advisory council within the *commission* [~~department~~].

[~~(b) Notwithstanding Subsection (a), if, as a result of legislation enacted in the 78th Legislature, Regular Session, 2003, a state agency other than the department is designated to serve as the agency with primary responsibility in relation to persons with physical disabilities, the council is an advisory council within that state agency and a reference in this chapter to the department means that agency.~~]

SECTION 3.0322. Section 92.053(b), Health and Safety Code, is amended to read as follows:

(b) The council is composed of *21* [~~22~~] members appointed as follows:

(1) eight public consumer members appointed by the *executive* commissioner [~~of health and human services~~], at least three of whom must be individuals related to persons with a traumatic brain injury and at least three of whom must be persons with a brain injury;

(2) six professional members appointed by the *executive* commissioner [~~of health and human services~~], each of whom must have special training and interest in the care, treatment, or rehabilitation of persons with a traumatic brain injury, with one representative each from:

(A) acute hospital trauma units;

(B) the National Institute *on* [~~for~~] Disability *and* Rehabilitation Research Traumatic Brain Injury Model System in this state;

(C) acute or post-acute rehabilitation facilities;

(D) community-based services;

(E) faculties of institutions of higher education; and

(F) providers in the areas of physical therapy, occupational therapy, or cognitive rehabilitation; and

(3) *seven* [~~eight~~] state agency members, with one representative from each of the following agencies appointed by the chief executive officer of the agency:

(A) [~~Texas~~] Department of *State* Health *Services*;

(B) [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services;

(C) *Department of Assistive and Rehabilitative Services* [~~Texas Department of Mental Health and Mental Retardation;~~

[~~(D) Texas Rehabilitation Commission~~];

(D) [~~(E)~~] Health and Human Services Commission;

(E) [~~(F)~~] Texas Education Agency;

(F) [~~(G)~~] Texas [~~Planning~~] Council for Developmental Disabilities; and

(G) [~~(H)~~] Texas Department of Insurance.

SECTION 3.0323. Section 92.057, Health and Safety Code, is amended by amending Subsections (b) and (c) and adding Subsection (b–1) to read as follows:

(b) *Except as provided by Subsection (b–1), a* [~~A~~] member who is a representative of a state agency shall be reimbursed for travel expenses incurred while conducting council business from the funds of the agency the person represents in accordance with the General Appropriations Act.

(b–1) A member who is a representative of a health and human services agency listed by Section 531.001(4), Government Code, shall be reimbursed for travel expenses incurred while conducting council business from the funds of the commission in accordance with the General Appropriations Act.

(c) If money is available for this purpose in the account established under Section 92.062(b), the *commission* [~~department~~] shall reimburse a public consumer member for the member's actual and necessary expenses incurred in performing council duties, including travel, meals, lodging, respite care for a dependent with a disability, and telephone long-distance charges.

SECTION 3.0324. Section 92.060, Health and Safety Code, is amended to read as follows:

Sec. 92.060. *COMMISSION* DUTIES [~~OF THE DEPARTMENT~~]. (a) The *commission* [~~department~~] shall:

(1) provide administrative support services to the council;

(2) accept gifts and grants on behalf of the council from any public or private entity;

(3) receive, deposit, and disburse gifts and grants for the council in accordance with this subchapter and provide other administrative services in support of the council as requested by and negotiated with the council; and

(4) enter into a memorandum of understanding with the council that delineates the responsibilities of the *commission* [~~department~~] and the council under this subchapter and amend the memorandum as necessary to reflect changes in those responsibilities.

(b) The *executive commissioner* [~~board~~] may adopt rules as necessary to implement the *commission's* [~~department's~~] duties under this subchapter and federal developmental disability laws.

SECTION 3.0325. Section 92.062(b), Health and Safety Code, is amended to read as follows:

(b) The [~~health and human services~~] commission shall deposit any money received under Subsection (a) to the credit of the Texas Traumatic Brain Injury Advisory Council account. The Texas Traumatic Brain Injury Advisory Council account is an account in the general revenue fund that may be appropriated only for the purpose of carrying out this subchapter.

SECTION 3.0326. Section 93.013(a), Health and Safety Code, is amended to read as follows:

(a) The council may receive gifts and grants from any public or private source to perform its duties under this chapter. The department shall accept the gifts on behalf of the council [~~and shall deposit any funds accepted under this section to the credit of a special account in the general revenue fund as required by Section 93.014~~].

SECTION 3.0327. Section 93.014, Health and Safety Code, is amended to read as follows:

Sec. 93.014. *FUNDS FOR CLINICAL RESEARCH* [~~HEART DISEASE AND STROKE RESOURCE FUND. (a) The heart disease and stroke resource fund is an account of the general revenue fund~~].

[~~(b) The legislature may appropriate money deposited to the credit of the heart disease and stroke resource fund only to the council for:~~

[~~(1) heart disease and stroke prevention, research, and medical care for heart attack and stroke victims; and~~

[~~(2) grants to nonprofit heart disease and stroke organizations.~~

[~~(c)~~] The council shall develop a policy governing the award of funds for clinical research that follows scientific peer review guidelines for primary and secondary prevention of heart disease or stroke or that follows other review procedures that are designed to distribute those funds on the basis of scientific merit.

[~~(d) Interest earned from the investment of the heart disease and stroke resource fund shall be deposited to the credit of the fund.~~]

SECTION 3.0328. Section 94.004(c), Health and Safety Code, is amended to read as follows:

(c) The department may charge a fee for the course to persons other than employees of entities receiving state or federal funds for hepatitis C counseling and testing programs through a contract with the department. The *executive commissioner by rule* [~~board~~] shall set the fee in an amount necessary to cover the costs of providing the course.

SECTION 3.0329. Section 95.002(f), Health and Safety Code, is amended to read as follows:

(f) The office shall:

(1) provide educational and other material to assist local risk assessment activities;

(2) monitor the quality of risk assessment activities provided under this chapter; and

(3) consult with the *Texas* Board of *Nursing* [~~Nurse Examiners~~] to determine the training requirements necessary for a nurse or other person to conduct risk assessment activities under this chapter.

SECTION 3.0330. Section 95.051, Health and Safety Code, is amended to read as follows:

Sec. 95.051. *DEFINITION* [~~DEFINITIONS~~]. In this subchapter, *"public*[~~:~~

[~~(1) "Department" means the Department of State Health Services.~~

[~~(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.~~

[~~(3) "Public~~] health district" means a district created under Chapter 121.

SECTION 3.0331. Section 95A.001, Health and Safety Code, is amended to read as follows:

Sec. 95A.001. *DEFINITION* [~~DEFINITIONS~~]. In this chapter, *"council"*[~~:~~

[~~(1) "Commission" means the Health and Human Services Commission.~~

[~~(2) "Council"~~] means the Texas Diabetes Council.

SECTION 3.0332. Section 96.001(3), Health and Safety Code, is amended to read as follows:

(3) "Health facility" includes:

(A) a general or special hospital licensed by the department under Chapter 241;

(B) a physician-owned or physician-operated clinic;

(C) a publicly or privately funded medical school;

(D) a state hospital *operated* [~~or state school maintained and managed~~] by the *department or a state supported living center operated by* [~~Department of State Health Services or~~] the Department of Aging and Disability Services;

(E) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Chapter 121; and

(F) another facility specified by a rule adopted by the executive commissioner.

SECTION 3.0333. Section 98.110(a), Health and Safety Code, is amended to read as follows:

(a) Notwithstanding any other law, the department may disclose information reported by health care facilities under Section 98.103 or 98.1045 to other programs within the department, to the *commission* [~~Health and Human Services Commission~~], to other health and human services agencies, as defined by Section 531.001, Government Code, and to the federal Centers for Disease Control and Prevention, or any other agency of the United States Department of Health and Human Services, for public health research or analysis purposes only, provided that the research or analysis relates to health care-

associated infections or preventable adverse events. The privilege and confidentiality provisions contained in this chapter apply to such disclosures.

SECTION 3.0334. Sections 101.001(1) and (3), Health and Safety Code, are amended to read as follows:

(1) "Alzheimer's disease and related disorders support group" means a local, state, or national organization that:

(A) is established to provide support services to aid *persons with* [~~victims of~~] Alzheimer's disease and related disorders and their caregivers;

(B) encourages research into the cause, prevention, treatment, and care of *persons with* [~~victims of~~] Alzheimer's disease and related disorders; and

(C) is dedicated to the development of essential services for *persons with* [~~victims of~~] Alzheimer's disease and related disorders and their caregivers.

(3) "Primary family caregiver" means an individual who is a relative of a *person with* [~~victim of~~] Alzheimer's disease or related disorders, who has or has had a major responsibility for care and supervision of the *person* [~~victim~~], and who is not a professional health care provider paid to care for the *person* [~~victim~~].

SECTION 3.0335. Section 101.002(a), Health and Safety Code, is amended to read as follows:

(a) The Texas Council on Alzheimer's Disease and Related Disorders is composed of:

(1) five public members, one of whom is an individual related to a *person with* [~~victim of~~] Alzheimer's disease or related disorders but who is not a primary family caregiver, one of whom is a primary family caregiver, two of whom are members of an Alzheimer's disease and related disorders support group, and one of whom is an interested citizen;

(2) seven professional members with special training and interest in Alzheimer's disease and related disorders, with one representative each from nursing *facilities* [~~homes~~], physicians, nurses, public hospitals, private hospitals, home health agencies, and faculty of institutions of higher education; and

(3) the [~~chief executive officer or the officer's designated~~] representative from the *commission,* department, *and* [~~Texas~~] Department *of* [~~on~~] Aging *and Disability Services designated by the executive commissioner or commissioner of each agency, as applicable*[~~, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, and Long-Term Care Coordinating Council for the Elderly~~].

SECTION 3.0336. Section 101.007(a), Health and Safety Code, is amended to read as follows:

(a) The council shall:

(1) advise the *department* [~~board~~] and recommend needed action for the benefit of *persons with* [~~victims of~~] Alzheimer's disease and related disorders and for their caregivers;

(2) coordinate public and private family support networking systems for primary family caregivers;

(3) disseminate information on services and related activities for *persons with* [~~victims of~~] Alzheimer's disease and related disorders to the medical and health care community, the academic community, primary family caregivers, advocacy associations, and the public;

(4) coordinate a volunteer assistance program primarily for in-home and respite care services;

(5) encourage research to benefit *persons with* [~~victims of~~] Alzheimer's disease and related disorders;

(6) recommend to the *department* [~~board~~] disbursement of grants and funds available for the council; and

(7) facilitate coordination of state agency services and activities relating to *persons with* [~~victims of~~] Alzheimer's disease and related disorders.

SECTION 3.0337. Section 101.008, Health and Safety Code, is amended to read as follows:

Sec. 101.008. DUTIES OF DEPARTMENT. The department shall:

(1) provide administrative assistance, services, and materials to the council;

(2) accept, deposit, and disburse funds made available to the council at the direction of the *executive commissioner* [~~board~~];

(3) accept gifts and grants on behalf of the council from any public or private entity;

(4) maintain a population data base of *persons with* [~~victims of~~] Alzheimer's disease and related disorders in this state; and

(5) apply for and receive on behalf of the council any appropriations, gifts, or other funds from the state or federal government or any other public or private entity, subject to limitations and conditions prescribed by legislative appropriation.

SECTION 3.0338. Section 101.009(b), Health and Safety Code, is amended to read as follows:

(b) The *department* [~~board~~] shall deposit any money received under Subsection (a) in the state treasury [~~to the credit of the Alzheimer's disease and related disorders council fund~~] to be used for the purposes of this chapter.

SECTION 3.0339. Section 101.010, Health and Safety Code, is amended to read as follows:

Sec. 101.010. REPORT. Before September 1 of each even-numbered year, the council shall submit a biennial report of the council's activities and recommendations to the governor, lieutenant governor, speaker of the house of representatives, *and* members of the legislature[~~, Long-Term Care Coordinating Council for the Elderly, and board~~].

SECTION 3.0340. Sections 103.002(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) The Texas Diabetes Council is composed of 11 citizen members appointed from the public and one representative each from the department, the *commission* [~~Health and Human Services Commission~~], and the Department of Assistive and Rehabilitative Services.

(b) The governor, with the advice and consent of the senate, shall appoint the following citizen members:

(1) a licensed physician with a specialization in treating diabetes;

(2) a registered nurse with a specialization in diabetes education and training;

(3) a registered and licensed dietitian with a specialization in the diabetes education field;

(4) a person with experience and training in public health policy;

(5) three consumer members, with special consideration given to persons active in the Texas affiliates of the Juvenile Diabetes *Research* Foundation *(JDRF)* or the American Diabetes Association; and

(6) four members from the general public with expertise or demonstrated commitment to diabetes issues.

(c) The *commissioner, executive commissioner, and commissioner of assistive and rehabilitative services* [~~chairman of the board of each agency listed in Subsection (a)~~] shall appoint that agency's representative *to the council.* Agency representatives shall be nonvoting members of the council.

SECTION 3.0341. Section 103.008(b), Health and Safety Code, is amended to read as follows:

(b) If the office of a member who is an agency representative becomes vacant, the *com-*

missioner or executive commissioner, as appropriate, [~~chairman of the board~~] of that agency shall appoint an agency representative to serve for the remainder of that member's term.

SECTION 3.0342. Section 103.009, Health and Safety Code, is amended to read as follows:

Sec. 103.009. REIMBURSEMENT. [~~(a)~~] The department shall reimburse council and advisory committee members for travel and other necessary expenses incurred in performing official duties *as provided by Section 2110.004, Government Code* [~~at the same rate provided for state employees in the General Appropriations Act~~].

[~~(b) Funds for travel reimbursement shall be appropriated to the department.~~]

SECTION 3.0343. Section 103.013(c), Health and Safety Code, is amended to read as follows:

(c) The council shall make written recommendations for performing its duties under this chapter to the *executive commissioner* [~~board~~] and the legislature. If the council considers a recommendation that will affect an agency not represented on the council, the council shall seek the advice and assistance of the agency before taking action on the recommendation. The council's recommendations shall be implemented by the agencies affected by the recommendations.

SECTION 3.0344. Section 103.0131(a), Health and Safety Code, is amended to read as follows:

(a) In conjunction with developing each state plan described in Section 103.013, the council shall conduct a statewide assessment of existing programs for the prevention of diabetes and treatment of individuals with diabetes that are administered by the *commission* [~~Health and Human Services Commission~~] or a health and human services agency, as defined by Section 531.001, Government Code. As part of the assessment, the council shall collect data regarding:

(1) the number of individuals served by the programs;

(2) the areas where services to prevent diabetes and treat individuals with diabetes are unavailable; and

(3) the number of health care providers treating individuals with diabetes under the programs.

SECTION 3.0345. Section 103.015(a), Health and Safety Code, is amended to read as follows:

(a) The council may receive gifts and grants from any public or private source to perform its duties under this chapter. The department shall accept the gifts on behalf of the council and shall deposit any funds accepted under this section to the credit of [~~a special account in~~] the general revenue fund.

SECTION 3.0346. Sections 103.017(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The department, *commission, and* [~~the~~] Department of Assistive and Rehabilitative Services[~~, and the Health and Human Services Commission~~] shall work with the council to jointly develop, produce, and implement a general public awareness strategy focusing on diabetes, its complications, and techniques for achieving good management. Each agency shall pay for the costs of producing and disseminating information on diabetes to clients served by that agency.

(c) The department, *commission, and* [~~the~~] Department of Assistive and Rehabilitative Services[~~, and the Health and Human Services Commission~~] may jointly develop and implement a statewide plan for conducting regional training sessions for public and private service providers, including institutional health care providers, who have routine contact with persons with diabetes.

SECTION 3.0347. Section 103A.007, Health and Safety Code, is amended to read as follows:

Sec. 103A.007. DUTIES OF COUNCIL. The council using existing resources may

conduct studies and advise the department, the *commission* [~~Health and Human Services Commission~~], and the Texas Department of Insurance on:

(1) public use data, outcome data, and other information submitted to or collected by the department under Chapter 108 or other law related to hemophilia or other bleeding or clotting disorders and the department's disclosure and dissemination of that information within and outside the department; and

(2) other issues that affect the health and wellness of persons living with hemophilia or other bleeding or clotting disorders.

SECTION 3.0348. Section 104.011(a), Health and Safety Code, is amended to read as follows:

(a) The statewide health coordinating council is composed of 17 members determined as follows:

(1) the executive commissioner or a representative designated by the executive commissioner;

(2) the chair of the Texas Higher Education Coordinating Board or a representative designated by the presiding officer;

(3) the commissioner or a representative designated by the commissioner;

(4) the *commissioner* [~~presiding officer~~] of *aging* [~~the Department of Aging~~] and *disability services* [~~Disability Services~~] or a representative designated by the *commissioner of aging and disability services* [~~presiding officer~~]; and

(5) the following members appointed by the governor:

(A) three health care professionals from the allied health, dental, medical, mental health, and pharmacy professions, no two of whom may be from the same profession;

(B) one registered nurse;

(C) two representatives of a university or health-related institution of higher education;

(D) one representative of a junior or community college with a nursing program;

(E) one hospital administrator;

(F) one managed care administrator; and

(G) four public members.

SECTION 3.0349. Section 104.0112(c), Health and Safety Code, is amended to read as follows:

(c) If the *executive* commissioner has knowledge that a potential ground for removal exists, the *executive* commissioner shall notify the presiding officer of the council of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the *executive* commissioner shall notify the next highest ranking officer of the council, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 3.0350. Section 104.023, Health and Safety Code, is amended to read as follows:

Sec. 104.023. REVIEW OF STATE HEALTH PLAN. The statewide health coordinating council shall submit the state health plan to the *commission* [~~Health and Human Services Commission~~] for review and comment before the plan is sent to the governor.

SECTION 3.0351. Section 104.043(a), Health and Safety Code, is amended to read as follows:

(a) If the department does not receive necessary data from an entity as required by *department* [~~the executive commissioner's~~] rules, the department shall send to the entity a notice requiring the entity to submit the data not later than the 30th day after the date on which the entity receives the notice.

SECTION 3.0352. Section 105.005, Health and Safety Code, is amended to read as follows:

Sec. 105.005. RULES. The executive commissioner [~~of the Health and Human Services Commission~~] may adopt rules to govern the reporting and collection of data.

SECTION 3.0353. Section 107A.001, Health and Safety Code, is amended to read as follows:

Sec. 107A.001. CENTER FOR ELIMINATION OF DISPROPORTIONALITY AND DISPARITIES. The executive commissioner [~~of the Health and Human Services Commission~~] shall maintain a center for elimination of disproportionality and disparities in the *commission* [~~Health and Human Services Commission~~] to:

(1) assume a leadership role in working or contracting with state and federal agencies, universities, private interest groups, communities, foundations, and offices of minority health to develop health initiatives to decrease or eliminate health and health access disparities among racial, multicultural, disadvantaged, ethnic, and regional populations, including appropriate language services; and

(2) maximize use of existing resources without duplicating existing efforts.

SECTION 3.0354. Section 107A.003, Health and Safety Code, is amended to read as follows:

Sec. 107A.003. FUNDING. The *commission* [~~Health and Human Services Commission~~] may distribute to the center unobligated and unexpended appropriations to be used to carry out its powers.

SECTION 3.0355. Chapter 108, Health and Safety Code, is amended to read as follows:

CHAPTER 108. [~~TEXAS~~] HEALTH CARE *DATA COLLECTION* [~~INFORMATION COUNCIL~~]

Sec. 108.001. *DEPARTMENT DUTIES* [~~CREATION OF COUNCIL~~]. The *department* [~~Texas Health Care Information Council~~] shall administer this chapter and report to the governor, the legislature, and the public.

Sec. 108.002. DEFINITIONS. In this chapter:

(1) "Accurate and consistent data" means data that has been edited by the *department* [~~council~~] and subject to provider validation and certification.

[~~(2) "Board" means the Texas Board of Health.~~]

(3) "Certification" means the process by which a provider confirms the accuracy and completeness of the data set required to produce the public use data file in accordance with *department* [~~council~~] rule.

(4) "Charge" or "rate" means the amount billed by a provider for specific procedures or services provided to a patient before any adjustment for contractual allowances. The term does not include copayment charges to enrollees in health benefit plans charged by providers paid by capitation or salary.

(4-a) "Commission" means the Health and Human Services Commission.

(6) "Data" means information collected under Section 108.0065 or 108.009 in the form initially received.

[~~(7) "Department" means the Department of State Health Services.~~]

(8) "Edit" means to use an electronic standardized process developed and implemented by *department* [~~council~~] rule to identify potential errors and mistakes in data elements by reviewing data fields for the presence or absence of data and the accuracy and appropriateness of data.

[~~(8-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.~~]

(9) "Health benefit plan" means a plan provided by:

(A) a health maintenance organization; or

(B) an approved nonprofit health corporation that is certified under Section 162.001, Occupations Code, and that holds a certificate of authority issued by the commissioner of insurance under Chapter 844, Insurance Code.

(10) "Health care facility" means:

(A) a hospital;

(B) an ambulatory surgical center licensed under Chapter 243;

(C) a chemical dependency treatment facility licensed under Chapter 464;

(D) a renal dialysis facility;

(E) a birthing center;

(F) a rural health clinic;

(G) a federally qualified health center as defined by 42 U.S.C. Section 1396d(l)(2)(B); or

(H) a free-standing imaging center.

(11) "Health maintenance organization" means an organization as defined in Section 843.002, Insurance Code.

(12) "Hospital" means a public, for-profit, or nonprofit institution licensed or owned by this state that is a general or special hospital, private mental hospital, chronic disease hospital, or other type of hospital.

(13) "Outcome data" means measures related to the provision of care, including:

(A) patient demographic information;

(B) patient length of stay;

(C) mortality;

(D) co-morbidity;

(E) complications; and

(F) charges.

(14) "Physician" means an individual licensed under the laws of this state to practice medicine under Subtitle B, Title 3, Occupations Code.

(15) "Provider" means a physician or health care facility.

(16) "Provider quality" means the extent to which a provider renders care that, within the capabilities of modern medicine, obtains for patients medically acceptable health outcomes and prognoses, after severity adjustment.

(17) "Public use data" means patient level data relating to individual hospitalizations that has not been summarized or analyzed, that has had patient identifying information removed, that identifies physicians only by use of uniform physician identifiers, and that is severity and risk adjusted, edited, and verified for accuracy and consistency. Public use data may exclude some data elements submitted to the *department* [~~council~~].

(19) "Severity adjustment" means a method to stratify patient groups by degrees of illness and mortality.

(20) "Uniform patient identifier" means a number assigned by the *department* [~~council~~] to an individual patient and composed of numeric, alpha, or alphanumeric characters.

(21) "Uniform physician identifier" means a number assigned by the *department* [~~council~~] to an individual physician and composed of numeric, alpha, or alphanumeric characters.

(22) "Validation" means the process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification in accor-

dance with *department* [~~council~~] rule.

[~~Sec. 108.0026. TRANSFER OF DUTIES; REFERENCE TO COUNCIL. (a) The powers and duties of the Texas Health Care Information Council under this chapter were transferred to the Department of State Health Services in accordance with Section 1.19, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.~~

[~~(b) In this chapter or other law, a reference to the Texas Health Care Information Council means the Department of State Health Services.~~

[~~Sec. 108.003. COUNCIL COMPOSITION; EXPENSES. (a) The council is composed of four ex officio state agency members and 15 members appointed by the governor in accordance with this section.~~

[~~(b) The ex officio members of the council are:~~

[~~(1) the commissioner of public health or the commissioner's designee;~~

[~~(2) the commissioner of health and human services or the commissioner's designee;~~

[~~(3) the commissioner of insurance or the commissioner's designee; and~~

[~~(4) the public insurance counsel or the counsel's designee.~~

[~~(c) The governor shall appoint the following members of the council:~~

[~~(1) three representatives of the business community, with at least one representing small businesses, who are purchasers of health care but who are not involved in the provision of health care or health insurance;~~

[~~(2) two representatives from labor, one of whom is not directly involved with management of health care benefits;~~

[~~(3) two representatives of consumers who are not professionally involved in the purchase, provision, administration, or review of health care or health care insurance;~~

[~~(4) two representatives of hospitals;~~

[~~(5) one representative of health maintenance organizations;~~

[~~(6) three representatives of physicians who are involved in direct patient care; and~~

[~~(7) two members who are not professionally involved in the purchase, provision, administration, or utilization review of health care or health care insurance and who have expertise in:~~

[~~(A) health planning;~~

[~~(B) health economics;~~

[~~(C) provider quality assurance;~~

[~~(D) information systems; or~~

[~~(E) the reimbursement of medical education and research costs.~~

[~~(d) The chairman is appointed by and serves at the pleasure of the governor. Members annually shall elect a vice chairman.~~

[~~(e) A majority of voting members constitutes a quorum for the transaction of any business. An act by the majority of the voting members present at any meeting at which there is a quorum is considered to be an act of the council.~~

[~~(f) The council may appoint committees and may elect any officers subordinate to those provided for in Subsection (d).~~

[~~(g) The council shall appoint technical advisory committees and shall consult with the appropriate technical advisory committee with respect to a rule before the rule is finally adopted by the council. The council is not required to consult with a technical advisory committee before adopting an emergency rule in accordance with Section 2001.034, Government Code. The council shall submit an emergency rule adopted by the council to the appropriate advisory committee for review not later than the first advisory committee meeting that occurs after the rule is adopted. The council may consult with the appropriate technical advisory committee with respect to other formal action of the~~

~~council. A technical advisory committee may consult with other professionals as necessary. Chapter 2110, Government Code, does not apply to an advisory committee appointed under this subsection. The technical advisory committees shall include:~~

~~[(1) a technical advisory committee that includes, among other individuals, at least five practicing physicians licensed in this state to provide advice and recommendations to the council on the development and implementation of the methodology and the interpretation of a provider quality report and data under Section 108.010;~~

~~[(2) a technical advisory committee composed of at least five practicing physicians licensed in this state who have been actively engaged in organized peer review at a hospital in this state to provide advice, recommendations, and peer review expertise to the council on:~~

~~[(A) the use of peer review in the determination of quality inpatient care;~~

~~[(B) the development and interpretation of data elements necessary to the determination of quality inpatient care; and~~

~~[(C) the development and format of reports and information relating to provider quality;~~

~~[(3) a technical advisory committee that includes providers and consumers to provide advice and recommendations to the council relating to education about the development and dissemination of provider reports and data;~~

~~[(4) a technical advisory committee that includes representatives of consumers and each type of issuer of health benefit plans to assist the council in complying with Section 108.009(o); and~~

~~[(5) a technical advisory committee composed of providers, consumers, and individuals who have expertise in hospital information systems, health information management, quality management, and security of confidential data.~~

~~[(h) A member of the council may not receive compensation for service on the council. However, the member shall be reimbursed for the member's actual and necessary meals, lodging, transportation, and incidental expenses if incurred while performing council business.~~

~~[(i) A member of an advisory committee appointed by the council may not receive compensation or reimbursement of any expense incurred while serving on the committee.~~

~~[(j) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of appointees. Additionally, in making the appointments to the council, the governor shall consider geographical representation.~~

~~[(k) A person may not serve as a member of the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the council.~~

~~[Sec. 108.004. MEETINGS. (a) The council, council committees, and technical advisory committees are subject to the open meetings law, Chapter 551, Government Code.~~

~~[(b) The council shall meet as often as necessary, but not less often than quarterly, to perform its duties under this chapter.~~

~~[(c) The council shall publish a notice of its meetings in the Texas Register.~~

~~[Sec. 108.0045. OPEN RECORDS. Subject to the restrictions of this chapter, the council is subject to the open records law, Chapter 552, Government Code.~~

~~[Sec. 108.005. TERMS. (a) The terms of the agency members are concurrent with their terms of office. The appointed council members serve six-year staggered terms, with the terms of five members expiring September 1 of each odd-numbered year.~~

~~[(b) An appointed member may not serve more than two full consecutive terms.~~

~~[(c) It is a ground for removal from the council if a member of the council:~~

~~[(1) does not have at the time of appointment the qualifications required by Section 108.003;~~

[~~(2) does not maintain during service the qualifications required by Section 108.003;~~

[~~(3) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or~~

[~~(4) fails to attend at least one-half of the regularly scheduled meetings that the member is eligible to attend during a calendar year.~~]

Sec. 108.006. POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER AND DEPARTMENT* [~~COUNCIL~~]. (a) The *department* [~~council~~] shall develop a statewide health care data collection system to collect health care charges, utilization data, provider quality data, and outcome data to facilitate the promotion and accessibility of cost-effective, good quality health care. The *executive commissioner or department, as applicable,* [~~council~~] shall *perform the following duties*:

(1) *the department shall* direct the collection, dissemination, and analysis of data under this chapter;

(2) [~~contract with~~] the department *shall* [~~to~~] collect the data under this chapter;

(3) *the executive commissioner shall* adopt policies and rules necessary to carry out this chapter, including rules concerning data collection requirements;

(4) *the department shall* build on and not duplicate other data collection required by state or federal law, by an accreditation organization, or by *department* [~~board~~] rule;

(5) working with appropriate agencies, *the department, with the approval of the executive commissioner, shall* review public health data collection programs in this state and recommend, where appropriate, consolidation of the programs and any legislation necessary to effect the consolidation;

(6) *the department shall* assure that public use data is made available and accessible to interested persons;

(7) *the executive commissioner shall* prescribe by rule the process for providers to submit data consistent with Section 108.009;

(8) *the executive commissioner shall* adopt by rule and *the department shall* implement a methodology to collect and disseminate data reflecting provider quality in accordance with Section 108.010;

(9) *the department shall* make reports to the legislature, the governor, and the public on:

(A) the charges and rate of change in the charges for health care services in this state;

(B) the effectiveness of the *department* [~~council~~] in carrying out the legislative intent of this chapter;

(C) if applicable, any recommendations on the need for further legislation; and

(D) the quality and effectiveness of health care and access to health care for all citizens of this state;

(10) *the department shall* develop an annual work plan and establish priorities to accomplish its duties;

(11) *the department shall* provide consumer education on the interpretation and understanding of the public use or provider quality data before the data is disseminated to the public;

(12) *the department shall* work with the *commission* [~~Health and Human Services Commission~~] and each health and human services agency that administers a part of the state Medicaid program to avoid duplication of expenditures of state funds for computer systems, staff, or services in the collection and analysis of data relating to the state Medicaid program;

(13) *the department shall* work with the Department of Information Resources in developing and implementing the statewide health care data collection system and maintain consistency with Department of Information Resources standards; and

(14) *the department shall* develop and implement a health care information plan [~~to be used by the department~~] to:

(A) support public health and preventative health initiatives;

(B) assist in the delivery of primary and preventive health care services;

(C) facilitate the establishment of appropriate benchmark data to measure performance improvements;

(D) establish and maintain a systematic approach to the collection, storage, and analysis of health care data for longitudinal, epidemiological, and policy impact studies; and

(E) develop and use system-based protocols to identify individuals and populations at risk.

(b) The *department* [~~council~~] may:

(1) employ *a* [~~or contract with the department to employ an executive~~] director and other staff, including administrative personnel, necessary to comply with this chapter and rules adopted under this chapter;

(2) engage professional consultants as it considers necessary to the performance of its duties; *and*

(3) [~~adopt rules clarifying which health care facilities must provide data under this chapter; and~~

[~~(4)~~] apply for and receive any appropriation, donation, or other funds from the state or federal government or any other public or private source, subject to Section 108.015 and limitations and conditions provided by legislative appropriation.

(b–1) The executive commissioner may adopt rules clarifying which health care facilities must provide data under this chapter.

(c) The *department* [~~council~~] may not establish or recommend rates of payment for health care services.

(d) The *department* [~~council~~] may not take an action that affects or relates to the validity, status, or terms of an interagency agreement [~~or a contract with the department~~] without the *executive commissioner's* [~~board's~~] approval.

(e) In the collection of data, the *department* [~~council~~] shall consider the research and initiatives being pursued by the United States Department of Health and Human Services, the National Committee for Quality Assurance, and *The* [~~the~~] Joint Commission [~~on Accreditation of Healthcare Organizations~~] to reduce potential duplication or inconsistencies. The *executive commissioner* [~~council~~] may not adopt rules that conflict with or duplicate any federally mandated data collection programs or requirements of comparable scope.

(f) The *executive commissioner* [~~council~~] shall prescribe by rule a public use data file minimum data set that maintains patient confidentiality and establishes data accuracy and consistency.

(g) The public use data file minimum data set as defined by *department* [~~council~~] rule is subject to annual review by the *department* [~~council with the assistance of the advisory committee under Section 108.003(g)(5)~~]. The purpose of the review is to evaluate requests to modify the existing minimum data set and editing process. A decision to modify the minimum data set by the addition or deletion of data elements shall include consideration of the value of the specific data to be added or deleted and the technical feasibility of establishing data accuracy and consistency. The *department* [~~council~~] may also consider the costs to the *department* [~~council~~] and providers associated with modifying the minimum data set.

(h) In accordance with Section 108.0135, the *department* [~~council~~] may release data collected under Section 108.009 that is not included in the public use data file minimum data set established under Subsection (f).

[~~Sec. 108.0062. DRUG PURCHASING COOPERATIVES. (a) The council shall~~

~~develop criteria for evaluating drug purchasing cooperatives that purchase drugs on behalf of consumers and create an evaluation form for consumers to evaluate drug purchasing cooperatives.~~

[~~(b) The council shall distribute the evaluation forms to the department, local health departments, the Texas Department of Insurance, and the consumer protection division of the office of the attorney general.~~

[~~(c) The council shall compile the information from completed evaluation forms and make the information available to the public.~~]

Sec. 108.0065. POWERS AND DUTIES OF *COMMISSION AND DEPARTMENT* [~~COUNCIL~~] RELATING TO MEDICAID MANAGED CARE. (a) In this section,[:

[~~(1) "Commission" means the Health and Human Services Commission.~~

[~~(2)~~] "Medicaid managed care organization" means a managed care organization, as defined by Section 533.001, Government Code, that is contracting with the commission to implement the Medicaid managed care program under Chapter 533, Government Code.

(b) The commission may direct the *department* [~~council~~] to collect data under this chapter with respect to Medicaid managed care organizations. The *department* [~~council~~] shall coordinate the collection of the data with the collection of data for health benefit plan providers, but with the approval of the commission may collect data in addition to the data otherwise required of health benefit plan providers.

(c) Each Medicaid managed care organization shall provide *to the department* the data required by the *executive commissioner* [~~council~~] in the form required by the *executive commissioner* [~~council~~] or, if the data is also being submitted to the commission [~~or Medicaid operating agency~~], in the form required by the commission [~~or Medicaid operating agency~~].

(d) Dissemination of data collected under this section is subject to Sections 108.010, 108.011, 108.012, 108.013, 108.014, and 108.0141.

(e) The commission shall analyze the data collected in accordance with this section and shall use the data to:

(1) evaluate the effectiveness and efficiency of the Medicaid managed care system;

(2) determine the extent to which Medicaid managed care does or does not serve the needs of Medicaid recipients in this state; and

(3) assess the cost-effectiveness of the Medicaid managed care system in comparison to the fee-for-service system, considering any improvement in the quality of care provided.

(h) The commission, using existing funds, may contract with an entity to comply with the requirements under Subsection (e).

Sec. 108.007. REVIEW POWERS. (a) The [~~council, through the~~] department, [~~and~~] subject to reasonable rules and guidelines, may:

(1) inspect documents and records used by data sources that are required to compile data and reports; and

(2) compel providers to produce accurate documents and records.

(b) The *department* [~~council~~] may enter into a memorandum of understanding with a state agency, including the division of the *commission* [~~Health and Human Services Commission~~] responsible for the state Medicaid program, or with a school of public health or another institution of higher education, to share data and expertise, to obtain data for the *department* [~~council~~], or to make data available to the *department* [~~council~~]. An agreement entered into under this subsection must protect patient confidentiality.

[~~Sec. 108.008. DUTIES OF DEPARTMENT. (a) The department, as the state health planning and development agency under Chapter 104, is responsible for the collection of data under Chapter 311.~~

[~~(b) The department shall:~~

[~~(1) contract with the council to collect data under this chapter;~~

[~~(2) provide administrative assistance to the council;~~

[~~(3) coordinate administrative responsibilities with the council to avoid unnecessary duplication of the collection of data and other duties;~~

[~~(4) on request of the council, give the council access to data collected by the department;~~

[~~(5) submit or assist in the council's budget request to the legislature; and~~

[~~(6) work with the Department of Information Resources in developing and implementing the statewide health care data collection system and maintain consistency with Department of Information Resources standards.~~

[~~(c) The department may not take an action that affects or relates to the validity, status, or terms of an interagency agreement or a contract with the council without the council 's approval.~~

[~~Sec. 108.0081. MEMORANDUM OF UNDERSTANDING. The council and the department shall enter into a memorandum of understanding to implement the department's duties under Section 108.008(b). The memorandum of understanding must address:~~

[~~(1) payroll and travel reimbursement services;~~

[~~(2) purchasing services;~~

[~~(3) personnel services;~~

[~~(4) budget management services;~~

[~~(5) computer support and maintenance services;~~

[~~(6) meeting coordination services;~~

[~~(7) any other administrative support or other services to be provided by the department for the council; and~~

[~~(8) the manner in which the council will reimburse the department for the cost of services provided by the department for the council.~~]

Sec. 108.0085. DUTIES OF ATTORNEY GENERAL. The attorney general shall furnish the *department* [~~council~~] with advice and legal assistance that may be required to implement this chapter.

Sec. 108.009. DATA SUBMISSION AND COLLECTION. (a) The *department* [~~council~~] may collect, and, except as provided by *Subsection* [~~Subsections (c) and~~] (d), providers shall submit to the *department* [~~council~~] or another entity as determined by the *department* [~~council~~], all data required by this section. The data shall be collected according to uniform submission formats, coding systems, and other technical specifications necessary to make the incoming data substantially valid, consistent, compatible, and manageable using electronic data processing, if available.

(b) The *executive commissioner* [~~council~~] shall adopt rules to implement the data submission requirements imposed by Subsection (a) in appropriate stages to allow for the development of efficient systems for the collection and submission of the data. A rule adopted by the *executive commissioner* [~~council~~] that requires submission of a data element that, before adoption of the rule, was not required to be submitted may not take effect before the 90th day after the date the rule is adopted and must take effect not later than the first anniversary after the date the rule is adopted.

(d) The *department* [~~council~~] may not collect data from individual physicians or from an entity that is composed entirely of physicians and that is a professional association organized under the *former* Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) *or formed under the Texas Professional Association Law, as described by Section 1.008(l), Business Organizations Code*, a limited liability partnership organized under *former* Section 3.08, Texas Revised Partnership Act (Article 6132b–3.08, Vernon's Texas Civil Statutes), *or formed as described by Subchapter J, Chapter*

152, Business Organizations Code, or a limited liability company organized under the *former* Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) *or formed under the Texas Limited Liability Company Law, as described by Section 1.008(e), Business Organizations Code*, except to the extent the entity owns and operates a health care facility in this state. This subsection does not prohibit the release of data about physicians using uniform physician identifiers that has been collected from a health care facility under this chapter.

(e) The *department* [~~council~~] shall establish [~~the department as~~] the single collection point for receipt of data from providers. With the approval of the *executive commissioner* [~~council and the board~~], the department may transfer collection of any data required to be collected by the department under any other law to the statewide health care data collection system.

(f) The *executive commissioner* [~~council~~] may not require providers to submit data more frequently than quarterly, but providers may submit data on a more frequent basis.

(g) The *department* [~~council~~] shall coordinate data collection with the data collection formats used by federally qualified health centers. To satisfy the requirements of this chapter:

(1) a federally qualified health center shall submit annually to the *department* [~~council~~] a copy of the Medicaid cost report of federally qualified health centers; and

(2) a provider receiving federal funds under 42 U.S.C. Section 254b *or*[,] 254c[~~, or 256~~] shall submit annually to the *department* [~~council~~] a copy of the *Uniform Data System* [~~Bureau of Common Reporting Requirements~~] data report developed by the United States *Department of* [~~Public~~] Health *and Human Services* [~~Service~~].

(h) The department shall coordinate data collection with the data submission formats used by hospitals and other providers. The department shall accept data in the format developed by the American National Standards Institute or its successor or other nationally accepted standardized forms that hospitals and other providers use for other complementary purposes.

(i) The *executive commissioner* [~~council~~] shall develop by rule reasonable alternate data submission procedures for providers that do not possess electronic data processing capacity.

(k) The *department* [~~council~~] shall collect health care data elements relating to payer type, the racial and ethnic background of patients, and the use of health care services by consumers. The *department* [~~council~~] shall prioritize data collection efforts on inpatient and outpatient surgical and radiological procedures from hospitals, ambulatory surgical centers, and free-standing *imaging* [~~radiology~~] centers.

(m) To the extent feasible, the *department* [~~council~~] shall obtain from public records the information that is available from those records.

(o) A provider of a health benefit plan shall annually submit to the *department* [~~council~~] aggregate data by service area required by the *Healthcare Effectiveness* [~~Health Plan Employer~~] Data *and* Information Set (HEDIS) as operated by the National Committee for Quality Assurance. The *department* [~~council~~] may approve the submission of data in accordance with other methods generally used by the health benefit plan industry. If the *Healthcare Effectiveness* [~~Health Plan Employer~~] Data *and* Information Set does not generally apply to a health benefit plan, the *department* [~~council~~] shall require submission of data in accordance with other methods. This subsection does not relieve a health care facility that provides services under a health benefit plan from the requirements of this chapter. Information submitted under this section is subject to Section 108.011 but is not subject to Section 108.010.

Sec. 108.010. COLLECTION AND DISSEMINATION OF PROVIDER QUALITY DATA. (a) Subject to Section 108.009, the *department* [~~council~~] shall collect data reflecting provider quality based on a methodology and review process established through the *executive commissioner's* [~~council's~~] rulemaking process. The methodology shall identify and measure quality standards and adhere to any federal mandates.

(b) The *department* [~~council~~] shall study and analyze initial methodologies for obtaining provider quality data, including outcome data.

(c) The *department* [~~council~~] shall test the methodology by collecting provider quality data for one year, subject to Section 108.009. The *department* [~~council~~] may test using pilot methodologies. After collecting provider quality data for one year, the *department* [~~council~~] shall report findings applicable to a provider to that provider and allow the provider to review and comment on the initial provider quality data applicable to that provider. The *department* [~~council~~] shall verify the accuracy of the data during this review and revision process. After the review and revision process, provider quality data for subsequent reports shall be published and made available to the public, on a time schedule the *department* [~~council~~] considers appropriate.

(d) If the *department* [~~council~~] determines that provider quality data to be published under Subsection (c) does not provide the intended result or is inaccurate or inappropriate for dissemination, the *department* [~~council~~] is not required to publish the data or reports based in whole or in part on the data. This subsection does not affect the release of public use data in accordance with Section 108.011 or the release of information submitted under Section 108.009(o).

(e) The *executive commissioner* [~~council~~] shall adopt rules allowing a provider to submit concise written comments regarding any specific provider quality data to be released concerning the provider. The *department* [~~council~~] shall make the comments available to the public at the office of the *department* [~~council~~] and in an electronic form accessible through the Internet. The comments shall be attached to any public release of provider quality data. Providers shall submit the comments to the *department* [~~council~~] to be attached to the public release of provider quality data in the same format as the provider quality data that is to be released.

(f) The methodology adopted [~~by the council~~] for measuring quality shall include case-mix qualifiers, severity adjustment factors, adjustments for medical education and research, and any other factors necessary to accurately reflect provider quality.

(g) In addition to the requirements of this section, any release of provider quality data shall comply with Sections 108.011(e) and (f).

(h) A provider quality data report may not identify an individual physician by name, but must identify the physician by the uniform physician identifier designated by the *department* [~~council~~] under Section 108.011(c).

(i) The *department* [~~council~~] shall release provider quality data in an aggregate form without uniform physician identifiers when[~~:~~

[~~(1) the data relates to providers described by Section 108.0025(1); or~~

[~~(2)~~] the cell size of the data is below the minimum size established by *department* [~~council~~] rule that would enable identification of an individual patient or physician.

Sec. 108.011. DISSEMINATION OF PUBLIC USE DATA AND *DEPARTMENT* [~~COUNCIL~~] PUBLICATIONS. (a) The *department* [~~council~~] shall promptly provide public use data and data collected in accordance with Section 108.009(o) to those requesting it. The public use data does not include provider quality data prescribed by Section 108.010 or confidential data prescribed by Section 108.013.

(b) Subject to the restrictions on access to *department* [~~council~~] data prescribed by Sections 108.010 and 108.013, and using the public use data and other data, records, and matters of record available to it, the *department* [~~council~~] shall prepare and issue reports to the governor, the legislature, and the public as provided by this section and Section 108.006(a). The *department* [~~council~~] must issue the reports at least annually.

(c) Subject to the restrictions on access to *department* [~~council~~] data prescribed by Sections 108.010 and 108.013, the *department* [~~council~~] shall use public use data to prepare and issue reports that provide information relating to providers, such as the incidence rate of selected medical or surgical procedures. The reports must provide the data in a manner that identifies individual providers, including individual physicians, and that identifies and compares data elements for all providers. Individual physicians may not

be identified by name, but shall be identified by uniform physician identifiers. The *executive commissioner* [~~council~~] by rule shall designate the characters to be used as uniform physician identifiers.

(c–1) The *department* [~~council~~] shall use public use data to prepare and issue reports that provide information for review and analysis by the *commission* [~~Health and Human Services Commission~~] relating to services that are provided in a niche hospital, as defined by Section 105.002, Occupations Code, and that are provided by a physician with an ownership interest in the niche hospital.

(c–2) Subsection (c–1) does not apply to an ownership interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.

(d) The *executive commissioner* [~~council~~] shall adopt procedures to establish the accuracy and consistency of the public use data before releasing the public use data to the public. *The department may adopt additional procedures as the department determines necessary.*

(e) If public use data is requested from the *department* [~~council~~] about a specific provider, the *department* [~~council~~] shall notify the provider about the release of the data. This subsection does not authorize the provider to interfere with the release of that data.

(f) A report issued by the *department* [~~council~~] shall include a reasonable review and comment period for the affected providers before public release of the report.

(g) The *executive commissioner* [~~council~~] shall adopt rules allowing a provider to submit concise written comments regarding any specific public use data to be released concerning the provider. The *department* [~~council~~] shall make the comments available to the public *at* [~~and~~] the office of the *department* [~~council~~] and in an electronic form accessible through the Internet. The comments shall be attached to any public release of the public use data. Providers shall submit the comments to the *department* [~~council~~] to be attached to the public release of public use data in the same format as the public use data that is to be released.

(h) Tapes containing public use data and provider quality reports that are released to the public must include general consumer education material, including an explanation of the benefits and limitations of the information provided in the public use data and provider quality reports.

(i) The *department* [~~council~~] shall release public use data in an aggregate form without uniform physician identifiers when[~~:~~

[~~(1) the data relates to providers described by Section 108.0025(1); or~~

[~~(2)~~] the cell size of the data is below the minimum size established by *department* [~~council~~] rule that would enable identification of an individual patient or physician.

Sec. 108.012. COMPUTER ACCESS TO DATA. (a) The *department* [~~council~~] shall provide a means for computer-to-computer access to the public use data. All reports shall maintain patient confidentiality as provided by Section 108.013.

(b) The *department* [~~council~~] may charge a person requesting public use or provider quality data a fee for the data. The fees may reflect the quantity of information provided and the expense incurred by the *department* [~~council~~] in collecting and providing the data. *The executive commissioner by rule* [~~and~~] shall [~~be~~] set *the fees* at a level that will raise revenue sufficient for the operation of the *department* [~~council~~]. The *department* [~~council~~] may not charge a fee for providing public use data to another state agency.

Sec. 108.013. CONFIDENTIALITY AND GENERAL ACCESS TO DATA. (a) The data received by the department under this chapter shall be used by the department and commission for the benefit of the public. Subject to specific limitations established by this chapter and *department* [~~executive commissioner~~] rule, the department shall make determinations on requests for information in favor of access.

(b) The executive commissioner by rule shall designate the characters to be used as

uniform patient identifiers. The basis for assignment of the characters and the manner in which the characters are assigned are confidential.

(c) Unless specifically authorized by this chapter, the department may not release and a person or entity may not gain access to any data obtained under this chapter:

(1) that could reasonably be expected to reveal the identity of a patient;

(2) that could reasonably be expected to reveal the identity of a physician;

(3) disclosing provider discounts or differentials between payments and billed charges;

(4) relating to actual payments to an identified provider made by a payer; or

(5) submitted to the department in a uniform submission format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section 108.0135.

(d) Except as provided by this section, all data collected and used by the department under this chapter is subject to the confidentiality provisions and criminal penalties of:

(1) Section 311.037;

(2) Section 81.103; and

(3) Section 159.002, Occupations Code.

(e) Data on patients and compilations produced from the data collected that identify patients are not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or

(2) admissible in any civil, administrative, or criminal proceeding.

(f) Data on physicians and compilations produced from the data collected that identify physicians are not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or

(2) admissible in any civil, administrative, or criminal proceeding.

(g) Unless specifically authorized by this chapter, the department may not release data elements in a manner that will reveal the identity of a patient. The department may not release data elements in a manner that will reveal the identity of a physician.

(h) Subsections (c) and (g) do not prohibit the release of a uniform physician identifier in conjunction with associated public use data in accordance with Section 108.011 or a provider quality report in accordance with Section 108.010.

(i) Notwithstanding any other law and except as provided by this section, the department may not provide information made confidential by this section to any other agency of this state.

(j) The executive commissioner shall by rule develop and implement a mechanism to comply with Subsections (c)(1) and (2).

(k) The department may disclose data collected under this chapter that is not included in public use data to any department or commission program if the disclosure is reviewed and approved by the institutional review board under Section 108.0135.

(*l*) Confidential data collected under this chapter that is disclosed to a department or commission program remains subject to the confidentiality provisions of this chapter and other applicable law. The department shall identify the confidential data that is disclosed to a program under Subsection (k). The program shall maintain the confidentiality of the disclosed confidential data.

(m) The following provisions do not apply to the disclosure of data to a department or commission program:

(1) Section 81.103;

(2) Sections 108.010(g) and (h);

(3) Sections 108.011(e) and (f);

(4) Section 311.037; and

(5) Section 159.002, Occupations Code.

(n) Nothing in this section authorizes the disclosure of physician identifying data.

Sec. 108.0131. LIST OF PURCHASERS OR RECIPIENTS OF DATA. The department shall post on the department's Internet website a list of each entity that purchases or receives data collected under this chapter.

Sec. 108.0135. INSTITUTIONAL REVIEW BOARD. (a) The department shall establish an institutional review board to review and approve requests for access to data not contained in public use data. The members of the institutional review board must have experience and expertise in ethics, patient confidentiality, and health care data.

(b) To assist the institutional review board in determining whether to approve a request for information, the executive commissioner shall adopt rules similar to the federal Centers for Medicare and Medicaid Services' guidelines on releasing data.

(c) A request for information other than public use data must be made on the form prescribed by the department.

(d) Any approval to release information under this section must require that the confidentiality provisions of this chapter be maintained and that any subsequent use of the information conform to the confidentiality provisions of this chapter.

Sec. 108.014. CIVIL PENALTY. (a) A person who knowingly or negligently releases data in violation of this chapter is liable for a civil penalty of not more than $10,000.

(b) A person who fails to supply available data under Sections 108.009 and 108.010 is liable for a civil penalty of not less than $1,000 or more than $10,000 for each act of violation.

(c) The attorney general, at the request of the *department* [~~council~~], shall enforce this chapter. The venue of an action brought under this section is in Travis County.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the general revenue fund to the credit of the health care information account.

Sec. 108.0141. CRIMINAL PENALTY. (a) A person who knowingly accesses data in violation of this chapter or who with criminal negligence releases data in violation of this chapter commits an offense.

(b) An offense under this section is a state jail felony.

Sec. 108.015. CONFLICT OF INTEREST. The *department* [~~council~~] may not accept a donation from a person required to provide data under this chapter or from a person or business entity who provides goods or services to the *department* [~~council~~] for compensation.

Sec. 108.016. SUNSET REVIEW. Unless continued in existence in accordance with Chapter 325, Government Code (Texas Sunset Act), after the review required by Section 11.003(b), this chapter expires September 1, 2015.

SECTION 3.0356. Section 114.002, Health and Safety Code, is amended to read as follows:

Sec. 114.002. INTERAGENCY OBESITY COUNCIL. The council is composed of *the commissioner,* the commissioner of agriculture, [~~the commissioner of state health services,~~] and the commissioner of education, or a staff member designated by each of those commissioners.

SECTION 3.0357. Section 114.005, Health and Safety Code, is amended to read as follows:

Sec. 114.005. REVIEW OF AGENCY PROGRAMS. The council shall review the status of the programs of *the department,* the Department of Agriculture, [~~the Depart-~~

~~ment of State Health Services,~~] and the Texas Education Agency that promote better health and nutrition and prevent obesity among children and adults in this state.

SECTION 3.0358. Section 114.006(d), Health and Safety Code, is amended to read as follows:

(d) The council shall provide to the *department* [~~Department of State Health Services~~] information on effective strategies for employers to use to promote workplace wellness, including information on the projected costs and benefits. The *department* [~~Department of State Health Services~~] shall post the information on its Internet website.

SECTION 3.0359. Section 114.007(c), Health and Safety Code, is amended to read as follows:

(c) A report submitted by the council under Subsection (a) must include the following information regarding the evidence-based public health awareness plan under Section 114.006:

(1) a cost estimate for an ongoing program to implement the plan;

(2) projected benefits of the program;

(3) a summary of the information provided to the *department* [~~Department of State Health Services~~] for its Internet website; and

(4) recommendations for goals and future legislation.

SECTION 3.0360. Section 115.007(a), Health and Safety Code, is amended to read as follows:

(a) The task force consists of:

(1) the commissioner, the executive director or director, or a deputy or assistant commissioner of:

(A) the commission, designated by the executive commissioner;

(B) the Department of Aging and Disability Services, designated by the commissioner of *aging and disability services* [~~that agency~~];

(C) the Department of Assistive and Rehabilitative Services, designated by the commissioner of *assistive and rehabilitative services* [~~that agency~~];

(D) the division of early childhood intervention services, designated by the commissioner of *assistive and rehabilitative services* [~~the Department of Assistive and Rehabilitative Services~~];

(E) the Department of Family and Protective Services, designated by the commissioner of *family and protective services* [~~that agency~~];

(F) the *department* [~~Department of State Health Services~~], designated by the commissioner [~~of that agency~~];

(G) the Texas Education Agency, designated by the commissioner of *education* [~~that agency~~];

(H) the Texas *Juvenile Justice Department* [~~Youth Commission~~], designated by the executive *director* [~~commissioner~~] of that agency; *and*

(I) [~~the Texas Juvenile Probation Commission, designated by the executive director of that agency; and~~

[~~(J)~~] the Texas Correctional Office on Offenders with Medical or Mental Impairments, designated by the director of that office; and

(2) eight nonvoting members who are:

(A) a representative of a local mental health authority or a local *intellectual and developmental disability* [~~mental retardation~~] authority, appointed by the governor;

(B) two members of the house of representatives, appointed by the speaker of the house of representatives;

(C) two senators, appointed by the lieutenant governor; and

(D) three parents or consumer advocates, one each appointed by the commission, the Texas Education Agency, and the Texas *Juvenile Justice Department* [~~Youth Commission~~].

SECTION 3.0361. Section 121.002(2), Health and Safety Code, is amended to read as follows:

(2) "Physician" means a person licensed to practice medicine by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~].

SECTION 3.0362. Section 121.003(b), Health and Safety Code, is amended to read as follows:

(b) The governing bodies of municipalities and the commissioners courts of counties may cooperate with one another in making necessary improvements and providing services to promote the public health in accordance with *Chapter 791, Government Code* [~~The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes)~~].

SECTION 3.0363. Section 121.004, Health and Safety Code, is amended to read as follows:

Sec. 121.004. LOCAL HEALTH UNITS. A local health unit is a division of municipal or county government that provides public health services but does not provide each service *listed* [~~required of a local health department~~] under Section *121.006(d)* [~~121.032(a)~~] or *required* of a public health district under Section 121.043(a).

SECTION 3.0364. Section 121.005(d), Health and Safety Code, is amended to read as follows:

(d) The *executive commissioner* [~~board~~] may adopt rules necessary to implement this section.

SECTION 3.0365. Section 121.006(c), Health and Safety Code, is amended to read as follows:

(c) *Chapter 783, Government Code,* [~~The Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes)~~] and standards adopted under that *chapter* [~~Act~~] control, if applicable, if the local health unit, local health department, or public health district receives state support for the provision of public health services.

SECTION 3.0366. Section 121.0065(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~board~~] shall adopt rules governing:

(1) the allocation formula for grants awarded under this section;

(2) the manner in which a municipality, county, public health district, or other political subdivision applies for a grant;

(3) the procedures for awarding grants; and

(4) the minimum essential public health services to be provided under the grant and other standards applicable to the services to be provided under the grant.

SECTION 3.0367. Section 121.007, Health and Safety Code, is amended to read as follows:

Sec. 121.007. PUBLIC HEALTH REGIONS. (a) The *department* [~~board~~] may designate geographic areas of the state as public health regions to provide public health services.

(b) The *department* [~~board~~] shall appoint a physician to serve as regional director for each public health region. The regional director is the chief administrative officer of the region. The *department* [~~board~~] shall establish the qualifications and terms of employment of a regional director.

(c) The *department* [~~board or its designee~~] may require a regional director to perform the duties of a health authority. The regional director may perform those duties, as authorized by the *department* [~~board or commissioner~~], in a jurisdiction in the region in

which the health authority fails to perform duties prescribed [~~by the board~~] under Section 121.024. The regional director shall perform the duties of a health authority in a jurisdiction in the region in which there is not a health authority.

SECTION 3.0368. Section 121.008(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~board~~] shall hold an annual conference for health authorities and for directors of local health departments and public health districts. The commissioner or the commissioner's designee shall preside over the conference.

SECTION 3.0369. Section 121.022(b), Health and Safety Code, is amended to read as follows:

(b) To be qualified to serve as a health authority, the appointee must:

(1) take and subscribe to the official oath; and

(2) file a copy of the oath and appointment with the *department* [~~board~~].

SECTION 3.0370. Sections 121.024(b) and (c), Health and Safety Code, are amended to read as follows:

(b) A health authority shall perform each duty that is:

(1) necessary to implement and enforce a law to protect the public health; or

(2) prescribed by the *department* [~~board~~].

(c) The duties of a health authority include:

(1) establishing, maintaining, and enforcing quarantine in the health authority's jurisdiction;

(2) aiding the *department* [~~board~~] in relation to local quarantine, inspection, disease prevention and suppression, birth and death statistics, and general sanitation in the health authority's jurisdiction;

(3) reporting the presence of contagious, infectious, and dangerous epidemic diseases in the health authority's jurisdiction to the *department* [~~board~~] in the manner and at the times prescribed by the *department* [~~board~~];

(4) reporting to the *department* [~~board~~] on any subject on which it is proper for the *department* [~~board~~] to direct that a report be made; and

(5) aiding the *department* [~~board~~] in the enforcement of the following in the health authority's jurisdiction:

(A) proper rules, requirements, and ordinances;

(B) sanitation laws;

(C) quarantine rules; and

(D) vital statistics collections.

SECTION 3.0371. Sections 121.029(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the *department* [~~board~~], or by this or any other law, to a properly qualified physician to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

(1) meet the qualifications set out in Section 121.022(a);

(2) be appointed as a designee in the same manner as the appointment of the health authority;

(3) take, subscribe, and file the official oath and appointment with the *department* [~~board~~] as required by Section 121.022(b); and

(4) file a certified copy of the written delegation with the *department* [~~board~~].

SECTION 3.0372. Section 121.033(d), Health and Safety Code, is amended to read as follows:

(d) A director of a local health department who is not a physician shall appoint a physician as the health authority in the local health department's jurisdiction, subject to the approval of the governing body or the commissioners court, as appropriate, and the *department* [~~board~~].

SECTION 3.0373. Sections 121.0331(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the *department* [~~board~~], or by this or any other law, to a properly qualified physician who is employed by the municipality's or county's local health department to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

(1) meet the qualifications set out in Section 121.022(a);

(2) be appointed as a designee in the same manner as the appointment of the health authority;

(3) take, subscribe, and file the official oath and appointment with the *department* [~~board~~] as required by Section 121.022(b); and

(4) file a certified copy of the written delegation with the *department* [~~board~~].

SECTION 3.0374. Section 121.043(b), Health and Safety Code, is amended to read as follows:

(b) For purposes of Section 121.005, a public health district shall be identified by its program of public health services and shall, at a minimum, provide the services listed [~~for a local health department~~] under Section *121.006(d)* [~~121.032(b)~~].

SECTION 3.0375. Section 121.045(d), Health and Safety Code, is amended to read as follows:

(d) A director of a public health district who is not a physician shall appoint a physician as the health authority for the district, subject to the approval of the members and the *department* [~~board~~].

SECTION 3.0376. Sections 121.0451(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the *department* [~~board~~], or by this or any other law, to a properly qualified physician who is employed by the public health district to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

(1) meet the qualifications set out in Section 121.022(a);

(2) be appointed as a designee in the same manner as the appointment of the health authority;

(3) take, subscribe, and file the official oath and appointment with the *department* [~~board~~] as required by Section 121.022(b); and

(4) file a certified copy of the written delegation with the *department* [~~board~~].

SECTION 3.0377. Section 122.008(b), Health and Safety Code, is amended to read as follows:

(b) A nurse employed under Subsection (a) shall:

(1) investigate the health conditions and sanitary surroundings of the schools and the personal, physical, and health condition of students in the schools;

(2) cooperate with the *department* [~~Texas Department of Health~~] and local health authorities; and

(3) perform other duties required by the commissioners court.

SECTION 3.0378. Sections 141.002(2) and (5), Health and Safety Code, are amended to read as follows:

(2) "Day camp" includes any camp that primarily operates during any portion of the day between 7 a.m. and 10 p.m. for a period of four or more consecutive days but may incidentally offer not more than two overnight stays each camp session. The term does not include a facility required to be licensed with the Department of *Family and* Protective [~~and Regulatory~~] Services.

(5) "Youth camp" means a facility or property, other than a facility required to be licensed by the Department of *Family and* Protective [~~and Regulatory~~] Services, that:

(A) has the general characteristics of a day camp, resident camp, or travel camp;

(B) is used primarily or partially for recreational, athletic, religious, or educational activities; and

(C) accommodates at least five minors who attend or temporarily reside at the camp for all or part of at least four days.

SECTION 3.0379. Section 141.0035, Health and Safety Code, is amended to read as follows:

Sec. 141.0035. LICENSE FEES. (a) The *executive commissioner* [~~board~~] by rule shall establish the amount of the fee for obtaining or renewing a license under this chapter. The *executive commissioner* [~~board~~] shall set the fee in a reasonable amount designed to recover the direct and indirect costs to the department of administering and enforcing this chapter. The *executive commissioner* [~~board~~] may set fees in a different amount for resident youth camps and day youth camps to reflect differences in the costs of administering and enforcing this chapter for resident and day camps.

(b) Before *the executive commissioner adopts or amends* [~~adopting or amending~~] a rule under Subsection (a), the *department* [~~board~~] shall solicit comments and information from the operators of affected youth camps and allow affected youth camp operators the opportunity to meet with appropriate department staff who are involved with the rulemaking process.

SECTION 3.0380. Section 141.004(a), Health and Safety Code, is amended to read as follows:

(a) To obtain a license, a person must submit a license application accompanied by a license fee in an amount set by the *executive commissioner by rule* [~~board~~].

SECTION 3.0381. Section 141.005, Health and Safety Code, is amended to read as follows:

Sec. 141.005. LICENSE RENEWAL. (a) A person holding a license issued under this chapter must renew the license annually by submitting a renewal application on a date determined by *department* [~~board~~] rule on a form provided by the department.

(b) The application must be accompanied by a renewal fee in an amount set by the *executive commissioner by rule* [~~board~~].

(c) The department may not renew the license of a youth camp which has not corrected deficiencies before the application for renewal is submitted. The *executive commissioner* [~~board~~] shall adopt substantive and procedural rules for the submission by a youth camp operator of evidence that a deficiency or deficiencies have been corrected.

SECTION 3.0382. Sections 141.007(b) and (c), Health and Safety Code, are amended to read as follows:

(b) An employee or agent who enters a youth camp to investigate and inspect conditions shall notify the person in charge of the camp of the inspector's presence and shall present proper credentials. The department may exercise the remedies authorized by Section *141.015(b)* [~~141.014(b)~~] if the employee or agent is not allowed to enter.

(c) The *executive commissioner* [~~department~~] may prescribe reasonable record-keeping requirements for licensed youth camps, including a requirement that the youth camp keep records relating to matters involving the health and safety of campers. An em-

ployee or agent of the department may examine, during regular business hours, any records relating to the health and safety of campers.

SECTION 3.0383. Section 141.008(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] may adopt rules to implement this chapter. In adopting the rules the *executive commissioner* [~~board~~] shall comply with Subchapter B, Chapter 2001, Government Code, including Sections 2001.032(b) and 2001.033, Government Code. In developing the rules *to be adopted by the executive commissioner*, the *department* [~~board~~] shall consult parents, youth camp operators, and appropriate public and private officials and organizations.

SECTION 3.0384. Section 141.009, Health and Safety Code, is amended to read as follows:

Sec. 141.009. STANDARDS. The *executive commissioner* [~~board~~] by rule shall establish health and safety standards for youth camps. The standards may relate to:

(1) adequate and proper supervision at all times of camp activities;

(2) qualifications for directors, supervisors, and staff and sufficient numbers of those persons;

(3) proper safeguards for sanitation and public health;

(4) adequate medical services for personal health and first aid;

(5) proper procedures for food preparation, handling, and mass feeding;

(6) healthful and sufficient water supply;

(7) proper waste disposal;

(8) proper water safety procedures for swimming pools, lakes, and waterways;

(9) safe boating equipment;

(10) proper maintenance and safe use of motor vehicles;

(11) safe buildings and physical facilities;

(12) proper fire precautions;

(13) safe and proper recreational and other equipment;

(14) proper regard for density and use of the premises; and

(15) records of criminal convictions of camp personnel.

SECTION 3.0385. Sections 141.0095(d) and (f), Health and Safety Code, are amended to read as follows:

(d) In accordance with this section and the criteria and guidelines developed by the training advisory committee established under Section 141.0096, the executive commissioner [~~of the Health and Human Services Commission~~] by rule shall establish criteria and guidelines for training and examination programs on sexual abuse and child molestation. The department may approve training and examination programs offered by trainers under contract with youth camps or by online training organizations or may approve programs offered in another format authorized by the department.

(f) The department may assess a fee in the amount *set by the executive commissioner by rule as* necessary to cover the costs of administering this section to each person that applies for the department's approval of a training and examination program on sexual abuse and child molestation under this section.

SECTION 3.0386. Sections 141.0096(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) The department shall appoint a training advisory committee to advise the department and the executive commissioner [~~of the Health and Human Services Commission~~] in the development of criteria and guidelines for the training and examination program on sexual abuse and child molestation required under Section 141.0095 and to perform any other functions requested by the department.

(b) The training advisory committee consists of not more than nine members selected by the commissioner [~~of state health services~~] as follows:

(1) at least two members who represent the general public; and

(2) other members, who include experienced camping professionals representing the camping communities of this state, representatives of youth camps selected by the department, and representatives of the Council on Sex Offender Treatment established under Chapter 110, Occupations Code.

(c) The training advisory committee shall meet at the call of the commissioner [~~of state health services~~].

SECTION 3.0387. Sections 141.010(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall appoint a committee to advise the *executive commissioner* [~~board~~] in the development of standards and procedures, make recommendations to the *executive commissioner* [~~board~~] regarding the content of the rules adopted to implement this *chapter* [~~Act~~], and perform any other functions requested by the *executive commissioner* [~~board~~] in the implementation and administration of the *chapter* [~~Act~~].

(b) The advisory committee may not exceed nine members, at least two of whom shall be members of the general public. The other members should be experienced camping professionals who represent the camping communities of the state. In making the appointments, the *executive commissioner* [~~board~~] shall attempt to reflect the geographic diversity of the state in proportion to the number of camps licensed by the department in each geographic area of the state.

(d) A vacancy on the advisory committee is filled by the *executive commissioner* [~~board~~] in the same manner as other appointments to the advisory committee.

SECTION 3.0388. The heading to Section 141.013, Health and Safety Code, is amended to read as follows:

Sec. 141.013. [~~BOARD~~] HEARINGS.

SECTION 3.0389. Section 141.013(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~board~~] may:

(1) call and conduct hearings;

(2) administer oaths;

(3) receive evidence;

(4) issue subpoenas for witnesses, papers, and documents related to the hearing; and

(5) make findings of fact and decisions concerning the administration of this chapter and rules adopted under this chapter.

SECTION 3.0390. Sections 141.016(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] may assess an administrative penalty if a person violates this *chapter* [~~Act~~] or a rule or order adopted or license issued under this *chapter* [~~Act~~].

(b) In determining the amount of the penalty, the *department* [~~commissioner~~] shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

SECTION 3.0391. Sections 141.017(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) If a hearing is held, the *administrative law judge* [~~commissioner~~] shall make findings of fact and shall issue a written *proposal for* decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the *department* [~~commissioner~~] may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the *department* [~~commissioner~~] shall issue an order requiring that the person pay the penalty.

SECTION 3.0392. Section 141.018, Health and Safety Code, is amended to read as follows:

Sec. 141.018. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the *department* [~~commissioner~~] shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) *file a petition for* [~~if the person seeks~~] judicial review of *the department's order contesting* the amount of the penalty, the fact of the violation, or both.

(b–1) Within the period prescribed by Subsection (b), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) *paying* [~~send the amount of~~] the penalty to the *court* [~~commissioner~~] for placement in an escrow account; or

(B) *posting* [~~post~~] with the *court* [~~commissioner~~] a *supersedeas* bond for the amount of the penalty*; or*

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b–2) If the department receives a copy of an affidavit under Subsection (b–1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved by the *court* [~~commissioner~~] and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to, [~~the commissioner or~~] post the bond *with, or file the affidavit with the court* within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

SECTION 3.0393. Section 141.019, Health and Safety Code, is amended to read as follows:

Sec. 141.019. REFUND OF ADMINISTRATIVE PENALTY. *On* [~~Not later than the 30th day after~~] the date *the court's judgment* [~~of a judicial determination~~] that an administrative penalty against a person should be reduced or not assessed *becomes final*, the *court* [~~commissioner~~] shall *order that*:

(1) [~~remit to the person~~] the appropriate amount of any penalty payment plus accrued interest *be remitted to the person not later than the 30th day after that date*; or

(2) [~~execute a release of~~] the bond *be released,* if the person has posted a bond.

SECTION 3.0394. Section 141.020, Health and Safety Code, is amended to read as follows:

Sec. 141.020. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the *department* [~~commissioner~~] may bring a civil action to recover an administrative penalty under this chapter.

SECTION 3.0395. Sections 142.001(6) and (22), Health and Safety Code, are amended to read as follows:

(6) "Certified agency" means a home and community support services agency, or a portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the *United States* Department of Health and Human Services as in compliance with conditions of participation in Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

(22) "Personal assistance service" means routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing *under the terms of* [~~through~~] a memorandum of understanding *executed by* [~~with~~] the *board and the* department [~~in accordance with Section 142.016~~]; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

SECTION 3.0396. Section 142.0011, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The *executive commissioner* [~~department~~] shall protect clients of home and community support services agencies by [~~regulating those agencies and:~~

[~~(1)~~] adopting rules relating to quality of care and quality of life.

(c) The department shall protect clients of home and community support services agencies by:

(1) regulating those agencies;

(2) strictly monitoring factors relating to the health, safety, welfare, and dignity of each client;

(3) imposing prompt and effective remedies for violations of this chapter and rules and standards adopted under this chapter;

(4) enabling agencies to provide services that allow clients to maintain the highest possible degree of independence and self-determination; and

(5) providing the public with helpful and understandable information relating to agencies in this state.

SECTION 3.0397. Section 142.0012(d), Health and Safety Code, is amended to read as follows:

(d) The *executive commissioner* [~~department~~] may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

SECTION 3.0398. Section 142.004(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~board~~] by rule shall require that, at a minimum,

before the department may approve a license application, the applicant must provide to the department:

(1) documentation establishing that, at a minimum, the applicant has sufficient financial resources to provide the services required by this chapter and by the department during the term of the license;

(2) a list of the management personnel for the proposed home and community support services agency, a description of personnel qualifications, and a plan for providing continuing training and education for the personnel during the term of the license;

(3) documentation establishing that the applicant is capable of meeting the minimum standards established by the *executive commissioner* [~~board~~] relating to the quality of care;

(4) a plan that provides for the orderly transfer of care of the applicant's clients if the applicant cannot maintain or deliver home health, hospice, or personal assistance services under the license;

(5) identifying information on the home and community support services agency owner, administrator, and chief financial officer to enable the department to conduct criminal background checks on those persons;

(6) identification of any controlling person with respect to the applicant; and

(7) documentation relating to any controlling person identified under Subdivision (6), if requested by the department and relevant to the controlling person's compliance with any applicable licensing standard required or adopted [~~by the board~~] under this chapter.

SECTION 3.0399. Sections 142.006(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) The department shall issue a home and community support services agency license to provide home health, hospice, or personal assistance services for each place of business to an applicant if:

(1) the applicant:

(A) qualifies for the license to provide the type of service that is to be offered by the applicant;

(B) submits an application and license fee as required by this chapter; and

(C) complies with all applicable licensing standards required or adopted [~~by the board~~] under this chapter; and

(2) any controlling person with respect to the applicant complies with all applicable licensing standards required or adopted [~~by the board~~] under this chapter.

(b) A license issued under this chapter expires two years after the date of issuance. The executive commissioner [~~of the Health and Human Services Commission~~] by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, the department shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months for which the license is valid. A license holder shall pay the total license renewal fee at the time of renewal. The department may issue an initial license for a shorter term to conform expiration dates for a locality or an applicant. The department may issue a temporary license to an applicant for an initial license.

(c) The department may find that a home and community support services agency has satisfied the requirements for licensing if the agency is accredited by an accreditation organization, such as *The* [~~the~~] Joint Commission [~~on Accreditation of Healthcare Organizations~~] or the Community Health Accreditation Program, and the department finds that the accreditation organization has standards that meet or exceed the requirements for licensing under this chapter. A license fee is required of the home and community support services agency at the time of a license application.

SECTION 3.0400. Section 142.008(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall establish eligibility requirements for a branch office license.

SECTION 3.0401. Section 142.0085(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall establish standards required for the issuance of an alternate delivery site license.

SECTION 3.0402. Sections 142.009(h) and (l), Health and Safety Code, are amended to read as follows:

(h) Except for the investigation of complaints, a home and community support services agency licensed by the department under this chapter is not subject to additional surveys relating to home health, hospice, or personal assistance services while the agency maintains accreditation for the applicable service from *The* [~~the~~] Joint Commission [~~for Accreditation of Healthcare Organizations~~], the Community Health Accreditation Program, or other accreditation organizations that meet or exceed the regulations adopted under this chapter. Each provider must submit to the department documentation from the accrediting body indicating that the provider is accredited when the provider is applying for the initial license and annually when the license is renewed.

(l) The department and other state agencies that are under the *commission* [~~Health and Human Services Commission~~] and that contract with home and community support services agencies to deliver services for which a license is required under this chapter shall execute a memorandum of understanding that establishes procedures to eliminate or reduce duplication of standards or conflicts between standards and of functions in license, certification, or compliance surveys and complaint investigations. [~~The Health and Human Services Commission shall review the recommendation of the council relating to the memorandum of understanding before considering approval.~~] The memorandum of understanding must be approved by the commission.

SECTION 3.0403. Sections 142.010(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner by rule* [~~department~~] shall set license fees for home and community support services agencies in amounts that are reasonable to meet the costs of administering this chapter, except that the fees may not be less than $600 or more than $2,000 for a license to provide home health, hospice, or personal assistance services.

(b) The *executive commissioner* [~~board~~] shall consider the size of the home and community support services agency, the number of clients served, the number of services provided, and the necessity for review of other accreditation documentation in determining the amount *collected by the department for* [~~of~~] initial and renewal license fees.

SECTION 3.0404. Section 142.0104(a), Health and Safety Code, is amended to read as follows:

(a) If certain application information as specified by *department* [~~executive commissioner~~] rule changes after the applicant submits an application to the department for a license under this chapter or after the department issues the license, the license holder shall report the change to the department and pay a fee not to exceed $50 not later than the time specified by *department* [~~executive commissioner~~] rule.

SECTION 3.0405. Section 142.011(d), Health and Safety Code, is amended to read as follows:

(d) A person whose application is denied or whose license is suspended or revoked is entitled to a hearing [~~before the department~~] if the person submits a written request to the *commission* [~~department~~]. Chapter 2001, Government Code, and the department's rules for contested case hearings apply to hearings conducted under this section and to appeals from department decisions.

SECTION 3.0406. Sections 142.017(c), (d), (e), and (g), Health and Safety Code, are amended to read as follows:

(c) The *executive commissioner* [~~department~~] by rule shall specify each violation for

which *the department may assess* an administrative penalty [~~may be assessed~~]. In determining which violations warrant penalties, the department shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(2) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The *executive commissioner* [~~department~~] by rule shall establish a schedule of appropriate and graduated penalties for each violation based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or safety of clients;

(2) the history of previous violations by the person or a controlling person with respect to that person;

(3) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation; and

(6) any other matters that justice may require.

(e) Except as provided by Subsection (j), the *executive commissioner* [~~department~~] by rule shall provide the home and community support services agency with a reasonable period of time following the first day of a violation to correct the violation before *the department assesses* [~~assessing~~] an administrative penalty if a plan of correction has been implemented.

(g) The *executive commissioner* [~~department~~] shall establish a system to ensure standard and consistent application of penalties regardless of the home and community support services agency location.

SECTION 3.0407. Section 142.0171(c), Health and Safety Code, is amended to read as follows:

(c) If the person notified of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the *department* [~~commissioner or the commissioner's designee~~] shall [~~issue an~~] order [~~approving the determination and ordering that~~] the person *to* pay the proposed penalty.

SECTION 3.0408. Section 142.0172, Health and Safety Code, is amended to read as follows:

Sec. 142.0172. HEARING; ORDER. (a) If the person notified requests a hearing, the department *shall refer the case to the State Office of Administrative Hearings and an administrative law judge of that office shall conduct the hearing.*

(a–1) The department shall[~~:~~

[~~(1) set a hearing;~~

[~~(2)~~] give written notice of the hearing to the person[~~; and~~

[~~(3) designate a hearings examiner to conduct the hearing~~].

(b) The *administrative law judge* [~~hearings examiner~~] shall make findings of fact and conclusions of law and shall promptly issue to the *department* [~~commissioner or the commissioner's designee~~] a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the *administrative law judge* [~~hearings examiner~~], the *department* [~~commissioner or the commissioner's designee~~] by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

SECTION 3.0409. Sections 142.018(a) and (b), Health and Safety Code, are amended to read as follows:

(a) In this section, "abuse," "exploitation," and "neglect" have the meanings applicable through a rule adopted by the executive commissioner [~~of the Health and Human Services Commission~~] under Section 48.002(c), Human Resources Code, except that if the executive commissioner has not adopted applicable rules under that section, the statutory definitions of those terms under Section 48.002(a), Human Resources Code, shall be used.

(b) A home and community support services agency that has cause to believe that a person receiving services from the agency has been abused, exploited, or neglected by an employee of the agency shall report the information to:

(1) the department; and

(2) the Department of *Family and* Protective [~~and Regulatory~~] Services or other appropriate state agency as required by Section 48.051, Human Resources Code.

SECTION 3.0410. Section 142.021, Health and Safety Code, is amended to read as follows:

Sec. 142.021. ADMINISTRATION OF MEDICATION. A person may not administer medication to a client of a home and community support services agency unless the person:

(1) holds a license under state law that authorizes the person to administer medication;

(2) holds a permit issued under Section 142.025 and acts under the delegated authority of a person who holds a license under state law that authorizes the person to administer medication;

(3) administers a medication to a client of a home and community support service agency in accordance with rules of the Texas Board of Nursing that permit delegation of the administration of medication to a person not holding a permit under Section 142.025; or

(4) administers noninjectable medication under circumstances authorized by the memorandum of understanding *executed by the department and the Texas Board of Nursing* [~~adopted under Section 142.016~~].

SECTION 3.0411. Section 142.023, Health and Safety Code, is amended to read as follows:

Sec. 142.023. RULES FOR ADMINISTRATION OF MEDICATION. The *executive commissioner* [~~board~~] by rule shall establish:

(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide;

(2) curricula to train a home health medication aide;

(3) minimum standards for the approval of home health medication aide training programs and for rescinding approval;

(4) the acts and practices that are allowed or prohibited to a permit holder; and

(5) minimum standards for on-site supervision of a permit holder by a registered nurse.

SECTION 3.0412. Section 142.024(a), Health and Safety Code, is amended to read as follows:

(a) An application for the approval of a home health medication aide training program must be made to the department on a form *prescribed by the department* and under *department* rules [~~prescribed by the board~~].

SECTION 3.0413. Sections 142.025(a) and (d), Health and Safety Code, are amended to read as follows:

(a) To be issued or to have renewed a home health medication aide permit, a person

shall apply to the department on a form prescribed *by the department* and under *department* rules [~~adopted by the board~~].

(d) The department shall issue a permit or renew a permit to an applicant who:

(1) meets the minimum requirements adopted under Section 142.023;

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee *specified in department rules* [~~determined by the board~~].

SECTION 3.0414. Section 142.026(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner by rule* [~~board~~] shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions under this subchapter. The fees may not exceed:

(1) $25 for a combined permit application and examination fee; and

(2) $15 for a renewal permit application fee.

SECTION 3.0415. Section 144.013(f), Health and Safety Code, is amended to read as follows:

(f) If the department denies an application twice, the application is canceled. The applicant is entitled to a hearing [~~before the commissioner~~] on the denial if the applicant requests the hearing not later than the 30th day after the date of the second denial.

SECTION 3.0416. Section 144.021(b), Health and Safety Code, is amended to read as follows:

(b) As a condition of licensure, the department, *in accordance with department rules,* may prescribe other reasonable and appropriate construction, operational, maintenance, and inspection requirements to ensure compliance with this chapter and *other* applicable rules [~~of the department~~].

SECTION 3.0417. Section 144.022(a), Health and Safety Code, is amended to read as follows:

(a) Each licensed rendering establishment, related station, or dead animal hauler shall have a dead animal log that meets the requirements prescribed by [~~the~~] department *rule*. The name of the licensed rendering establishment, related station, or dead animal hauler must be on the front of the log.

SECTION 3.0418. Section 144.026(b), Health and Safety Code, is amended to read as follows:

(b) Liquid waste shall be treated in the manner required by the department and disposed of in a manner approved by [~~the~~] department *rule*.

SECTION 3.0419. Section 144.043(e), Health and Safety Code, is amended to read as follows:

(e) If the department denies an application twice, the application is canceled. The applicant is entitled to a hearing [~~before the commissioner~~] on the denial if the applicant requests the hearing not later than the 30th day after the date of the second denial.

SECTION 3.0420. Sections 144.063(b) and (c), Health and Safety Code, are amended to read as follows:

(b) *The term of a* [~~An operating~~] license *issued under this chapter is two years* [~~is valid for one year and may be renewed annually by the license holder~~]. The *executive commissioner by rule* [~~department~~] shall set *a* [~~an annual~~] renewal fee.

(c) A license holder may renew a license by paying the renewal fee to the department on or before *the expiration date of the license* [~~January 1 of each year~~]. On receipt of the fee, the license is automatically renewed [~~for the next calendar year~~].

SECTION 3.0421. Section 144.064, Health and Safety Code, is amended to read as

follows:

Sec. 144.064. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE OR PERMIT; REINSTATEMENT. (a) The *department* [~~commissioner~~] may deny, suspend, or revoke an operating license, construction permit, or renewal of an operating license or construction permit if the *department* [~~commissioner~~] finds that:

(1) the license holder or permit holder has violated this chapter or a rule or order adopted under this chapter or did not exercise due care to prevent the violation; or

(2) a fact or condition exists that would have justified the denial of the license or permit application if the fact or condition was known at the time the original application was filed.

(b) On the discovery of such a violation, the *department* [~~commissioner~~] shall notify the license holder or permit holder of the violation. If the license holder or permit holder fails to make the necessary corrections, the department shall notify the license holder or permit holder of a hearing to suspend or revoke the license or permit.

(c) The *department* [~~commissioner~~] may reinstate a suspended license or permit, or may issue a new license or permit to a person whose license or permit has been revoked, if a ground to deny the original license or permit application does not exist.

SECTION 3.0422. Section 144.072(e), Health and Safety Code, is amended to read as follows:

(e) The *executive commissioner* [~~department~~] by rule shall set the fees authorized by this chapter in amounts that allow the department to recover the annual expenditures of state funds by the department in:

(1) reviewing and acting on a license renewal or registration;

(2) amending a license, renewal license, or registration;

(3) inspecting a licensed facility or vehicles and equipment regulated under this chapter; and

(4) implementing and enforcing this chapter, including a rule or order adopted or a license issued under this chapter.

SECTION 3.0423. Section 144.073, Health and Safety Code, is amended to read as follows:

Sec. 144.073. *FEES* [~~ACCOUNT~~]. All fees collected under this chapter are payable to the department and shall be deposited to the credit of the [~~rendering fee account in the~~] general revenue fund[~~. Money in the account may be appropriated only to the department~~] to be used to process and investigate applications filed under this chapter and to administer this chapter.

SECTION 3.0424. Section 144.074, Health and Safety Code, is amended to read as follows:

Sec. 144.074. ADOPTION OF RULES. The *executive commissioner* [~~board~~] may adopt rules consistent with this chapter as necessary for the enforcement of this chapter.

SECTION 3.0425. Section 144.076, Health and Safety Code, is amended to read as follows:

Sec. 144.076. PUBLIC RECORDS. The transcript of any hearing held by the *State Office of Administrative Hearings* [~~commissioner~~] and findings made by the *administrative law judge* [~~commissioner~~] or the department under this chapter are public records open to inspection at all reasonable times.

SECTION 3.0426. Sections 144.081(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] may assess an administrative penalty against a person who violates this chapter, a rule adopted [~~by the board~~] under the authority of this chapter, or an order or license issued under this chapter.

(b) In determining the amount of the penalty, the *department* [~~commissioner~~] shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; *and*

(5) such other matters as justice may require.

SECTION 3.0427. Sections 144.082(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) If a hearing is held, the *administrative law judge* [~~commissioner~~] shall make findings of fact and shall issue a written *proposal for* decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person notified of the violation does not request a hearing, the *department* [~~commissioner~~] may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the *department* [~~commissioner~~] shall issue an order requiring that the person pay the penalty.

SECTION 3.0428. Section 144.083, Health and Safety Code, is amended to read as follows:

Sec. 144.083. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the *department* [~~commissioner~~] shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) *file a petition for* [~~if the person seeks~~] judicial review of *the department's order contesting* the amount of the penalty, the fact of the violation, or both.

(b–1) Within the period prescribed by Subsection (b), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) *paying* [~~send the amount of~~] the penalty to the *court* [~~commissioner~~] for placement in an escrow account; or

(B) *posting* [~~post~~] with the *court* [~~commissioner~~] a *supersedeas* bond for the amount of the penalty*; or*

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b–2) If the department receives a copy of an affidavit under Subsection (b–1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved by the *court* [~~commissioner~~] and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to, [~~the commissioner or~~] post the bond *with, or file the affidavit with the court* within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

SECTION 3.0429. Section 144.084, Health and Safety Code, is amended to read as follows:

Sec. 144.084. REFUND OF ADMINISTRATIVE PENALTY. *On* [~~Not later than the 30th day after~~] the date *the court's judgment* [~~of a judicial determination~~] that an administrative penalty against a person should be reduced or not assessed *becomes final*, the *court* [~~commissioner~~] shall *order that*:

(1) [~~remit to the person~~] the appropriate amount of any penalty payment plus accrued interest *be remitted to the person not later than the 30th day after that date*; or

(2) [~~execute a release of~~] the bond *be released,* if the person has posted a bond.

SECTION 3.0430. Section 144.085, Health and Safety Code, is amended to read as follows:

Sec. 144.085. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the *department* [~~commissioner~~] may bring a civil action to recover an administrative penalty under this subchapter.

SECTION 3.0431. Section 145.004(b), Health and Safety Code, is amended to read as follows:

(b) The *department* [~~Texas Department of Health~~] may enforce Chapter 431 against a person who adulterates or misbrands a tanning device. The department may investigate a person accused of adulterating or misbranding a tanning device. For the purposes of this subsection, a tanning device is adulterated or misbranded if the tanning device would be an adulterated or misbranded device under Section 431.111 or 431.112[~~, Health and Safety Code~~].

SECTION 3.0432. Section 145.006, Health and Safety Code, is amended to read as follows:

Sec. 145.006. WARNING SIGNS. (a) A tanning facility shall post a warning sign in a conspicuous location where it is readily visible by persons entering the establishment. The *executive commissioner* [~~board~~] by rule shall specify the size, design, and graphic design of the sign. The sign must have dimensions of at least 11 inches by 17 inches and must contain the following wording:

Repeated exposure to ultraviolet radiation may cause chronic sun damage characterized by wrinkling, dryness, fragility, bruising of the skin, and skin cancer.

DANGER: ULTRAVIOLET RADIATION

Failure to use protective eyewear may result in severe burns or permanent injury to the eyes.

Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women taking oral contraceptives who use this product may develop discolored skin.

A customer may call the [~~Texas~~] Department of *State* Health *Services* at (insert toll-free telephone number) to report an alleged injury regarding this tanning facility.

IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF AN ULTRAVIOLET LAMP OR SUNLAMP.

(b) A tanning facility operator shall also post a warning sign at each tanning device in a conspicuous location that is readily visible to a person about to use the device. The *executive commissioner* [~~board~~] by rule shall specify the size, design, and graphic design of the sign. The sign must have dimensions of at least 11 inches by 17 inches and must contain the following wording:

DANGER: ULTRAVIOLET RADIATION

1. Follow the manufacturer's instructions for use of this device.
2. Avoid too frequent or lengthy exposure. As with natural sunlight, exposure can

cause serious eye and skin injuries and allergic reactions. Repeated exposure may cause skin cancer.

3. Wear protective eyewear. Failure to use protective eyewear may result in severe burns or permanent damage to the eyes.

4. Do not sunbathe before or after exposure to ultraviolet radiation from sunlamps.

5. Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medication, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women using oral contraceptives who use this product may develop discolored skin.

A customer may call the [~~Texas~~] Department of *State* Health *Services* at (insert toll-free telephone number) to report an alleged injury regarding this tanning device.

IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF THIS DEVICE.

(c) The *department* [~~Texas Department of Health~~] shall include with a license application and an application for renewal of a license a description of the design standards required for signs under this section.

SECTION 3.0433. Sections 145.008(i), (j), and (k), Health and Safety Code, are amended to read as follows:

(i) A record of each customer using a tanning device shall be maintained at the tanning facility at least until the third anniversary of the date of the customer's last use of a tanning device. The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall prescribe the form and content of the records. The record shall include:

(1) the date and time of the customer's use of a tanning device;

(2) the length of time the tanning device was used;

(3) any injury or illness resulting from the use of a tanning device;

(4) any written informed consent statement required to be signed under Subsection (e);

(5) the customer's skin type, as determined by the customer by using the Fitzpatrick scale for classifying a skin type;

(6) whether the customer has a family history of skin cancer; and

(7) whether the customer has a past medical history of skin cancer.

(j) An operator shall keep an incident log at each tanning facility. The log shall be maintained at the tanning facility at least until the third anniversary of the date of an incident. The *executive commissioner* [~~board~~] by rule shall prescribe the form and content of the log. The log shall include each:

(1) alleged injury;

(2) use of a tanning device by a customer not wearing protective eyewear;

(3) mechanical problem with a tanning device; and

(4) customer complaint.

(k) The *department* [~~Texas Department of Health~~] shall provide to each applicant for an original or renewal license a written copy of the Fitzpatrick scale.

SECTION 3.0434. Sections 145.009(a), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) A person may not operate a tanning facility unless the person holds a license issued by the department to operate the facility. Unless revoked or suspended, a license is valid until the *second* [~~first~~] anniversary of the date the license was issued. A separate license is required for each tanning facility.

(c) The *department* [~~board annually~~] shall renew licenses after application for renewal

is made on forms provided by the department for this purpose and after receipt of renewal fees.

(d) The *executive commissioner* [~~department~~] by rule may adopt a system under which licenses expire on various dates during the year. As part of this system the license fees and [~~the annual~~] renewal fees may be prorated on a monthly basis to reflect the actual number of months the license is valid.

(e) The department may revoke, suspend, suspend on an emergency basis, or probate by an emergency order of the commissioner, or the commissioner's designee, a license to operate a tanning facility for:

(1) a failure to pay a license fee or [~~an annual~~] renewal fee for a license;

(2) an applicant's acquisition or attempted acquisition of a license by fraud or deception;

(3) a violation of this chapter;

(4) a violation of a rule of the department adopted under this chapter; or

(5) a violation of an order issued under this chapter.

SECTION 3.0435. Sections 145.010(a), (b), (c), and (e), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~board~~] shall collect a fee for:

(1) a license issued or renewed; or

(2) a license that is modified.

(b) The *department* [~~board~~] may charge prorated [~~or annual~~] fees.

(c) The *executive commissioner* [~~board~~] by rule shall set the fees *for issuance or renewal of a license in the amounts prescribed by Section 12.0111 and for modification of a license in an amount* [~~in amounts~~] that *allows* [~~allow~~] the department to recover not less than 50 percent of the costs to the department in:

(1) reviewing and acting on a license application;

(2) modifying [~~or renewing~~] a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this chapter or rules relating to this chapter.

(e) A license fee received by the department shall be deposited in the state treasury to the credit of the food and drug registration *account in the general revenue* fund. The fees are dedicated to the department for the administration and enforcement of this chapter.

SECTION 3.0436. Section 145.011(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] may adopt rules as necessary to implement this chapter.

SECTION 3.0437. Section 145.012(c), Health and Safety Code, is amended to read as follows:

(c) If an emergency order is issued without a hearing, the department shall *refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall* determine a time and place for a hearing *and hold the hearing* [~~at which the emergency order is affirmed, modified, or set aside~~]. The hearing shall be held under rules of the department.

SECTION 3.0438. Sections 145.0121(a) and (f), Health and Safety Code, are amended to read as follows:

(a) If it appears that a person has violated or is violating this chapter or an order issued or a rule adopted under this chapter, the *department* [~~commissioner~~] may request the attorney general or the district or county attorney or the municipal attorney of a municipality in the jurisdiction where the violation is alleged to have occurred or may occur to institute a civil suit for:

(1) an order enjoining the violation;

(2) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy if the department shows that the person has engaged in or is engaging in a violation;

(3) the assessment and recovery of a civil penalty; or

(4) both injunctive relief and a civil penalty.

(f) The *department* [~~commissioner~~] or the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the *department* [~~commissioner~~] under this section shall be used for the administration and enforcement of this chapter. The expenses recovered by the attorney general shall be used by the attorney general.

SECTION 3.0439. Sections 145.0122(a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~board or the board's designee~~] may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

(d) If the *department* [~~commissioner or the commissioner's designee~~] determines a violation has occurred, the *department shall give to the person written notice* [~~commissioner or the commissioner's designee may issue to the board or the board's designee a report~~] that states the facts on which the determination is based and the *department's* [~~commissioner's or the designee's~~] recommendation on the imposition of a penalty[~~, including a recommendation on the amount of the penalty~~].

[~~(e) Within 14 days after the date the report is issued, the commissioner or the commissioner's designee shall give written notice of the report to the person.~~] The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the *department* [~~commissioner or the commissioner's designee~~] or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the *department* [~~commissioner or the commissioner's designee~~], the *department* [~~board~~] by order shall [~~approve the determination and~~] impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the *department shall refer the matter to the State Office of Administrative Hearings* [~~commissioner or the commissioner's designee shall set a hearing~~] and *shall* give notice of the hearing to the person. The hearing shall be held by an administrative law judge of *that office* [~~the department~~]. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~board~~] a *written* proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~board~~] by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the *department's* [~~board's~~] order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the *department's* [~~board's~~] order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review in a district court in Travis County contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30–day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the *department's* [~~board's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner~~] by certified mail.

(l) If the *department* [~~commissioner~~] receives a copy of an affidavit under Subsection (k)(2), the *department* [~~commissioner~~] may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the *department* [~~commissioner~~] may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the *department's* order [~~of the board~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.0440. Section 146.0025(a), Health and Safety Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) a medical facility licensed under other law;

(2) an office or clinic of a person licensed by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~];

(3) a person who performs only ear piercing; or

(4) a facility in which only ear piercing is performed.

SECTION 3.0441. Section 146.003(b), Health and Safety Code, as amended by Chapters 516 (S.B. 61) and 1528 (S.B. 932), Acts of the 76th Legislature, Regular Session, 1999, is reenacted to read as follows:

(b) The department may issue a license or temporary location license for a tattoo or body piercing studio after determining that the studio is in compliance with applicable statutes, rules, and zoning codes.

SECTION 3.0442. Section 146.004, Health and Safety Code, is amended to read as follows:

Sec. 146.004. LICENSE TERM; RENEWAL. (a) A tattoo studio or body piercing

studio license is valid for *two years* [~~one year~~] from the date of issuance. A temporary tattooing or body piercing location license is valid for a specified period not to exceed seven days.

(b) A tattoo studio or body piercing studio license may be renewed [~~annually~~] on payment of the required renewal fee.

SECTION 3.0443. Section 146.0041(a), Health and Safety Code, is amended to read as follows:

(a) The department may refuse to issue an original or renewal tattoo studio or body piercing studio license if it has reasonable grounds to believe and finds that any of the following circumstances exist:

(1) the applicant has been convicted of a violation of this chapter during the two years immediately preceding the filing of the application;

(2) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for a conviction associated with tattooing or body piercing;

(3) the applicant violated or caused to be violated a provision of this chapter or a rule [~~of the department~~] adopted under this chapter involving moral turpitude during the six months immediately preceding the filing of the application;

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(5) the applicant is indebted to the state for a fee or penalty imposed by this chapter or by rule [~~of the department~~] adopted under this chapter;

(6) the applicant is a minor; or

(7) the applicant does not provide an adequate building available at the address for which the license is sought before conducting any activity authorized by the license.

SECTION 3.0444. Section 146.0042(b), Health and Safety Code, is amended to read as follows:

(b) The department may suspend for not more than 60 days or revoke an original or renewal tattoo studio or body piercing studio license if it is found, after notice and hearing, that any of the following is true:

(1) the license holder has been finally convicted of a violation of this chapter;

(2) the license holder violated a provision of this chapter or a rule [~~of the department~~] adopted under this chapter;

(3) the license holder made a false or misleading statement in connection with the original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the department;

(4) the license holder is indebted to the state for fees or payment of penalties imposed by this chapter or by a rule [~~of the department~~] adopted under this chapter;

(5) the license holder knowingly misrepresented to a customer or the public any tattoo or body piercing jewelry sold by the license holder; or

(6) the license holder was intoxicated on the licensed premises.

SECTION 3.0445. Section 146.005, Health and Safety Code, is amended to read as follows:

Sec. 146.005. FEES. [~~(a)~~] The *executive commissioner by rule* [~~board~~] shall set license and registration fees and license and registration renewal fees in amounts necessary *for the department* to administer this chapter.

[~~(b) Fees collected under this section may only be appropriated to the department to administer and enforce this chapter.~~]

SECTION 3.0446. Section 146.007(b), Health and Safety Code, is amended to read as follows:

(b) The [~~board, commissioner, and~~] department may enforce Chapter 431 in relation to a drug, cosmetic, or device that is used in tattooing and that is not otherwise subject to that chapter as if the drug, cosmetic, or device satisfied the definitions assigned those terms under Section 431.002.

SECTION 3.0447. Section 146.010(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall establish sanitation requirements for tattoo and body piercing studios and any other necessary requirements relating to the building or part of the building in which a tattoo or body piercing studio is located.

SECTION 3.0448. Section 146.013(a), Health and Safety Code, is amended to read as follows:

(a) A tattooist shall maintain a permanent record of each person tattooed by the tattooist for a period established by *department rule* [~~the board~~]. A person who performs body piercing shall maintain a permanent record of each individual whose body is pierced by the person for a period established by *department rule* [~~the board~~].

SECTION 3.0449. Section 146.015(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt rules to implement this chapter.

SECTION 3.0450. Section 146.017(b), Health and Safety Code, is amended to read as follows:

(b) The refusal to issue a license, the suspension or revocation of a license, and any appeals are governed by the *department's* [~~board's~~] formal hearing procedures and the procedures for a contested case hearing under Chapter 2001, Government Code. A person may appeal a final decision of the department as provided by that chapter.

SECTION 3.0451. Sections 146.019(a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] may impose an administrative penalty against a person who violates a rule adopted under Section 146.007 or an order adopted or license issued under this chapter.

(d) The *department* [~~commissioner who determines that a violation has occurred~~] shall issue an order that states the facts on which *a* [~~the~~] determination *that a violation occurred* is based, including an assessment of the penalty.

(e) *The department* [~~Within 14 days after the date the report is issued, the commissioner~~] shall give written notice of the *order* [~~report~~] to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the *department* [~~commissioner~~] or may make written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the *department* [~~commissioner~~], the *department* [~~commissioner~~] by order shall [~~approve the determination and~~] impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the *department* [~~commissioner~~] shall *refer the case to the State Office of Administrative Hearings and* [~~set a hearing and give notice of the hearing to the person. The hearing shall be held by~~] an administrative law judge of *that office shall hold the hearing. The department shall give written notice of the hearing to the person* [~~the State Office of Administrative Hearings~~]. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~commissioner~~] a proposal for a decision

about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~commissioner~~] by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the *department's* [~~commissioner's~~] order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the *department's* [~~commissioner's~~] order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30–day period, a person who acts under Subsection (j)(3) [~~of this section~~] may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the *department's* [~~commissioner's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner~~] by certified mail.

(l) The *department on receipt of* [~~commissioner who receives~~] a copy of an affidavit under Subsection (k)(2) [~~of this section~~] may file, with the court within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the *department* [~~commissioner~~] may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the *department* [~~commissioner~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code [~~and its subsequent amendments~~]; and

(2) is under the substantial evidence rule.

SECTION 3.0452. Section 146.024, Health and Safety Code, is amended to read as follows:

Sec. 146.024. REGISTRATION TERM; RENEWAL. (a) A tattooist or body piercer registration is valid for *two years* [~~one year~~] from the date of issuance.

(b) A tattooist or body piercer registration may be renewed [~~annually~~] on:

(1) payment of the required renewal fee; and

(2) submission of proof of completion of a training course approved by the depart-

ment that includes not less than four hours related to bloodborne pathogens, infection control, and aseptic technique.

SECTION 3.0453. Sections 146.025(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The department may approve a course of instruction based on *any* standards set by the *executive commissioner* [~~department~~] to reasonably ensure that a tattooist or body piercer develops the job skills and knowledge necessary to protect public health and safety.

(d) The *executive commissioner* [~~department~~] by rule shall set a fee in an amount reasonable and necessary to cover the cost *to the department* of reviewing the course content and issuing the approval.

SECTION 3.0454. Section 161.001(a), Health and Safety Code, is amended to read as follows:

(a) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable for an injury caused by the vaccine or immunizing agent if the immunization is required by *department rule* [~~the board~~] or is otherwise required by law or *other rules* [~~rule~~].

SECTION 3.0455. Sections 161.004(a) and (f), Health and Safety Code, are amended to read as follows:

(a) Every child in the state shall be immunized against vaccine preventable diseases caused by infectious agents in accordance with the immunization schedule adopted *in department rules* [~~by the board~~].

(f) The *executive commissioner* [~~board~~] shall adopt rules that are necessary to administer this section.

SECTION 3.0456. Sections 161.005(a) and (b), Health and Safety Code, are amended to read as follows:

(a) On admission of a child to a *mental health* facility of the *department, a state supported living center of the* [~~Texas~~] Department of *Aging and Disability Services, or a facility of* [~~Mental Health and Mental Retardation,~~] the Texas Department of Criminal Justice[~~,~~] or the Texas *Juvenile Justice Department* [~~Youth Commission~~], the facility physician shall review the immunization history of the child and administer any needed vaccinations or refer the child for immunization.

(b) The department and the *executive commissioner* [~~board~~] have the same powers and duties under this section as *the department and the executive commissioner* [~~those entities~~] have under Sections 38.001 and 51.933, Education Code. In addition, the provisions of those sections relating to provisional admissions and exceptions apply to this section.

SECTION 3.0457. Sections 161.0051(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule may require nursing *facilities* [~~homes~~] to offer, in accordance with an immunization schedule adopted *in department rules* [~~by the board~~], immunizations to elderly residents or to staff who are in contact with elderly residents against diseases that the *executive commissioner* [~~board~~] determines to be:

(1) caused by infectious agents;

(2) potentially deadly; and

(3) preventable by vaccine.

(c) The *executive commissioner* [~~board~~] by rule shall require nursing homes to offer, in accordance with an immunization schedule adopted *in department rules* [~~by the board~~]:

(1) pneumococcal vaccine to elderly residents; and

(2) influenza vaccine to elderly residents and to staff who are in contact with elderly residents.

SECTION 3.0458. Sections 161.0052(b), (c), (d), (f), and (h), Health and Safety Code, are amended to read as follows:

(b) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall require a hospital to inform each elderly person admitted to the hospital for a period of 24 hours or more that the pneumococcal and influenza vaccines are available. If the elderly person requests a vaccine, and if a physician, or an advanced nurse practitioner or physician assistant on behalf of a physician, determines that the vaccine is in the person's best interest, the hospital must make the vaccination available to the person before the person is discharged from the hospital.

(c) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall require an end stage renal disease facility to offer, to the extent possible as determined by the facility, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the facility if a physician, or an advanced nurse practitioner or physician assistant on behalf of a physician, determines that the vaccine is in the person's best interest. If the facility decides it is not feasible to offer the vaccine, the facility must provide the person with information on other options for obtaining the vaccine.

(d) The Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] by rule shall require a physician responsible for the management of a physician's office that provides ongoing medical care to elderly persons to offer, to the extent possible as determined by the physician, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the office. If the physician decides it is not feasible to offer the vaccine, the physician must provide the person with information on other options for obtaining the vaccine.

(f) In adopting rules under this section, the executive commissioner [~~of the Health and Human Services Commission~~] and the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] shall consider the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(h) The department shall make available to hospitals and end stage renal disease facilities, and the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] shall make available to physicians' offices, educational and informational materials concerning vaccination against influenza virus and pneumococcal disease.

SECTION 3.0459. Sections 161.007(a), (a–3), and (k), Health and Safety Code, are amended to read as follows:

(a) The department, for the primary purpose of establishing and maintaining a single repository of accurate, complete, and current immunization records to be used in aiding, coordinating, and promoting efficient and cost-effective communicable disease prevention and control efforts, shall establish and maintain an immunization registry. The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall develop guidelines to:

(1) protect the confidentiality of patients in accordance with Section 159.002, Occupations Code;

(2) inform the individual or the individual's legally authorized representative about the registry and that registry information may be released under Section 161.00735;

(3) require the written or electronic consent of the individual or the individual's legally authorized representative before any information relating to the individual is included in the registry;

(4) permit the individual or the individual's legally authorized representative to withdraw consent for the individual to be included in the registry; and

(5) determine the process by which consent is verified, including affirmation by a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained.

(a–3) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall develop guidelines and procedures for obtaining consent from an individual after the individual's 18th birthday, including procedures for retaining immunization information in a separate database that is inaccessible by any person other than the

department during the one-year period during which an 18–year-old may consent to inclusion in the registry under Subsection (a–2).

(k) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules to implement this section.

SECTION 3.0460. Sections 161.00705(e) and (i), Health and Safety Code, are amended to read as follows:

(e) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall determine the period during which the information collected under this section must remain in the immunization registry following the end of the disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(i) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules necessary to implement this section.

SECTION 3.0461. Section 161.00706(c), Health and Safety Code, is amended to read as follows:

(c) The executive commissioner [~~of the Health and Human Services Commission~~] shall:

(1) develop rules to ensure that immunization history submitted under Subsection (a)(2) is medically verified immunization information;

(2) develop guidelines for use by the department in informing first responders about the registry and that registry information may be released under Section 161.00735; and

(3) adopt rules necessary for the implementation of this section.

SECTION 3.0462. Section 161.0072(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~board~~] shall develop rules to ensure that the immunization history submitted by an individual or the individual's legally authorized representative is medically verified immunization information.

SECTION 3.0463. Sections 161.00735(e) and (h), Health and Safety Code, are amended to read as follows:

(e) The executive commissioner [~~of the Health and Human Services Commission,~~] by rule[~~,~~] shall determine the period during which the information collected under Subsection (c) must remain in the immunization registry following the end of the disaster.

(h) The executive commissioner [~~of the Health and Human Services Commission~~] shall make every effort to enter into a memorandum of agreement with each state to which residents of this state are likely to evacuate in a disaster on:

(1) the release and use of registry information under this section to the appropriate health authority or local health authority of that state, including the length of time the information may be retained by that state; and

(2) the receipt and use of information submitted by the health authority or local health authority of that state for inclusion in the registry under this section.

SECTION 3.0464. Section 161.008(h), Health and Safety Code, is amended to read as follows:

(h) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules to implement this section.

SECTION 3.0465. Section 161.0105(c), Health and Safety Code, is amended to read as follows:

(c) The immunity created by this section is in addition to any immunity created by Sections 161.001 and *161.007(i)* [~~161.007(g)~~].

SECTION 3.0466. Section 161.0107(c), Health and Safety Code, is amended to read as follows:

(c) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall specify:

(1) the fields necessary to populate the immunization registry, including a field that indicates the patient's consent to be listed in the immunization registry has been obtained; and

(2) the data standards that must be used for electronic submission of immunization information.

SECTION 3.0467. Section 161.0109(b), Health and Safety Code, is amended to read as follows:

(b) The department shall collaborate with the *Cancer Prevention and Research Institute of* Texas [~~Cancer Council~~] or its successor entity to develop educational programs for parents regarding human papillomavirus and promoting awareness of a minor's need for preventive services for cervical cancer and its precursors.

SECTION 3.0468. Section 161.021(a), Health and Safety Code, is amended to read as follows:

(a) Unless prohibited by other law, a person, including a hospital, sanatorium, nursing *facility* [~~home~~], rest home, medical society, cancer registry, or other organization, may provide interviews, reports, statements, memoranda, or other information relating to the condition and treatment of any person, to be used in a study to reduce morbidity or mortality or to identify persons who may need immunization, to:

(1) the department;

(2) a person that makes inquiries under immunization surveys conducted for the department;

(3) a medical organization;

(4) a hospital;

(5) a hospital committee; or

(6) a cancer registry, including a cancer registry of a cancer treatment center [~~as defined by Section 82.002~~].

SECTION 3.0469. Section 161.0213, Health and Safety Code, is amended to read as follows:

Sec. 161.0213. CONFIDENTIALITY. Reports, records, and information furnished to the commissioner or the commissioner's designee or the Texas [~~Natural Resource Conservation~~] Commission *on Environmental Quality* that relate to an epidemiologic or toxicologic investigation of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health are not public information under Chapter 552, Government Code, and are subject to the same confidentiality requirements as described by Section 81.046.

SECTION 3.0470. Sections 161.0315(c) and (e), Health and Safety Code, are amended to read as follows:

(c) A hospital district may require in a contract with a health care facility described by Subsection (b) a provision that allows the governing body of the district to appoint a specified number of members to the facility's medical peer review committee or medical committee to evaluate medical and health care services for which the district contracts with the facility to provide. The governing body of a hospital district may receive a report from the facility's medical peer review committee or medical committee under this section in a closed meeting. A report, information, or a record that the district receives from the facility related to a review action conducted under the terms of the contract is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a

report, information, or record of a medical peer review committee under Section *160.007* [~~160.006~~], Occupations Code, is subject.

(e) The governing body of a hospital district may receive a report under Subsection (d)(3) in a closed meeting. A report, information, or a record that the hospital district receives under Subsection (d)(3) is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section *160.007* [~~160.006~~], Occupations Code, is subject.

SECTION 3.0471. Section 161.083(a), Health and Safety Code, is amended to read as follows:

(a) Pursuant to federal regulation under 21 C.F.R. Section *1140.14(b)* [~~897.14(b)~~], a person may not sell, give, or cause to be sold or given a cigarette or tobacco product to someone who is younger than 27 years of age unless the person to whom the cigarette or tobacco product was sold or given presents an apparently valid proof of identification.

SECTION 3.0472. Section 161.101(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~board~~] shall adopt rules to implement this section.

SECTION 3.0473. Sections 161.131(1) and (8), Health and Safety Code, are amended to read as follows:

(1) "Abuse" has the meaning assigned by the federal Protection and Advocacy for [~~Mentally Ill~~] Individuals *with Mental Illness* Act [~~of 1986~~] (42 U.S.C. Section 10801 et seq.).

(8) "Neglect" has the meaning assigned by the federal Protection and Advocacy for [~~Mentally Ill~~] Individuals *with Mental Illness* Act [~~of 1986~~] (42 U.S.C. Section 10801 et seq.).

SECTION 3.0474. Sections 161.132(d) and (f), Health and Safety Code, are amended to read as follows:

(d) The *executive commissioner by rule for the department and the Department of Aging and Disability Services, and* [~~Texas Board of Mental Health and Mental Retardation, Texas Board of Health, Texas Commission on Alcohol and Drug Abuse, and~~] each state health care regulatory agency by rule, shall:

(1) prescribe procedures for the investigation of reports received under Subsection (a) or (b) and for coordination with and referral of reports to law enforcement agencies or other appropriate agencies; and

(2) prescribe follow-up procedures to ensure that a report referred to another agency receives appropriate action.

(f) *The executive commissioner by rule and each* [~~Each~~] state health care regulatory agency by rule shall provide for appropriate disciplinary action against a health care professional licensed by the agency who fails to report as required by this section.

SECTION 3.0475. Section 161.133, Health and Safety Code, is amended to read as follows:

Sec. 161.133. [~~MEMORANDUM OF UNDERSTANDING ON~~] INSERVICE TRAINING. (a) The *executive commissioner* [~~Texas Board of Mental Health and Mental Retardation, Texas Board of Health, and Texas Commission on Alcohol and Drug Abuse~~] by rule shall *require* [~~adopt a joint memorandum of understanding that requires~~] each inpatient mental health facility, treatment facility, or hospital that provides comprehensive medical rehabilitation services to annually provide as a condition of continued licensure a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the facility.

(b) The *rules* [~~memorandum~~] must prescribe:

(1) minimum standards for the training program; and

(2) a means for monitoring compliance with the requirement.

(c) *The department* [~~Each agency~~] shall review and *the executive commissioner shall* modify the *rules* [~~memorandum~~] as necessary not later than the last month of each state fiscal year.

SECTION 3.0476. Section 161.134(a), Health and Safety Code, is amended to read as follows:

(a) A hospital, mental health facility, or treatment facility may not suspend or terminate the employment of or discipline or otherwise discriminate against an employee for reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule *of another agency* [~~adopted by the Texas Board of Mental Health and Mental Retardation, the Texas Board of Health, or the Texas Commission on Alcohol and Drug Abuse~~].

SECTION 3.0477. Sections 161.135(a) and (c), Health and Safety Code, are amended to read as follows:

(a) A hospital, mental health facility, or treatment facility may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule *of another agency* [~~adopted by the Texas Board of Mental Health and Mental Retardation, the Texas Board of Health, or the Texas Commission on Alcohol and Drug Abuse~~].

(c) A person suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff was retaliated against if:

(1) before the 60th day after the date on which the plaintiff made a report in good faith, the hospital, mental health facility, or treatment facility:

(A) discriminates in violation of Section 161.134 against a relative who is an employee of the facility;

(B) transfers, disciplines, suspends, terminates, or otherwise discriminates against the person or a relative who is a volunteer in the facility or who is employed under the patient work program administered by the *department* [~~Texas Department of Mental Health and Mental Retardation~~];

(C) commits or threatens to commit, without justification, the person or a relative of the person; or

(D) transfers, discharges, punishes, or restricts the privileges of the person or a relative of the person who is receiving inpatient or outpatient services in the facility; or

(2) a person expected to testify on behalf of the plaintiff is intentionally made unavailable through an action of the facility, including a discharge, resignation, or transfer.

SECTION 3.0478. Sections 161.301(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] shall develop and implement a public awareness campaign designed to reduce tobacco use by minors in this state. The campaign may use advertisements or similar media to provide educational information about tobacco use.

(b) The *department* [~~commissioner~~] may contract with another person to develop and implement the public awareness campaign. The contract shall be awarded on the basis of competitive bids.

(d) The *department* [~~commissioner~~] may not award a contract under Subsection (b) to:

(1) a person or entity that is required to register with the Texas Ethics Commission under Chapter 305, Government Code, except as provided by Subsection (f);

(2) any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by Subdivision (1) and not described by Subsection (f); or

(3) a person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, or other government policies through grassroots or media campaigns.

SECTION 3.0479. Section 161.352(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~department~~] by rule shall establish the time for filing an annual report under this section and shall prescribe the form for the report.

SECTION 3.0480. Section 161.353(a), Health and Safety Code, is amended to read as follows:

(a) Each manufacturer shall assign a nicotine yield rating to each cigarette or tobacco product distributed in this state. The rating shall be assigned in accordance with *department* standards [~~adopted by the department~~].

SECTION 3.0481. Section 161.402, Health and Safety Code, is amended to read as follows:

Sec. 161.402. MATERIAL SAFETY DATA SHEET REQUIRED; ASBESTOS INSTALLATION OR REINSTALLATION PROHIBITED. The *executive commissioner* [~~board~~] shall adopt rules designating the materials or replacement parts for which a person must obtain a material safety data sheet before installing the materials or parts in a public building. A person may not install materials or replacement parts in a public building if:

(1) the person does not obtain a required material safety data sheet; or

(2) the materials or parts, according to the material safety data sheet, contain more than one percent asbestos and there is an alternative material or part.

SECTION 3.0482. Section 161.501(a), Health and Safety Code, is amended to read as follows:

(a) A hospital, birthing center, physician, nurse midwife, or midwife who provides prenatal care to a pregnant woman during gestation or at delivery of an infant shall:

(1) provide the woman and the father of the infant, if possible, or another adult caregiver for the infant, with a resource pamphlet that includes:

(A) a list of the names, addresses, and phone numbers of professional organizations that provide postpartum counseling and assistance to parents relating to postpartum depression and other emotional trauma associated with pregnancy and parenting;

(B) information regarding the prevention of shaken baby syndrome including:

(i) techniques for coping with anger caused by a crying baby;

(ii) different methods for preventing a person from shaking a newborn, infant, or other young child;

(iii) the dangerous effects of shaking a newborn, infant, or other young child; and

(iv) the symptoms of shaken baby syndrome and who to contact, as recommended by the American Academy of Pediatrics, if a parent suspects or knows that a baby has been shaken in order to receive prompt medical treatment;

(C) a list of diseases for which a child is required by state law to be immunized and the appropriate schedule for the administration of those immunizations;

(D) the appropriate schedule for follow-up procedures for newborn screening;

(E) information regarding sudden infant death syndrome, including current recommendations for infant sleeping conditions to lower the risk of sudden infant death syndrome; and

(F) educational information in both English and Spanish on pertussis disease and the availability of a vaccine to protect against pertussis, including information on the Centers for Disease Control *and Prevention* recommendation that parents receive Tdap during the postpartum period to protect newborns from the transmission of pertussis;

(2) if the woman is a recipient of medical assistance under Chapter 32, Human Resources Code, provide the woman and the father of the infant, if possible, or another adult caregiver with a resource guide that includes information in both English and Spanish relating to the development, health, and safety of a child from birth until age five, including information relating to:

(A) selecting and interacting with a primary health care practitioner and establishing a "medical home" for the child;

(B) dental care;

(C) effective parenting;

(D) child safety;

(E) the importance of reading to a child;

(F) expected developmental milestones;

(G) health care resources available in the state;

(H) selecting appropriate child care; and

(I) other resources available in the state;

(3) document in the woman's record that the woman received the resource pamphlet described in Subdivision (1) and the resource guide described in Subdivision (2), if applicable; and

(4) retain the documentation for at least five years in the hospital's, birthing center's, physician's, nurse midwife's, or midwife's records.

SECTION 3.0483. The heading to Section 161.502, Health and Safety Code, is amended to read as follows:

Sec. 161.502. DUTIES OF DEPARTMENT, *EXECUTIVE COMMISSIONER, AND COMMISSION*.

SECTION 3.0484. Sections 161.502(c) and (d), Health and Safety Code, are amended to read as follows:

(c) The *executive commissioner* [~~Health and Human Services Commission~~] shall develop specific performance measures by which the commission may evaluate the effectiveness of the resource guide under Section 161.501(a)(2) in:

(1) reducing costs to the state; and

(2) improving outcomes for children.

(d) Not later than December 1 of each even-numbered year, the *commission* [~~Health and Human Services Commission~~] shall submit a report to the legislature on the effectiveness of the resource guide under Section 161.501(a)(2), including legislative recommendations concerning the guide.

SECTION 3.0485. Section 161.551, Health and Safety Code, is amended to read as follows:

Sec. 161.551. DEFINITIONS. *(a)* In this subchapter, *"servicemember"* [~~:~~

[~~(1) "Commission" means the Health and Human Services Commission.~~

[~~(2) "Department" means the Department of State Health Services.~~

[~~(3) "Servicemember"~~] means a member or former member of the state military forces or a component of the United States armed forces, including a reserve component.

(b) In this section, "state military forces" has the meaning assigned by Section 437.001, Government Code.

SECTION 3.0486. Sections 162.001(1) and (2), Health and Safety Code, are amended to read as follows:

(1) "Blood bank" means a facility that obtains blood from voluntary donors, as that term is defined by the United States Food and Drug Administration, the *AABB (formerly known as the* American Association of Blood Banks*)*, and the American Red Cross Blood Services and that is registered or licensed by the *Center for* [~~Office of~~] Biologics *Evaluation and Research* of the United States Food and Drug Administration and accredited by the *AABB* [~~American Association of Blood Banks~~] or the American Red Cross Blood Services, or is qualified for membership in the American Association of Tissue Banks. The term includes a blood center, regional collection center, tissue bank, and transfusion service.

(2) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control *and Prevention* of the United States Public Health Service.

SECTION 3.0487. Section 162.002(a), Health and Safety Code, is amended to read as follows:

(a) For each donation of blood, a blood bank shall require the donor to submit to tests for *communicable* [~~infectious~~] diseases, including tests for AIDS, HIV, or hepatitis, and serological tests for contagious venereal diseases.

SECTION 3.0488. Section 162.004, Health and Safety Code, is amended to read as follows:

Sec. 162.004. DISCLOSURE REQUIRED BY LAW. A blood bank shall disclose all information required by law, including HIV test results, to:

(1) the department and a local health authority as required under Chapter 81 (Communicable Disease Prevention and Control Act);

(2) the Centers for Disease Control *and Prevention* of the United States Public Health Service, as required by federal law or regulation; or

(3) any other local, state, or federal entity, as required by law, rule, or regulation.

SECTION 3.0489. Sections 162.006(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A blood bank may report to other blood banks the name of a donor with a possible *communicable* [~~infectious~~] disease according to positive blood test results.

(b) A blood bank that reports a donor's name to other blood banks under this section may not disclose the *communicable* [~~infectious~~] disease that the donor has or is suspected of having.

SECTION 3.0490. Section 162.007(a), Health and Safety Code, is amended to read as follows:

(a) A blood bank shall report blood test results for blood confirmed as HIV positive by the normal procedures blood banks presently use or found to be contaminated by any other *communicable* [~~infectious~~] disease to:

(1) the hospital or other facility in which the blood was transfused or provided;

(2) the physician who transfused the infected blood; or

(3) the recipient of the blood.

SECTION 3.0491. Section 162.016, Health and Safety Code, is amended to read as follows:

Sec. 162.016. BE A BLOOD DONOR ACCOUNT; *DEDICATION*. (a) The be a blood donor account is a separate account in the general revenue fund. The account is composed of:

(1) money deposited to the credit of the account under Section 504.641, Transportation Code; and

(2) gifts, grants, donations, and legislative appropriations.

(b) The department administers the account.

(b–1) The department [~~and~~] may spend money credited to the account *or money deposited to the associated trust fund account created under Section 504.6012, Transportation Code,* only to:

(1) make grants to nonprofit blood centers in this state for programs to recruit and retain volunteer blood donors; and

(2) defray the cost of administering the account.

(c) The *department* [~~board:~~

[~~(1)~~] may accept gifts, grants, and donations from any source for the benefit of the account. *The executive commissioner of the Health and Human Services Commission* [~~; and~~

[~~(2)~~] by rule shall establish guidelines for spending money *described by Subsection (b–1)* [~~credited to the account~~].

SECTION 3.0492. Section 162.018, Health and Safety Code, is amended to read as follows:

Sec. 162.018. BROCHURE ON UMBILICAL CORD BLOOD OPTIONS. (a) The executive commissioner [~~of the Health and Human Services Commission~~] shall prepare and update as necessary a brochure based on nationally accepted, peer reviewed, scientific research information regarding stem cells contained in the umbilical cord blood after delivery of an infant. The information in the brochure must include:

(1) the current and potential uses, risks, and benefits of stem cells contained in umbilical cord blood to a potential recipient of donated stem cells, including a biological family member, extended family member, or nonrelated individual;

(2) the options available for future use or storage of umbilical cord blood after delivery of an infant, including:

(A) discarding the stem cells;

(B) donating the stem cells to a public umbilical cord blood bank;

(C) storing the stem cells in a private family umbilical cord blood bank for use by immediate and extended family members; and

(D) storing the stem cells for immediate and extended family use through a family or sibling donor banking program that provides free collection, processing, and storage when a medical need exists;

(3) the medical process used to collect umbilical cord blood after delivery of an infant;

(4) any risk associated with umbilical cord blood collection to the mother and the infant;

(5) any costs that may be incurred by a pregnant woman who chooses to donate or store umbilical cord blood after delivery of the woman's infant; and

(6) the average cost of public and private umbilical cord blood banking.

(b) The *department* [~~Department of State Health Services~~] shall make the brochure available on the department's website and shall distribute the brochure on request to physicians or other persons permitted by law to attend a pregnant woman during gestation or at delivery of an infant.

SECTION 3.0493. Section 164.003(5), Health and Safety Code, is amended to read as follows:

(5) "Mental health facility" means:

(A) a "mental health facility" as defined by Section 571.003;

(B) a residential treatment facility, other than a mental health facility, in which persons are treated for emotional problems or disorders in a 24–hour supervised living environment; and

(C) an adult day-care facility [~~or adult day health care facility~~] as defined by Section 103.003, Human Resources Code.

SECTION 3.0494. Section 164.004, Health and Safety Code, is amended to read as follows:

Sec. 164.004. EXEMPTIONS. This chapter does not apply to:

(1) a treatment facility:

(A) operated by the *department* [~~Texas Department of Mental Health and Mental Retardation~~], a federal agency, or a political subdivision; or

(B) funded by the *department* [~~Texas Commission on Alcohol and Drug Abuse~~];

(2) a community center established under Subchapter A, Chapter 534, or a facility operated by a community center; or

(3) a facility owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.

SECTION 3.0495. Section 164.006, Health and Safety Code, is amended to read as follows:

Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN REFERRAL SOURCES. A treatment facility or a person employed or under contract with a treatment facility, if acting on behalf of the treatment facility, may not:

(1) contact a referral source or potential client for the purpose of soliciting, directly or indirectly, a referral of a patient to the treatment facility without disclosing its soliciting agent's, employee's, or contractor's affiliation with the treatment facility;

(2) offer to provide or provide mental health or chemical dependency services to a public or private school in this state, on a part-time or full-time basis, the services of any of its employees or agents who make, or are in a position to make, a referral, if the services are provided on an individual basis to individual students or their families. Nothing herein prohibits a treatment facility from:

(A) offering or providing educational programs in group settings to public schools in this state if the affiliation between the educational program and the treatment facility is disclosed;

(B) providing counseling services to a public school in this state in an emergency or crisis situation if the services are provided in response to a specific request by a school; provided that, under no circumstances may a student be referred to the treatment facility offering the services; or

(C) entering into a contract under Section 464.020 with the board of trustees of a school district with a disciplinary alternative education program, or with the board's designee, for the provision of chemical dependency treatment services;

(3) provide to an entity of state or local government, on a part-time or full-time basis, the mental health or chemical dependency services of any of its employees, agents, or contractors who make or are in a position to make referrals unless:

(A) the treatment facility discloses to the governing authority of the entity:

(i) the employee's, agent's, or contractor's relationship to the facility; and

(ii) the fact that the employee, agent, or contractor might make a referral, if permitted, to the facility; and

(B) the employee, agent, or contractor makes a referral only if:

(i) the treatment facility obtains the governing authority's authorization in writing for the employee, agent, or contractor to make the referrals; and

(ii) the employee, agent, or contractor discloses to the prospective patient the employee's, agent's, or contractor's relationship to the facility at initial contact; or

(4) in relation to intervention and assessment services, contract with, offer to remunerate, or remunerate a person who operates an intervention and assessment service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the intervention and assessment service is:

(A) operated by a community mental health and *intellectual disability* [~~mental~~

~~retardation~~] center funded by the *department and the Department of Aging and Disability Services* [~~Texas Department of Mental Health and Mental Retardation~~];

(B) operated by a county or regional medical society;

(C) a qualified mental health referral service as defined by Section 164.007; or

(D) owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.

SECTION 3.0496. Section 164.007(a), Health and Safety Code, is amended to read as follows:

(a) A qualified mental health referral service means a service that conforms to all of the following standards:

(1) the referral service does not exclude as a participant in the referral service an individual who meets the qualifications for participation and qualifications for participation cannot be based in whole or in part on an individual's or entity's affiliation or nonaffiliation with other participants in the referral service;

(2) a payment the participant makes to the referral service is assessed equally against and collected equally from all participants, and is only based on the cost of operating the referral service and not on the volume or value of any referrals to or business otherwise generated by the participants of the referral service;

(3) the referral service imposes no requirements on the manner in which the participant provides services to a referred person, except that the referral service may require that the participant charge the person referred at the same rate as it charges other persons not referred by the referral service, or that these services be furnished free of charge or at a reduced charge;

(4) a referral made to a mental health professional or chemical dependency treatment facility is made only in accordance with Subdivision (1) and the referral service does not make referrals to mental health facilities other than facilities maintained or operated by the *department* [~~Texas Department of Mental Health and Mental Retardation~~], community mental health [~~and mental retardation~~] centers, or other political subdivisions, provided that a physician may make a referral directly to any mental health facility;

(5) the referral service is staffed by appropriately licensed and trained mental health professionals and a person who makes assessments for the need for treatment of mental illness or chemical dependency is a mental health professional as defined by this chapter;

(6) in response to each inquiry or after personal assessment, the referral service makes referrals, on a clinically appropriate, rotational basis, to at least three mental health professionals or chemical dependency treatment facilities whose practice addresses or facilities are located in the county of residence of the person seeking the referral or assessment, but if there are not three providers in the inquirer's county of residence, the referral service may include additional providers from other counties nearest the inquirer's county of residence;

(7) no information that identifies the person seeking a referral, such as name, address, or telephone number, is used, maintained, distributed, or provided for a purpose other than making the requested referral or for administrative functions necessary to operating the referral service;

(8) the referral service makes the following disclosures to each person seeking a referral:

(A) the manner in which the referral service selects the group of providers participating in the referral service;

(B) whether the provider participant has paid a fee to the referral service;

(C) the manner in which the referral service selects a particular provider from its list of provider participants to which to make a referral;

(D) the nature of the relationship or any affiliation between the referral service and the group of provider participants to whom it could make a referral; and

(E) the nature of any restriction that would exclude a provider from continuing as a provider participant;

(9) the referral service maintains each disclosure in a written record certifying that the disclosure has been made and the record certifying that the disclosure has been made is signed by either the person seeking a referral or by the person making the disclosure on behalf of the referral service; and

(10) if the referral service refers callers to a 1–900 telephone number or another telephone number that requires the payment of a toll or fee payable to or collected by the referral service, the referral service discloses the per minute charge.

SECTION 3.0497. Section 164.009(a), Health and Safety Code, is amended to read as follows:

(a) A treatment facility may not admit a patient to its facilities without fully disclosing to the patient or, if the patient is a minor, the patient's parent, managing conservator, or guardian, in, if possible, the primary language of the patient, managing conservator, or guardian, as the case may be, the following information in writing before admission:

(1) the treatment facility's estimated average daily charge for inpatient treatment with an explanation that the patient may be billed separately for services provided by mental health professionals;

(2) the name of the attending physician, if the treatment facility is a mental health facility, or the name of the attending mental health professional, if the facility is a chemical dependency facility; and

(3) the current "patient's bill of rights" as adopted by the *executive commissioner* [~~Texas Department of Mental Health and Mental Retardation, the Texas Commission on Alcohol and Drug Abuse, or the Texas Department of Health~~] that sets out restrictions to the patient's freedom that may be imposed on the patient during the patient's stay in a treatment facility.

SECTION 3.0498. Section 164.014, Health and Safety Code, is amended to read as follows:

Sec. 164.014. RULE–MAKING AUTHORITY. The *executive commissioner* [~~Texas Commission on Alcohol and Drug Abuse and Texas Board of Mental Health and Mental Retardation~~] may adopt rules interpreting the provisions of this chapter relating to the activities of a chemical dependency facility or mental health facility under *the department's* [~~its~~] jurisdiction.

SECTION 3.0499. Section 166.002(12), Health and Safety Code, is amended to read as follows:

(12) "Physician" means:

(A) a physician licensed by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~]; or

(B) a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.

SECTION 3.0500. Section 166.004(a), Health and Safety Code, is amended to read as follows:

(a) In this section, "health care provider" means:

(1) a hospital;

(2) an institution licensed under Chapter 242, including a skilled nursing facility;

(3) a home and community support services agency;

(4) *an assisted living* [~~a personal care~~] facility; and

(5) a special care facility.

SECTION 3.0501. Section 166.011(c), Health and Safety Code, is amended to read as follows:

(c) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall modify the advance directive forms required under this chapter as necessary to provide for the use of a digital or electronic signature that complies with the requirements of this section.

SECTION 3.0502. Section 166.039(g), Health and Safety Code, is amended to read as follows:

(g) A person listed in Subsection (b) who wishes to challenge a treatment decision made under this section must apply for temporary guardianship under *Chapter 1251, Estates* [~~Section 875, Texas Probate~~] Code. The court may waive applicable fees in that proceeding.

SECTION 3.0503. Sections 166.046(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision:

(1) may be given a written description of the ethics or medical committee review process and any other policies and procedures related to this section adopted by the health care facility;

(2) shall be informed of the committee review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement;

(3) at the time of being so informed, shall be provided:

(A) a copy of the appropriate statement set forth in Section 166.052; and

(B) a copy of the registry list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the *department* [~~Texas Health Care Information Council~~] under Section 166.053; and

(4) is entitled to:

(A) attend the meeting; and

(B) receive a written explanation of the decision reached during the review process.

(c) The written explanation required by Subsection *(b)(4)(B)* [~~(b)(2)(B)~~] must be included in the patient's medical record.

SECTION 3.0504. Sections 166.052(a) and (b), Health and Safety Code, are amended to read as follows:

(a) In cases in which the attending physician refuses to honor an advance directive or treatment decision requesting the provision of life-sustaining treatment, the statement required by Section *166.046(b)(3)(A)* [~~166.046(b)(2)(A)~~] shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Against Life–Sustaining Treatment That You Wish To Continue

You have been given this information because you have requested life-sustaining treatment,* which the attending physician believes is not appropriate. This information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for life-sustaining treatment because of the physician's judgment that the treatment would be inappropriate, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least 48 hours before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than 48 hours, if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

If after this review process both the attending physician and the ethics or medical committee conclude that life-sustaining treatment is inappropriate and yet you continue to request such treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to provide the requested treatment.

2. You are being given a list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the *Department of State Health Services* [~~Texas Health Care Information Council~~]. You may wish to contact providers or referral groups on the list or others of your choice to get help in arranging a transfer.

3. The patient will continue to be given life-sustaining treatment until he or she can be transferred to a willing provider for up to 10 days from the time you were given the committee's written decision that life-sustaining treatment is not appropriate.

4. If a transfer can be arranged, the patient will be responsible for the costs of the transfer.

5. If a provider cannot be found willing to give the requested treatment within 10 days, life-sustaining treatment may be withdrawn unless a court of law has granted an extension.

6. You may ask the appropriate district or county court to extend the 10–day period if the court finds that there is a reasonable expectation that a physician or health care facility willing to provide life-sustaining treatment will be found if the extension is granted.

*"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(b) In cases in which the attending physician refuses to comply with an advance directive or treatment decision requesting the withholding or withdrawal of life-sustaining treatment, the statement required by Section 166.046(b)(3)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Life–Sustaining Treatment That You Wish To Stop

You have been given this information because you have requested the withdrawal or withholding of life-sustaining treatment* and the attending physician refuses to comply with that request. The information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for withdrawal or withholding of life-sustaining treatment for any reason, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least 48 hours before a meeting of the

committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than 48 hours, if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

If you or the attending physician do not agree with the decision reached during the review process, and the attending physician still refuses to comply with your request to withhold or withdraw life-sustaining treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to withdraw or withhold the life-sustaining treatment.

2. You are being given a list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the *Department of State Health Services* [~~Texas Health Care Information Council~~]. You may wish to contact providers or referral groups on the list or others of your choice to get help in arranging a transfer.

*"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

SECTION 3.0505. Sections 166.053(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~Texas Health Care Information Council~~] shall maintain a registry listing the identity of and contact information for health care providers and referral groups, situated inside and outside this state, that have voluntarily notified the *department* [~~council~~] they may consider accepting or may assist in locating a provider willing to accept transfer of a patient under Section 166.045 or 166.046.

(c) The *department* [~~Texas Health Care Information Council~~] shall post the current registry list on its website in a form appropriate for easy comprehension by patients and persons responsible for the health care decisions of patients [~~and shall provide a clearly identifiable link from its home page to the registry page~~]. The list shall separately indicate those providers and groups that have indicated their interest in assisting the transfer of:

(1) those patients on whose behalf life-sustaining treatment is being sought;

(2) those patients on whose behalf the withholding or withdrawal of life-sustaining treatment is being sought; and

(3) patients described in both Subdivisions (1) and (2).

(d) The registry list described in this section shall include the following disclaimer:

"This registry lists providers and groups that have indicated to the *Department of State Health Services* [~~Texas Health Care Information Council~~] their interest in assisting the transfer of patients in the circumstances described, and is provided for information purposes only. Neither the *Department of State Health Services* [~~Texas Health Care Information Council~~] nor the State of Texas endorses or assumes any responsibility for any representation, claim, or act of the listed providers or groups."

SECTION 3.0506. Sections 166.081(2), (6), and (10), Health and Safety Code, are amended to read as follows:

(2) "DNR identification device" means an identification device specified by *department rule* [~~the board~~] under Section 166.101 that is worn for the purpose of identifying a person who has executed or issued an out-of-hospital DNR order or on whose behalf an out-of-hospital DNR order has been executed or issued under this subchapter.

(6) "Out-of-hospital DNR order":

(A) means a legally binding out-of-hospital do-not-resuscitate order, in the form specified by *department rule* [~~the board~~] under Section 166.083, prepared and signed by the attending physician of a person, that documents the instructions of a person or the person's legally authorized representative and directs health care professionals acting in an out-of-hospital setting not to initiate or continue the following life-sustaining treatment:

(i) cardiopulmonary resuscitation;

(ii) advanced airway management;

(iii) artificial ventilation;

(iv) defibrillation;

(v) transcutaneous cardiac pacing; and

(vi) other life-sustaining treatment specified by *department rule* [~~the board~~] under Section 166.101(a); and

(B) does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care or to alleviate pain or to provide water or nutrition.

(10) "Statewide out-of-hospital DNR protocol" means a set of statewide standardized procedures adopted by the *executive commissioner* [~~board~~] under Section 166.101(a) for withholding cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings.

SECTION 3.0507. Sections 166.082(a) and (f), Health and Safety Code, are amended to read as follows:

(a) A competent person may at any time execute a written out-of-hospital DNR order directing health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life-sustaining treatment designated by *department rule* [~~the board~~].

(f) The *executive commissioner* [~~board~~], on the recommendation of the department, shall by rule adopt procedures for the disposition and maintenance of records of an original out-of-hospital DNR order and any copies of the order.

SECTION 3.0508. Sections 166.083(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) A written out-of-hospital DNR order shall be in the standard form specified by *department* [~~board~~] rule as recommended by the department.

(b) The standard form of an out-of-hospital DNR order specified by *department rule* [~~the board~~] must, at a minimum, contain the following:

(1) a distinctive single-page format that readily identifies the document as an out-of-hospital DNR order;

(2) a title that readily identifies the document as an out-of-hospital DNR order;

(3) the printed or typed name of the person;

(4) a statement that the physician signing the document is the attending physician of the person and that the physician is directing health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue certain life-sustaining treatment on behalf of the person, and a listing of those procedures not to be initiated or continued;

(5) a statement that the person understands that the person may revoke the out-of-hospital DNR order at any time by destroying the order and removing the DNR identification device, if any, or by communicating to health care professionals at the scene the person's desire to revoke the out-of-hospital DNR order;

(6) places for the printed names and signatures of the witnesses or the notary public's acknowledgment and for the printed name and signature of the attending physician of the person and the medical license number of the attending physician;

(7) a separate section for execution of the document by the legal guardian of the person, the person's proxy, an agent of the person having a medical power of attorney, or the attending physician attesting to the issuance of an out-of-hospital DNR order by nonwritten means of communication or acting in accordance with a previously executed or previously issued directive to physicians under Section 166.082(c) that includes the following:

(A) a statement that the legal guardian, the proxy, the agent, the person by nonwritten means of communication, or the physician directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and, as applicable, the legal guardian, proxy, agent, or physician;

(8) a separate section for execution of the document by at least one qualified relative of the person when the person does not have a legal guardian, proxy, or agent having a medical power of attorney and is incompetent or otherwise mentally or physically incapable of communication, including:

(A) a statement that the relative of the person is qualified to make a treatment decision to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment under Section 166.088 and, based on the known desires of the person or a determination of the best interest of the person, directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and qualified relative of the person;

(9) a place for entry of the date of execution of the document;

(10) a statement that the document is in effect on the date of its execution and remains in effect until the death of the person or until the document is revoked;

(11) a statement that the document must accompany the person during transport;

(12) a statement regarding the proper disposition of the document or copies of the document, as the *executive commissioner* [~~board~~] determines appropriate; and

(13) a statement at the bottom of the document, with places for the signature of each person executing the document, that the document has been properly completed.

(c) The *executive commissioner* [~~board~~] may, by rule and as recommended by the department, modify the standard form of the out-of-hospital DNR order described by Subsection (b) in order to accomplish the purposes of this subchapter.

SECTION 3.0509. Sections 166.088(e) and (g), Health and Safety Code, are amended to read as follows:

(e) The fact that an adult person has not executed or issued an out-of-hospital DNR order does not create a presumption that the person does not want a treatment decision made to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment designated by *department rule* [~~the board~~].

(g) A person listed in Section 166.039(b) who wishes to challenge a decision made under this section must apply for temporary guardianship under *Chapter 1251, Estates* [~~Section 875, Texas Probate~~] Code. The court may waive applicable fees in that proceeding.

SECTION 3.0510. Section 166.089(h), Health and Safety Code, is amended to read as follows:

(h) An out-of-hospital DNR order executed or issued and documented or evidenced in the manner prescribed by this subchapter is valid and shall be honored by responding health care professionals unless the person or persons found at the scene:

(1) identify themselves as the declarant or as the attending physician, legal guardian, qualified relative, or agent of the person having a medical power of attorney who executed or issued the out-of-hospital DNR order on behalf of the person; and

(2) request that cardiopulmonary resuscitation or certain other life-sustaining treatment designated by *department rule* [~~the board~~] be initiated or continued.

SECTION 3.0511. Section 166.090(a), Health and Safety Code, is amended to read as follows:

(a) A person who has a valid out-of-hospital DNR order under this subchapter may wear a DNR identification device around the neck or on the wrist as prescribed by *department* [~~board~~] rule adopted under Section 166.101.

SECTION 3.0512. Section 166.092(b), Health and Safety Code, is amended to read as follows:

(b) An oral revocation under Subsection (a)(3) or (a)(4) takes effect only when the declarant or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation in accordance with the statewide out-of-hospital DNR protocol and rules adopted by the *executive commissioner* [~~board~~] and any applicable local out-of-hospital DNR protocol. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the person's medical record.

SECTION 3.0513. Section 166.094, Health and Safety Code, is amended to read as follows:

Sec. 166.094. LIMITATION ON LIABILITY FOR WITHHOLDING CARDIOPULMONARY RESUSCITATION AND CERTAIN OTHER LIFE–SUSTAINING PROCEDURES. (a) A health care professional or health care facility or entity that in good faith causes cardiopulmonary resuscitation or certain other life-sustaining treatment designated by *department rule* [~~the board~~] to be withheld from a person in accordance with this subchapter is not civilly liable for that action.

(b) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by *department rule* [~~the board~~] from a person in accordance with this subchapter is not civilly liable for that action.

(c) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by *department rule* [~~the board~~] from a person in accordance with this subchapter is not criminally liable or guilty of unprofessional conduct as a result of that action.

(d) A health care professional or health care facility or entity that in good faith causes or participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by *department rule* [~~the board~~] from a person in accordance with this subchapter and rules adopted under this subchapter is not in violation of any other licensing or regulatory laws or rules of this state and is not subject to any disciplinary action or sanction by any licensing or regulatory agency of this state as a result of that action.

SECTION 3.0514. Section 166.096, Health and Safety Code, is amended to read as follows:

Sec. 166.096. HONORING OUT–OF–HOSPITAL DNR ORDER DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an offense under Section 22.08, Penal Code, by withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by *department rule* [~~the board~~] from a person in accordance with this subchapter.

SECTION 3.0515. Section 166.097(b), Health and Safety Code, is amended to read as follows:

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause cardiopulmonary resuscitation or certain other life-sustaining treatment designated by *department rule* [~~the board~~] to be withheld from another person contrary to the other person's desires, falsifies or forges an out-of-hospital DNR order or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes cardiopulmonary resuscitation and certain other life-sustaining treatment designated by *department rule* [~~the board~~] to be withheld from the other person with the result that the other person's death is hastened.

SECTION 3.0516. Section 166.098, Health and Safety Code, is amended to read as follows:

Sec. 166.098. PREGNANT PERSONS. A person may not withhold cardiopulmonary resuscitation or certain other life-sustaining treatment designated by *department rule* [~~the board~~] under this subchapter from a person known by the responding health care professionals to be pregnant.

SECTION 3.0517. Sections 166.100 and 166.101, Health and Safety Code, are amended to read as follows:

Sec. 166.100. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter does not impair or supersede any legal right or responsibility a person may have under a constitution, other statute, regulation, or court decision to effect the withholding of cardiopulmonary resuscitation or certain other life-sustaining treatment designated by *department rule* [~~the board~~].

Sec. 166.101. DUTIES OF DEPARTMENT AND *EXECUTIVE COMMISSIONER* [~~BOARD~~]. (a) The *executive commissioner* [~~board~~] shall, on the recommendation of the department, adopt all reasonable and necessary rules to carry out the purposes of this subchapter, including rules:

(1) adopting a statewide out-of-hospital DNR order protocol that sets out standard procedures for the withholding of cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings;

(2) designating life-sustaining treatment that may be included in an out-of-hospital DNR order, including all procedures listed in Sections 166.081(6)(A)(i) through (v); and

(3) governing recordkeeping in circumstances in which an out-of-hospital DNR order or DNR identification device is encountered by responding health care professionals.

(b) The rules adopted [~~by the board~~] under Subsection (a) are not effective until approved by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~].

(c) Local emergency medical services authorities may adopt local out-of-hospital DNR order protocols if the local protocols do not conflict with the statewide out-of-hospital DNR order protocol adopted by the *executive commissioner* [~~board~~].

(d) The *executive commissioner* [~~board~~] by rule shall specify a distinctive standard design for a necklace and a bracelet DNR identification device that signifies, when worn by a person, that the possessor has executed or issued a valid out-of-hospital DNR order under this subchapter or is a person for whom a valid out-of-hospital DNR order has been executed or issued.

(e) The department shall report to the *executive commissioner* [~~board~~] from time to time regarding issues identified in emergency medical services responses in which an out-of-hospital DNR order or DNR identification device is encountered. The report may contain recommendations to the *executive commissioner* [~~board~~] for necessary modifications to the form of the standard out-of-hospital DNR order or the designated life-sustaining procedures listed in the standard out-of-hospital DNR order, the statewide out-of-hospital DNR order protocol, or the DNR identification devices.

SECTION 3.0518. Section 171.012(a–1), Health and Safety Code, is amended to read as follows:

(a–1) During a visit made to a facility to fulfill the requirements of Subsection (a), the

facility and any person at the facility may not accept any form of payment, deposit, or exchange or make any financial agreement for an abortion or abortion-related services other than for payment of a service required by Subsection (a). The amount charged for a service required by Subsection (a) may not exceed the reimbursement rate established for the service by the *executive commissioner* [~~Health and Human Services Commission~~] for statewide medical reimbursement programs.

SECTION 3.0519. Section 171.0124, Health and Safety Code, is amended to read as follows:

Sec. 171.0124. EXCEPTION FOR MEDICAL EMERGENCY. A physician may perform an abortion without obtaining informed consent under this subchapter in a medical emergency. A physician who performs an abortion in a medical emergency shall:

(1) include in the patient's medical records a statement signed by the physician certifying the nature of the medical emergency; and

(2) not later than the 30th day after the date the abortion is performed, certify to the *department* [~~Department of State Health Services~~] the specific medical condition that constituted the emergency.

SECTION 3.0520. Section 171.014(d), Health and Safety Code, is amended to read as follows:

(d) The department shall annually review the materials to determine if changes to the contents of the materials are necessary. The *executive commissioner* [~~department~~] shall adopt rules necessary for considering and making changes to the materials.

SECTION 3.0521. Section 181.053, Health and Safety Code, is amended to read as follows:

Sec. 181.053. NONPROFIT AGENCIES. The *executive commissioner* [~~department~~] shall by rule exempt from this chapter a nonprofit agency that pays for health care services or prescription drugs for an indigent person only if the agency's primary business is not the provision of health care or reimbursement for health care services.

SECTION 3.0522. Section 181.102(c), Health and Safety Code, is amended to read as follows:

(c) For purposes of Subsection (a), the executive commissioner, in consultation with the *department* [~~Department of State Health Services~~], the Texas Medical Board, and the Texas Department of Insurance, by rule may recommend a standard electronic format for the release of requested health records. The standard electronic format recommended under this section must be consistent, if feasible, with federal law regarding the release of electronic health records.

SECTION 3.0523. Section 181.103, Health and Safety Code, is amended to read as follows:

Sec. 181.103. CONSUMER INFORMATION WEBSITE. The attorney general shall maintain an Internet website that provides:

(1) information concerning a consumer's privacy rights regarding protected health information under federal and state law;

(2) a list of the state agencies, including the *department* [~~Department of State Health Services~~], the Texas Medical Board, and the Texas Department of Insurance, that regulate covered entities in this state and the types of entities each agency regulates;

(3) detailed information regarding each agency's complaint enforcement process; and

(4) contact information, including the address of the agency's Internet website, for each agency listed under Subdivision (2) for reporting a violation of this chapter.

SECTION 3.0524. Section 182.053(b), Health and Safety Code, is amended to read as follows:

(b) The governor shall also appoint at least two ex officio, nonvoting members representing the *department* [~~Department of State Health Services~~].

SECTION 3.0525. Section 182.103(b), Health and Safety Code, is amended to read as follows:

(b) The corporation shall comply with all state and federal laws and rules relating to the transmission of health information, including *Chapter 181, and rules adopted under that chapter, and* the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104–191) and rules adopted under that Act.

SECTION 3.0526. Section 182.108(b), Health and Safety Code, is amended to read as follows:

(b) The commission shall review and *the executive commissioner* by rule *shall* adopt acceptable standards submitted for ratification under Subsection (a).

SECTION 3.0527. Section 191.001, Health and Safety Code, is amended to read as follows:

Sec. 191.001. DEFINITIONS. In this title:

(1) [~~"Board" means the Texas Board of Health.~~

[~~(2)~~] "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Vital statistics unit" means the vital statistics unit established in the Department of State Health Services.

SECTION 3.0528. Subchapter A, Chapter 191, Health and Safety Code, is amended by adding Section 191.0011 to read as follows:

Sec. 191.0011. REFERENCE IN OTHER LAW. A reference in other law to the bureau of vital statistics of the department or of the former Texas Department of Health means the vital statistics unit established in the department.

SECTION 3.0529. Section 191.002(b), Health and Safety Code, is amended to read as follows:

(b) The department shall:

(1) establish a [~~bureau of~~] vital statistics *unit in the department* with suitable offices that are properly equipped for the preservation of its official records;

(2) establish a statewide system of vital statistics;

(3) provide instructions and prescribe forms for collecting, recording, transcribing, compiling, and preserving vital statistics;

(4) require the enforcement of this title and rules adopted under this title;

(5) prepare, print, and supply to local registrars forms for registering, recording, and preserving returns or otherwise carrying out the purposes of this title; and

(6) propose legislation necessary for the purposes of this title.

SECTION 3.0530. Section 191.003, Health and Safety Code, is amended to read as follows:

Sec. 191.003. POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER AND DEPARTMENT* [~~BOARD~~]. (a) The *executive commissioner* [~~board~~] shall[~~:~~

[~~(1)~~] adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics.

(a–1) The department shall:

(1) [~~; (2)~~] supervise the [~~bureau of~~] vital statistics *unit*; and

(2) [~~(3)~~] appoint the director of the [~~bureau of~~] vital statistics *unit*.

(b) In an emergency, the *executive commissioner* [~~board~~] may suspend any part of this title that hinders the uniform and efficient registration of vital events and may substitute emergency rules designed to expedite that registration under disaster conditions.

SECTION 3.0531. Section 191.004(a), Health and Safety Code, is amended to read as follows:

(a) The director of the [~~bureau of~~] vital statistics *unit* is the state registrar of vital statistics. The director must be a competent vital statistician.

SECTION 3.0532. Sections 191.0045(a), (b), (c), (d), (e), and (g), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~bureau of vital statistics~~] may *collect* [~~charge~~] fees for providing services to the public and performing other activities in connection with maintenance of the vital statistics system, including:

(1) performing searches of birth, death, fetal death, marriage, divorce, annulment, and other records;

(2) preparing and issuing copies and certified copies of birth, death, fetal death, marriage, divorce, annulment, and other records; and

(3) filing a record, amendment, or affidavit under this title.

(b) The *executive commissioner* [~~board~~] by rule may prescribe a schedule of fees for vital statistics services. The aggregate of the amounts of the fees may not exceed the cost of administering the vital statistics system.

(c) The *department* [~~bureau of vital statistics~~] shall refund to an applicant any fee received for services that the *department* [~~bureau~~] cannot perform. If the money has been deposited to the credit of the vital statistics *account in the general revenue* fund, the comptroller shall issue a warrant against the fund for refund of the payment on presentation of a claim signed by the state registrar.

(d) A local registrar or county clerk who issues a certified copy of a birth or death certificate shall *collect* [~~charge~~] the same fees as *collected* [~~charged~~] by the *department* [~~bureau of vital statistics~~], including the additional fee required under Subsection (e), except as provided by Subsections (g) and (h).

(e) In addition to fees *charged* [~~collected~~] by the *department* [~~bureau of vital statistics~~] under Subsection (b), the *department* [~~bureau~~] shall collect an additional $2 fee for each of the following:

(1) issuing a certified copy of a certificate of birth;

(2) issuing a wallet-sized certification of birth; and

(3) conducting a search for a certificate of birth.

(g) A local registrar or county clerk that on March 31, 1995, was *collecting* [~~charging~~] a fee for the issuance of a certified copy of a birth certificate that exceeded the fee *collected* [~~charged~~] by the *department* [~~bureau of vital statistics~~] for the same type of certificate may continue to do so but shall not raise this fee until the fee *collected* [~~charged~~] by the *department* [~~bureau~~] exceeds the fee *collected* [~~charged~~] by the local registrar or county clerk. A local registrar or county clerk to which this subsection applies shall *collect* [~~charge~~] the additional fee as required under Subsection (e).

SECTION 3.0533. Section 191.0047, Health and Safety Code, is amended to read as follows:

Sec. 191.0047. BIRTH INFORMATION FOR DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. (a) The *department* [~~Department of State Health Services~~] shall implement an efficient and effective method to verify birth information or provide a certified copy of a birth record necessary to provide services for the benefit of a minor being served by the Department of Family and Protective Services.

(b) The *department* [~~Department of State Health Services~~] shall enter into a memorandum of understanding with the Department of Family and Protective Services to implement this section. Subject to Subsection (c), the terms of the memorandum of understanding must include methods for reimbursing the *department* [~~Department of State Health Services~~] in an amount that is not more than the actual costs the department incurs in verifying the birth information or providing the birth record to the Department of Family and Protective Services.

(c) The *department* [~~Department of State Health Services~~] may not collect a fee or

other amount for verification of birth information or provision of a certified copy of the birth record under Subsection (a) for a child in the managing conservatorship of the Department of Family and Protective Services if parental rights to the child have been terminated and the child is eligible for adoption.

SECTION 3.0534. Section 191.0048(b), Health and Safety Code, is amended to read as follows:

(b) On each paper or electronic application form for a copy or certified copy of a birth, marriage, or divorce record, the *department* [~~bureau of vital statistics~~] shall include a printed box for the applicant to check indicating that the applicant wishes to make a voluntary contribution of $5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services Commission.

SECTION 3.0535. Section 191.005, Health and Safety Code, is amended to read as follows:

Sec. 191.005. VITAL STATISTICS *ACCOUNT* [~~FUND~~]. (a) The vital statistics *account* [~~fund~~] is *an account* in the *general revenue fund in the* state treasury.

(b) The legislature shall make appropriations to the department from the *vital statistics account* [~~fund~~] to be used to defray expenses incurred in the administration and enforcement of the system of vital statistics.

(c) All fees collected by the *department under this chapter* [~~bureau of vital statistics~~] shall be deposited to the credit of the vital statistics *account* [~~fund~~].

SECTION 3.0536. Section 191.021(b), Health and Safety Code, is amended to read as follows:

(b) To facilitate registration, the *department* [~~board~~] may combine or divide registration districts.

SECTION 3.0537. Section 191.022(d), Health and Safety Code, is amended to read as follows:

(d) The local registrar shall sign each report made to the *department* [~~bureau of vital statistics~~].

SECTION 3.0538. Section 191.025(c), Health and Safety Code, is amended to read as follows:

(c) A local registrar shall supply forms of certificates to persons who need them. The *executive commissioner* [~~board~~] shall establish and promulgate rules for strict accountability of birth certificates to prevent birth certificate fraud.

SECTION 3.0539. Sections 191.026(c) and (e), Health and Safety Code, are amended to read as follows:

(c) The local registrar shall copy in the record book required under Section 191.025 each certificate that the local registrar registers, unless the local registrar keeps duplicates under Subsection (d) or makes photographic duplications as authorized by Chapter [~~181 or~~] 201, Local Government Code, *or the provisions of Chapter 204, Local Government Code, derived from former Chapter 181, Local Government Code*. Except as provided by Subsection (e), the copies shall be permanently preserved in the local registrar's office as the local record, in the manner directed by the state registrar.

(e) The local registrar may, after the first anniversary of the date of registration of a birth, death, or fetal death, destroy the permanent record of the birth, death, or fetal death maintained by the local registrar if:

(1) the local registrar has access to electronic records of births, deaths, and fetal deaths maintained by the [~~bureau of~~] vital statistics *unit*; and

(2) before destroying the records, the local registrar certifies to the state registrar that each record maintained by the local office that is to be destroyed has been verified against the records contained in the *unit's* [~~bureau's~~] database and that each record is included in the database or otherwise accounted for.

SECTION 3.0540. Section 191.032(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules necessary to implement this section.

SECTION 3.0541. Section 191.033(a), Health and Safety Code, is amended to read as follows:

(a) The state registrar may attach to the original record an addendum that sets out any information received by the state registrar that may contradict the information in a birth, death, or fetal death record required to be maintained in the [~~bureau of~~] vital statistics *unit*.

SECTION 3.0542. Section 191.051(a), Health and Safety Code, is amended to read as follows:

(a) Subject to *department* [~~board~~] rules controlling the accessibility of vital records, the state registrar shall supply to a properly qualified applicant, on request, a certified copy of a record, or part of a record, of a birth, death, or fetal death registered under this title.

SECTION 3.0543. Section 191.056(b), Health and Safety Code, is amended to read as follows:

(b) The *department* [~~bureau of vital statistics~~] may contract with the national agency to have copies of vital records that are filed with the *vital statistics unit* [~~bureau~~] transcribed for that agency.

SECTION 3.0544. Section 191.057(b), Health and Safety Code, is amended to read as follows:

(b) If the [~~bureau of~~] vital statistics *unit* or any local registration official receives an application for a certified copy of a birth, death, or fetal death record to which an addendum has been attached under Section 191.033, the application shall be sent immediately to the state registrar. After examining the application, the original record, and the addendum, the state registrar may refuse to issue a certified copy of the record or part of the record to the applicant.

SECTION 3.0545. Sections 192.002(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The section of the birth certificate entitled "For Medical and Health Use Only" is not part of the legal birth certificate. Information held by the department under that section of the certificate is confidential. That information may not be released or made public on subpoena or otherwise, except that release may be made for statistical purposes only so that no person, patient, or facility is identified, or to medical personnel of a health care entity, as that term is defined in Subtitle B, Title 3, Occupations Code, or to a faculty member at a medical school, as that term is defined in Section 61.501, Education Code, for statistical or medical research, or to appropriate state or federal agencies for statistical research. The *executive commissioner* [~~board~~] may adopt rules to implement this subsection.

(d) The social security numbers of the mother and father recorded on the form shall be made available to the *United States* [~~federal~~] Social Security Administration.

SECTION 3.0546. Sections 192.0021(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The department shall promote and sell copies of an heirloom birth certificate. The department shall solicit donated designs for the certificate from Texas artists and select the best donated designs for the form of the certificate. An heirloom birth certificate must contain the same information as, and have the same effect of, a certified copy of another birth record. The *executive commissioner by rule* [~~department~~] shall prescribe a fee for the issuance of an heirloom birth certificate in an amount that does not exceed $50. The heirloom birth certificate must be printed on high-quality paper with the appearance of parchment not smaller than 11 inches by 14 inches.

(b) The department shall deposit 50 percent of the proceeds from the sale of heirloom birth certificates to the credit of the childhood immunization account and the other 50 percent to the credit of the undedicated portion of the general revenue fund. The childhood immunization account is an account in the general revenue fund. Money in the account may be used only by the *department* [~~Department of State Health Services~~] for:

(1) making grants to fund childhood immunizations and related education programs; and

(2) administering this section.

SECTION 3.0547. Sections 192.0022(b), (c), (f), (g), (h), and (i), Health and Safety Code, are amended to read as follows:

(b) The person who is required to file a fetal death certificate under Section 193.002 shall advise the parent or parents of a stillborn child:

(1) that a parent may, but is not required to, request the preparation of a certificate of birth resulting in stillbirth;

(2) that a parent may obtain a certificate of birth resulting in stillbirth by contacting the [~~bureau of~~] vital statistics *unit* to request the certificate and paying the required fee; and

(3) regarding the way or ways in which a parent may contact the [~~bureau of~~] vital statistics *unit* to request the certificate.

(c) A parent may provide a name for a stillborn child on the request for a certificate of birth resulting in stillbirth. If the requesting parent does not wish to provide a name, the [~~bureau of~~] vital statistics *unit* shall fill in the certificate with the name "baby boy" or "baby girl" and the last name of the parent. The name of the stillborn child provided on or later added by amendment to the certificate of birth resulting in stillbirth shall be the same name as placed on the original or amended fetal death certificate.

(f) The *department* [~~bureau of vital statistics~~] may not use a certificate of birth resulting in stillbirth to calculate live birth statistics.

(g) On issuance of a certificate of birth resulting in stillbirth to a parent who has requested the certificate as provided by this section, the [~~bureau of~~] vital statistics *unit* shall file an exact copy of the certificate with the local registrar of the registration district in which the stillbirth occurred. The local registrar shall file the certificate of birth resulting in stillbirth with the fetal death certificate.

(h) A parent may request the [~~bureau of~~] vital statistics *unit* to issue a certificate of birth resulting in stillbirth without regard to the date on which the fetal death certificate was issued.

(i) The executive commissioner [~~of the Health and Human Services Commission~~] may adopt rules necessary to administer this section.

SECTION 3.0548. Section 192.005(a), Health and Safety Code, is amended to read as follows:

(a) The items on a birth certificate relating to the child's father shall be completed only if:

(1) the child's mother was married to the father:

(A) at the time of the child's conception;

(B) at the time of the child's birth; or

(C) after the child's birth;

(2) paternity is established by order of a court of competent jurisdiction; or

(3) a valid acknowledgment of paternity executed by the father has been filed with the [~~bureau of~~] vital statistics *unit* as provided by Subchapter D, Chapter 160, Family Code.

SECTION 3.0549. Sections 192.006(c), (d), and (e), Health and Safety Code, are amended to read as follows:

(c) The state registrar shall require proof of the change in status that the *executive commissioner* [~~board~~] by rule may prescribe.

(d) Supplementary birth certificates and applications for supplementary birth certificates shall be prepared and filed in accordance with *department* [~~board~~] rules.

(e) In accordance with *department* [~~board~~] rules, a supplementary birth certificate may be filed for a person whose parentage has been determined by an acknowledgment of paternity.

SECTION 3.0550. Section 192.008(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~board~~] shall adopt rules and procedures to ensure that birth records and indexes under the control of the department or local registrars and accessible to the public do not contain information or cross-references through which the confidentiality of adoption placements may be directly or indirectly violated. The rules and procedures may not interfere with the registries established under Subchapter E, Chapter 162, Family Code, or with a court order under this section.

SECTION 3.0551. Section 192.009(d), Health and Safety Code, is amended to read as follows:

(d) If the *department* [~~bureau of vital statistics~~] determines that a certificate filed with the state registrar under this section requires correction, the *department* [~~bureau~~] shall mail the certificate directly to an attorney of record with respect to the petition of adoption, annulment of adoption, or revocation of adoption. The attorney shall return the corrected certificate to the *department* [~~bureau~~]. If there is no attorney of record, the *department* [~~bureau~~] shall mail the certificate to the clerk of the court for correction.

SECTION 3.0552. Section 192.010, Health and Safety Code, is amended to read as follows:

Sec. 192.010. CHANGE OF NAME. (a) Subject to *department* [~~board~~] rules, an adult whose name is changed by court order, or the legal representative of any person whose name is changed by court order, may request that the state registrar attach an amendment showing the change to the person's original birth record.

(b) The state registrar shall require proof of the change of name that the *executive commissioner* [~~board~~] by rule may prescribe.

SECTION 3.0553. Section 192.012(a), Health and Safety Code, is amended to read as follows:

(a) If the mother of a child is not married to the father of the child, a person listed in Section 192.003 who is responsible for filing the birth certificate shall:

(1) provide an opportunity for the child's mother and putative father to sign an acknowledgment of paternity as provided by Subchapter *D* [~~C~~], Chapter 160, Family Code; and

(2) provide oral and written information to the child's mother and putative father about:

(A) establishing paternity, including an explanation of the rights and responsibilities that result from acknowledging paternity; and

(B) the availability of child support services.

SECTION 3.0554. Section 192.021(c), Health and Safety Code, is amended to read as follows:

(c) Registration under this section is subject to *department* [~~board~~] rules.

SECTION 3.0555. Section 192.022, Health and Safety Code, is amended to read as follows:

Sec. 192.022. DELAY OF ONE YEAR OR MORE: APPLICATION FILED WITH STATE REGISTRAR. Subject to *department* [~~board~~] rules, an application to file a delayed birth certificate for a birth in this state not registered before the one-year anniversary of the date of birth shall be made to the state registrar.

SECTION 3.0556. Section 193.001(d), Health and Safety Code, is amended to read as follows:

(d) The *department* [~~bureau of vital statistics~~] and each local registrar shall make the information provided under Subsection (c) available to the public and may *collect* [~~charge~~] a fee in an amount prescribed under Section 191.0045 for providing that service.

SECTION 3.0557. Section 193.003(b), Health and Safety Code, is amended to read as follows:

(b) Subject to *department* [~~board~~] rules, a certificate of a fetal death that occurs in this state shall be filed with the local registrar of the registration district in which:

(1) the fetal death occurs; or

(2) the body is found, if the place of fetal death is not known.

SECTION 3.0558. Section 193.006(d), Health and Safety Code, is amended to read as follows:

(d) When the death certificate is filed with the [~~bureau of~~] vital statistics *unit*, the state registrar shall notify the Texas Veterans Commission.

SECTION 3.0559. Sections 193.007(c) and (f), Health and Safety Code, are amended to read as follows:

(c) The *department* [~~bureau of vital statistics~~] shall furnish a form for filing records under this section. Records submitted under this section must be on the form furnished by the *department* [~~bureau~~]. The state registrar may accept a certificate that is verified as provided by this section.

(f) Not later than the seventh day after the date on which a certificate is accepted and ordered filed by a court under this section, the clerk of the court shall forward to the [~~bureau of~~] vital statistics *unit*:

(1) the certificate; and

(2) an order from the court that the state registrar accept the certificate.

SECTION 3.0560. Section 194.001, Health and Safety Code, is amended to read as follows:

Sec. 194.001. REPORT OF MARRIAGE. (a) The county clerk shall file with the [~~bureau of~~] vital statistics *unit* a copy of each completed marriage license application and a copy of any affidavit of an absent applicant submitted with an application. The clerk shall file the copies not later than the 90th day after the date of the application. The clerk may not collect a fee for filing the copies.

(b) The county clerk shall file with the [~~bureau of~~] vital statistics *unit* a copy of each declaration of informal marriage executed under Section *2.402* [~~1.92~~], Family Code. The clerk shall file the copy not later than the 90th day after the date on which the declaration is executed.

SECTION 3.0561. Section 194.0011, Health and Safety Code, is amended to read as follows:

Sec. 194.0011. MARRIAGE LICENSE APPLICATIONS. (a) The *executive commissioner* [~~board~~] by rule shall prescribe the format and content of the *department* form used for the marriage license application.

(b) The [~~bureau of~~] vital statistics *unit* shall print and distribute the *department* forms to each county clerk throughout the state.

(c) The *department* form [~~adopted by the board~~] shall replace locally adopted forms.

(d) A county clerk may reproduce the *department* [~~board's~~] form locally.

SECTION 3.0562. Sections 194.002(a), (b), (d), (e), and (f), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~bureau of vital statistics~~] shall prescribe a form for reporting divorces and annulments of marriage. The form must require the following information:

(1) each party's:

(A) full name;

(B) usual residence;

(C) age;

(D) place of birth;

(E) color or race; and

(F) number of children;

(2) the date and place of the parties' marriage;

(3) the date the divorce or annulment of marriage was granted; and

(4) the court and the style and docket number of the case in which the divorce or annulment of marriage was granted.

(b) The [~~bureau of~~] vital statistics *unit* shall furnish sufficient copies of the form to each district clerk.

(d) Not later than the ninth day of each month, each district clerk shall file with the [~~bureau of~~] vital statistics *unit* a completed report for each divorce or annulment of marriage granted in the district court during the preceding calendar month. If a report does not include the information required by Subsection (a)(3) or (4), the clerk must complete that information on the report before the clerk files the report with the *unit* [~~bureau~~].

(e) For each report that a district clerk files with the [~~bureau of~~] vital statistics *unit* under this section, the clerk may collect a $1 fee as costs in the case in which the divorce or annulment of marriage is granted.

(f) If the *department* [~~bureau of vital statistics~~] determines that a report filed with the *department* [~~bureau~~] under this section requires correction, the *department* [~~bureau~~] shall mail the report form directly to an attorney of record with respect to the divorce or annulment of marriage. The attorney shall return the corrected report form to the *department* [~~bureau~~]. If there is no attorney of record, the *department* [~~bureau~~] shall mail the report form to the district clerk for correction.

SECTION 3.0563. Section 194.003, Health and Safety Code, is amended to read as follows:

Sec. 194.003. STATE INDEX. (a) The [~~bureau of~~] vital statistics *unit* shall maintain a statewide alphabetical index, under the names of both parties, of each marriage license application or declaration of informal marriage. The statewide index does not replace the indexes required in each county.

(b) The [~~bureau of~~] vital statistics *unit* shall maintain a statewide alphabetical index, under the names of both parties, of each report of divorce or annulment of marriage.

SECTION 3.0564. Section 194.004, Health and Safety Code, is amended to read as follows:

Sec. 194.004. RELEASE OF INFORMATION. (a) The [~~bureau of~~] vital statistics *unit* shall furnish on request any information it has on record relating to any marriage, divorce, or annulment of marriage.

(b) The [~~bureau of~~] vital statistics *unit* may not issue:

(1) a certificate or a certified copy of information relating to a marriage; or

(2) a certified copy of a report of divorce or annulment of marriage.

SECTION 3.0565. Sections 194.005(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The department shall *collect* [~~prescribe~~] a $50 fee for the issuance of an heirloom wedding anniversary certificate.

(c) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules designating certain milestone wedding anniversary dates and shall design

and promote heirloom wedding anniversary certificates celebrating those anniversary dates.

SECTION 3.0566. Chapter 222, Health and Safety Code, is amended to read as follows:

CHAPTER 222. HEALTH CARE FACILITY SURVEY, CONSTRUCTION, INSPECTION, AND REGULATION

SUBCHAPTER A. SURVEY AND CONSTRUCTION OF HOSPITALS

Sec. 222.001. SHORT TITLE. This subchapter may be cited as the Texas Hospital Survey and Construction Act.

Sec. 222.002. DEFINITIONS. In this subchapter:

[~~(1) "Board" means the Texas Board of Health.~~]

(2) "Commissioner" means the commissioner of *state* health *services*.

(3) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Hospital" includes a public health center, a general hospital, or a tuberculosis, mental, chronic disease, or other type of hospital, and related facilities such as a laboratory, outpatient department, nurses' home and training facility, or central service facility operated in connection with a hospital.

(5) "Public health center" means a publicly owned facility for providing public health services and includes related facilities such as a laboratory, clinic, or administrative office operated in connection with a facility for providing public health services.

Sec. 222.003. EXCEPTION. This subchapter does not apply to a hospital furnishing primarily domiciliary care.

[~~Sec. 222.004. DIVISION OF HOSPITAL SURVEY AND CONSTRUCTION. (a) The division of hospital survey and construction is a division of the department.~~

[~~(b) The division is administered by a full-time salaried director appointed by the commissioner and under the supervision and direction of the board.~~

[~~(c) The commissioner shall appoint other personnel of the division.~~]

Sec. 222.005. SURVEY, PLANNING, AND CONSTRUCTION OF HOSPITALS. (a) The department[~~, through the division of hospital survey and construction,~~] is the only agency of the state authorized to make an inventory of existing hospitals, survey the need for construction of hospitals, and develop a program of hospital construction as provided by the federal Hospital Survey and Construction Act (42 U.S.C. Section 291 et seq.).

(b) The *executive commissioner* [~~board~~] may [~~establish methods of administration and~~] adopt rules to meet the requirements of the federal Hospital Survey and Construction Act relating to survey, planning, and construction of hospitals and public health centers. *The executive commissioner shall adopt other rules the executive commissioner considers necessary.*

(c) The commissioner *may establish methods of administration and* shall:

(1) require reports *and*[~~,~~] make inspections and investigations[~~, and prescribe rules~~] as the commissioner considers necessary; and

(2) take other action that the commissioner considers necessary to carry out the federal Hospital Survey and Construction Act and the regulations adopted under that Act.

Sec. 222.006. FUNDING. (a) The *department* [~~commissioner~~] shall accept, on behalf

of the state, a payment of federal funds or a gift or grant made to assist in meeting the cost of carrying out the purpose of this subchapter, and may spend the payment, gift, or grant for that purpose.

(b) The *department* [~~commissioner~~] shall deposit the payment, gift, or grant in the state treasury to the credit of the hospital construction fund.

(c) The *department* [~~commissioner~~] shall deposit to the credit of the hospital construction fund money received from the federal government for a construction project approved by the surgeon general of the United States Public Health Service. The *department* [~~commissioner~~] shall use the money only for payments to applicants for work performed and purchases made in carrying out approved projects.

Sec. 222.007. AGREEMENTS FOR USE OF FACILITIES AND SERVICES OF OTHER ENTITIES. To the extent the *department* [~~commissioner~~] considers desirable to carry out the purposes of this subchapter, the *department* [~~commissioner~~] may enter into an agreement for the use of a facility or service of another public or private department, agency, or institution.

Sec. 222.008. EXPERTS AND CONSULTANTS. The *department* [~~commissioner~~] may contract for services of experts or consultants, or organizations of experts or consultants, on a part-time or fee-for-service basis. The contracts may not involve the performance of administrative duties.

Sec. 222.009. [~~COMMISSIONER'S~~] REPORT. (a) The *department* [~~commissioner~~] annually shall report to the *executive commissioner* [~~board~~] on activities and expenditures under this subchapter.

(b) The *department* [~~commissioner~~] shall include in the report recommendations for additional legislation that the *department* [~~commissioner~~] considers appropriate to furnish adequate hospital, clinic, and similar facilities to the public.

SUBCHAPTER B. LIMITATION ON INSPECTION AND OTHER REGULATION OF HEALTH CARE FACILITIES

[~~Sec. 222.021. PURPOSE. The purpose of this subchapter is to require that state agencies that perform inspections of health care facilities, including the Texas Department of Health, the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, and other agencies with which each of those agencies contracts, do not duplicate their procedures or subject health care facilities to duplicative rules.~~]

Sec. 222.022. DEFINITIONS. In this subchapter:

(1) *"Executive commissioner" means the executive commissioner of the Health and Human Services Commission.*

(2) "Health care facility" has the meaning assigned by Section 104.002, except that the term does not include a *chemical dependency* treatment facility licensed by the *Department of State Health Services under Chapter 464* [~~Texas Commission on Alcohol and Drug Abuse~~].

(3) [~~(2)~~] "Inspection" includes a survey, inspection, investigation, or other procedure necessary for a state agency to carry out an obligation imposed by federal and state laws, rules, and regulations.

Sec. 222.023. LIMITATION ON INSPECTIONS. (a) A state agency may make or require only those inspections necessary to carry out obligations imposed on the agency by federal and state laws, rules, and regulations.

(b) Instead of making an on-site inspection, a state agency shall accept an on-site inspection by another state agency charged with making an inspection if the inspection substantially complies with the accepting agency's inspection requirements.

(c) A state agency shall coordinate its inspections within the agency and with inspections required of other agencies to ensure compliance with this section.

Sec. 222.024. CERTIFICATION OR ACCREDITATION INSTEAD OF INSPECTION.

(a) Except as provided by Subsection (c), a hospital licensed by the [~~Texas~~] Department of *State* Health *Services* is not subject to additional annual licensing inspections before the department issues the hospital a license while the hospital maintains:

(1) certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.); or

(2) accreditation from *The* [~~the~~] Joint Commission [~~on Accreditation of Healthcare Organizations~~], the American Osteopathic Association, or other national accreditation organization for the offered services.

(b) If the *Department of State Health Services* [~~department~~] licenses a hospital exempt from an annual licensing inspection under Subsection (a), the department shall issue a renewal license to the hospital if the hospital annually:

(1) submits a complete application required by the department;

(2) remits any applicable fees;

(3) submits a copy of documentation from the certification or accreditation body showing that the hospital is certified or accredited; and

(4) submits a copy of the most recent fire safety inspection report from the fire marshal in whose jurisdiction the hospital is located.

(c) The *Department of State Health Services* [~~department~~] may conduct an inspection of a hospital exempt from an annual licensing inspection under Subsection (a) before issuing a renewal license to the hospital if the certification or accreditation body has not conducted an on-site inspection of the hospital in the preceding three years and the department determines that an inspection of the hospital by the certification or accreditation body is not scheduled within 60 days.

[~~Sec. 222.025. LIMITATION OF OTHER REGULATION. (a) The Texas Department of Human Services, the Texas Department of Health, and the Texas Department of Mental Health and Mental Retardation each by rule shall execute a memorandum of understanding that establishes procedures to eliminate or reduce duplication of functions in certifying or licensing hospitals, nursing homes, or other facilities under their jurisdiction for payments under the requirements of Chapter 32, Human Resources Code, and federal law and regulations relating to Titles XVIII and XIX of the Social Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.). The procedures must provide for use by each agency of information collected by the agencies in making inspections for certification purposes and in investigating complaints regarding matters that would affect the certification of a nursing home or other facility under their jurisdiction.~~

[~~(b) The Texas Department of Health shall coordinate all licensing or certification procedures conducted by the state agencies covered by this section.~~

[~~Sec. 222.0255. NURSING HOMES. (a) The Texas Department of Human Services shall develop one set of standards for nursing homes that apply to licensing and to certification for participation in the medical assistance program under Chapter 32, Human Resources Code.~~

[~~(b) The standards must comply with federal regulations. If the federal regulations at the time of adoption are less stringent than the state standards, the department shall keep and comply with the state standards.~~

[~~(c) The department by rule shall adopt the standards and any amendments to the standards.~~

[~~(d) The department shall maintain a set of standards for nursing homes that are licensed only.~~

[~~(e) Chapter 242 establishes the minimum licensing standards for an institution. The licensing standards adopted by the department under this chapter shall be adopted subject to Section 242.037(b) and must comply with Section 242.037(c) and the other provisions of Chapter 242.~~]

Sec. 222.026. COMPLAINT INVESTIGATIONS AND ENFORCEMENT

AUTHORITY. (a) *Section* [~~Sections~~] 222.024 *does*[~~, 222.025, and 222.0255 do~~] not affect the authority of the [~~Texas~~] Department of *State* Health *Services* to implement and enforce the provisions of Chapter 241 (Texas Hospital Licensing Law) to:

(1) reinspect a hospital if a hospital applies for the reissuance of its license after a final ruling upholding the suspension or revocation of a hospital's license, the assessment of administrative or civil penalties, or the issuance of an injunction against the hospital for violations of provisions of the licensing law, rules adopted under the licensing law, special license conditions, or orders of the commissioner of *state* health *services*; or

(2) investigate a complaint against a hospital and, if appropriate, enforce the provisions of the licensing law on a finding by the *Department of State Health Services* [~~department~~] that reasonable cause exists to believe that the hospital has violated provisions of the licensing law, rules adopted under the licensing law, special license conditions, or orders of the commissioner of *state* health *services*; provided, however, that the *Department of State Health Services* [~~department~~] shall coordinate with the federal *Centers for Medicare and Medicaid Services* [~~Health Care Financing Administration~~] and its agents responsible for the inspection of hospitals to determine compliance with the conditions of participation under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.), so as to avoid duplicate investigations.

(b) The *executive commissioner* [~~department~~] shall by rule establish a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection.

Sec. 222.027. PHYSICIAN ON SURVEY TEAM. The [~~Texas~~] Department of *State* Health *Services* shall ensure that a licensed physician involved in direct patient care as defined by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~] is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when surveying the quality of services provided by physicians in hospitals.

SUBCHAPTER C. SURVEYS OF INTERMEDIATE CARE FACILITIES FOR *INDIVIDUALS WITH AN INTELLECTUAL DISABILITY* [~~MENTALLY RETARDED~~]

Sec. 222.041. DEFINITIONS. In this subchapter:

(1) [~~"Board" means the Texas Board of Human Services.~~

[~~(2)~~] "Commissioner" means the commissioner of *aging and disability services* [~~human services~~].

(2) [~~(3)~~] "Department" means the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) *"ICF–IID"* [~~"ICF–MR"~~] means the medical assistance program serving *individuals with an intellectual or developmental disability who receive* [~~persons receiving~~] care in intermediate care facilities [~~for mentally retarded persons~~].

Sec. 222.042. LICENSING OF [~~ICF–MR~~] BEDS AND FACILITIES. The department may not license or approve as meeting licensing standards new *ICF–IID* [~~ICF–MR~~] beds or the expansion of an existing *ICF–IID* [~~ICF–MR~~] facility unless the new beds or the expansion was included in the plan approved by the Health and Human Services Commission in accordance with Section 533.062.

[~~Sec. 222.043. REVIEW OF ICF–MR SURVEYS. (a) The board by rule shall establish policies and procedures as prescribed by this section to conduct an informal review of ICF–MR surveys when the survey findings are disputed by the provider. The board shall provide that the procedure may be used only if the deficiencies cited in the survey report do not pose an imminent threat of danger to the health or safety of a resident.~~

[~~(b) The department shall designate at least one employee to conduct on a full-time~~

~~basis the review provided by this section. The person must be impartial and may not be directly involved in or supervise any initial or recertification surveys. The person may participate in or direct follow-up surveys for quality assurance purposes only at the discretion of the commissioner or the commissioner's designated representative or under Chapter 242.~~

~~[(c) The employee designated under Subsection (b) should have current knowledge of applicable federal laws and survey processes. The employee reports directly to the commissioner or the commissioner's designated representative.~~

~~[(d) If a provider disputes the findings of a survey team or files a complaint relating to the conduct of the survey, the employee designated under Subsection (b) shall conduct an informal review as soon as possible, but before the 45th day after the date of receiving the request for a review or the expiration of the period during which the provider is required to correct the alleged deficiency, whichever is sooner.~~

~~[(e) The employee conducting the review shall sustain, alter, or reverse the original findings of the survey team after consulting with the commissioner or the commissioner's designated representative.~~]

Sec. 222.044. FOLLOW-UP SURVEYS. (a) The department shall conduct follow-up surveys of *ICF-IID* [~~ICF-MR~~] facilities to:

(1) evaluate and monitor the findings of the certification or licensing survey teams; and

(2) ensure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(b) A provider shall correct any additional deficiency cited by the department. The department may not impose an additional punitive action for the deficiency unless the provider fails to correct the deficiency within the period during which the provider is required to correct the deficiency.

Sec. 222.046. SURVEYS OF *ICF-IID* [~~ICF-MR~~] FACILITIES. (a) The department shall ensure that each survey team sent to survey an *ICF-IID* [~~ICF-MR~~] facility includes a qualified *intellectual disabilities* [~~mental retardation~~] professional, as that term is defined by federal law.

(b) The department shall require that each survey team sent to survey an *ICF-IID* [~~ICF-MR~~] facility conduct a final interview with the provider to ensure that the survey team informs the provider of the survey findings and that the survey team has requested the necessary information from the provider. The survey team shall allow the provider to record the interview. The provider shall immediately give the survey team a copy of any recording.

SECTION 3.0567. Section 241.003, Health and Safety Code, is amended by amending Subdivisions (2), (4), (11), and (12) and adding Subdivisions (2-a) and (4-a) to read as follows:

(2) *"Commission" means the Health and Human Services Commission.*

(2-a) "Commissioner" means the commissioner of state health services [~~"Board" means the Texas Board of Health~~].

(4) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(11) "Physician" means a physician licensed by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~].

(12) "Physician assistant" means a physician assistant licensed by the Texas *Physician Assistant* [~~State~~] Board [~~of Physician Assistant Examiners~~].

SECTION 3.0568. Section 241.006(a), Health and Safety Code, is amended to read as follows:

(a) The department is authorized to review current and proposed state rules, *includ-*

ing [~~issued by the~~] department *rules and rules of* [~~or by~~] other state agencies, that mandate that a hospital place or post a notice, poster, or sign in a conspicuous place or in an area of high public traffic, concerning the rights of patients or others or the responsibilities of the hospital, which is directed at patients, patients' families, or others. The purpose of this review shall be to coordinate the placement, format, and language contained in the required notices in order to:

(1) eliminate the duplication of information;

(2) reduce the potential for confusion to patients, patients' families, and others; and

(3) reduce the administrative burden of compliance on hospitals.

SECTION 3.0569. Section 241.009, Health and Safety Code, is amended to read as follows:

Sec. 241.009. PHOTO IDENTIFICATION BADGE REQUIRED. (a) In this section, "*health*[~~:~~

[~~(1) "Health~~] care provider" means a person who provides health care services at a hospital as a physician, as an employee of the hospital, under a contract with the hospital, or in the course of a training or educational program at the hospital.

[~~(2) "Hospital" means a hospital licensed under this chapter.~~]

(b) A hospital *licensed under this chapter* shall adopt a policy requiring a health care provider providing direct patient care at the hospital to wear a photo identification badge during all patient encounters, unless precluded by adopted isolation or sterilization protocols. The badge must be of sufficient size and worn in a manner to be visible and must clearly state:

(1) at minimum the provider's first or last name;

(2) the department of the hospital with which the provider is associated;

(3) the type of license held by the provider, if the provider holds a license under Title 3, Occupations Code; and

(4) if applicable, the provider's status as a student, intern, trainee, or resident.

SECTION 3.0570. Section 241.022(d), Health and Safety Code, is amended to read as follows:

(d) The application must be accompanied by:

(1) a copy of the hospital's current patient transfer policy;

(2) a nonrefundable license fee;

(3) copies of the hospital's patient transfer agreements, unless the filing of copies has been waived by the *department* [~~hospital licensing director~~] in accordance with the rules adopted under this chapter; and

(4) a copy of the most recent annual fire safety inspection report from the fire marshal in whose jurisdiction the hospital is located.

SECTION 3.0571. Sections 241.023(b), (c–2), (c–3), (d), and (e), Health and Safety Code, are amended to read as follows:

(b) A license may be renewed *every two years* [~~annually~~] after payment of the required fee and submission of an application for license renewal that contains the information required by Section 241.022(b).

(c–2) The *department* [~~hospital licensing director~~] may recommend a waiver of the requirement of Subsection (c–1)(7) for a hospital if another hospital that is to be included in the license:

(1) complies with the emergency services standards for a general hospital; and

(2) is in close geographic proximity to the hospital.

(c–3) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules to implement the waiver provision of Subsection (c–2). The rules must

provide for a determination by the department that the waiver will facilitate the creation or operation of the hospital seeking the waiver and that the waiver is in the best interest of the individuals served or to be served by the hospital.

(d) Subject to Subsection (e), a license issued under this section for a hospital includes each outpatient facility that is not separately licensed, that is located apart from the hospital, and for which the hospital has submitted to the department:

(1) a copy of a fire safety survey that is dated not earlier than one year before the submission date indicating approval by:

(A) the local fire authority in whose jurisdiction the outpatient facility is located; or

(B) the nearest fire authority, if the outpatient facility is located outside of the jurisdiction of a local fire authority; and

(2) if the hospital is accredited by *The* [~~the~~] Joint Commission [~~on Accreditation of Healthcare Organizations~~] or the American Osteopathic Association, a copy of documentation from the accrediting body showing that the outpatient facility is included within the hospital's accreditation.

(e) Subsection (d) applies only if the federal Department of Health and Human Services, *Centers for Medicare and Medicaid Services* [~~Health Care Financing Administration~~], or Office of Inspector General adopts final or interim final rules requiring state licensure of outpatient facilities as a condition of the determination of provider-based status for Medicare reimbursement purposes.

SECTION 3.0572. Sections 241.025(a), (b), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) The department shall charge each hospital *a* [~~an annual~~] license fee for an initial license or a license renewal.

(b) The *executive commissioner* [~~board~~] by rule shall adopt the fees authorized by Subsection (a) *in amounts as prescribed by Section 12.0111 and* according to a schedule under which the number of beds in the hospital determines the amount of the fee. [~~The fee may not exceed $15 a bed.~~] A minimum license fee may be established. [~~The minimum fee may not exceed $1,000.~~]

(d) All license fees collected shall be deposited in the state treasury to the credit of the department to administer and enforce this chapter. [~~These fees are hereby appropriated to the department.~~]

(e) Notwithstanding Subsection (d), to the extent that money received from the fees collected under this chapter exceeds the costs to the department to conduct the activity for which the fee is imposed, the department may use the money to administer Chapter 324 and similar laws that require the department to provide information related to hospital care to the public. The *executive commissioner* [~~department~~] may not consider the costs of administering Chapter 324 or similar laws in adopting a fee imposed under this section.

SECTION 3.0573. Sections 241.026(a) through (e), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt *rules* and *the department shall* enforce *the* rules to further the purposes of this chapter. The rules at a minimum shall address:

(1) minimum requirements for staffing by physicians and nurses;

(2) hospital services relating to patient care;

(3) fire prevention, safety, and sanitation requirements in hospitals;

(4) patient care and a patient bill of rights;

(5) compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; and

(6) compliance with nursing peer review under Subchapter I, Chapter 301, and

Chapter 303, Occupations Code, and the rules of the Texas Board of Nursing relating to peer review.

(b) In adopting rules, the *executive commissioner* [~~board~~] shall consider the conditions of participation for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) and the standards of *The* [~~the~~] Joint Commission [~~on Accreditation of Healthcare Organizations~~] and will attempt to achieve consistency with those conditions and standards.

(c) *The department* [~~Upon the recommendation of the hospital licensing director and the council, the board~~] by order may waive or modify the requirement of a particular provision of this *chapter* [~~Act~~] or minimum standard adopted by *department* [~~board~~] rule under this section to a particular general or special hospital if the *department* [~~board~~] determines that the waiver or modification will facilitate the creation or operation of the hospital and that the waiver or modification is in the best interests of the individuals served or to be served by the hospital.

(d) The *executive commissioner* [~~board~~] shall adopt rules establishing procedures and criteria for the issuance of the waiver or modification order. The criteria must include at a minimum a statement of the appropriateness of the waiver or modification against the best interests of the individuals served by the hospital.

(e) If the *department* [~~board~~] orders a waiver or modification of a provision or standard, the licensing record of the hospital granted the waiver or modification shall contain documentation to support the [~~board's~~] action. *Department* [~~The board's~~] rules shall specify the type and specificity of the supporting documentation that must be included.

SECTION 3.0574. Section 241.0265, Health and Safety Code, is amended to read as follows:

Sec. 241.0265. STANDARDS FOR CARE FOR MENTAL HEALTH AND CHEMICAL DEPENDENCY. (a) The care and treatment of a patient receiving mental health services in a facility licensed by the department under this chapter or Chapter 577 are governed by the *applicable department* standards adopted [~~by the Texas Department of Mental Health and Mental Retardation to the same extent as if the standards adopted by that department were rules adopted by the board~~] under this chapter or Chapter 577.

(b) The care and treatment of a patient receiving chemical dependency treatment in a facility licensed by the department under this chapter are governed by the same standards that govern the care and treatment of a patient receiving treatment in a treatment facility licensed under Chapter 464 [~~and that are adopted by the Texas Commission on Alcohol and Drug Abuse~~], to the same extent as if the standards [~~adopted by the commission~~] were rules adopted [~~by the board~~] under this chapter.

(c) The department shall enforce the standards provided by Subsections (a) and (b). A violation of a standard is subject to the same consequence as a violation of a rule adopted [~~by the board~~] under this chapter or Chapter 577. The department is not required to enforce a standard if the enforcement violates a federal law, rule, or regulation.

SECTION 3.0575. Section 241.027(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt rules to govern the transfer of patients between hospitals that do not have a transfer agreement and governing services not included in transfer agreements.

SECTION 3.0576. Sections 241.051(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The department may make any inspection, survey, or investigation that it considers necessary. A representative of the department may enter the premises of a hospital at any reasonable time to make an inspection, a survey, or an investigation to assure compliance with or prevent a violation of this chapter, the rules adopted under this chapter, an order or special order of the commissioner [~~of health~~], a special license provision, a court order granting injunctive relief, or other enforcement procedures. The department shall maintain the confidentiality of hospital records as applicable under state or federal law.

(b) The department or a representative of the department is entitled to access to all books, records, or other documents maintained by or on behalf of the hospital to the extent necessary to enforce this chapter, the rules adopted under this chapter, an order or special order of the commissioner [~~of health~~], a special license provision, a court order granting injunctive relief, or other enforcement procedures.

SECTION 3.0577. Sections 241.053(a) and (d), Health and Safety Code, are amended to read as follows:

(a) The department, after providing notice and an opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a hospital's license if the department finds that the hospital:

(1) failed to comply with:

(A) a provision of this chapter;

(B) a rule adopted under this chapter;

(C) a special license condition;

(D) an order or emergency order by the commissioner [~~of health~~]; or

(E) another enforcement procedure permitted under this chapter;

(2) has a history of noncompliance with the rules adopted under this chapter relating to patient health, safety, and rights which reflects more than nominal noncompliance; or

(3) has aided, abetted, or permitted the commission of an illegal act.

(d) Administrative hearings required under this section shall be conducted under the *department's* [~~board's~~] formal hearing rules and the contested case provisions of Chapter 2001, Government Code.

SECTION 3.0578. Sections 241.0531(a) and (c), Health and Safety Code, are amended to read as follows:

(a) Following notice to the hospital and opportunity for hearing, the commissioner [~~of health~~] or a person designated by the commissioner may issue an emergency order, either mandatory or prohibitory in nature, in relation to the operation of a hospital licensed under this chapter if the commissioner or the commissioner's designee determines that the hospital is violating or threatening to violate this chapter, a rule adopted pursuant to this chapter, a special license provision, injunctive relief issued pursuant to Section 241.054, an order of the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter and the provision, rule, license provision, injunctive relief, order, or enforcement procedure relates to the health or safety of the hospital's patients.

(c) The hearing shall not be governed by the contested case provisions of Chapter 2001, Government Code, but shall instead be held in accordance with the *department's* [~~board's~~] informal hearing rules.

SECTION 3.0579. Section 241.054(b), Health and Safety Code, is amended to read as follows:

(b) After the notice and opportunity to comply, the commissioner [~~of health~~] may request the attorney general or the appropriate district or county attorney to institute and conduct a suit for a violation of this chapter or a rule adopted under this chapter.

SECTION 3.0580. Section 241.058, Health and Safety Code, is amended to read as follows:

Sec. 241.058. MINOR VIOLATIONS. (a) This chapter does not require the commissioner [~~of health~~] or a designee of the commissioner to report a minor violation for prosecution or the institution of any other enforcement proceeding authorized under this chapter, if the commissioner or [~~a~~] designee [~~of the commissioner~~] determines that prosecution or enforcement is not in the best interests of the persons served or to be served by the hospital.

(b) For the purpose of this section, a "minor violation" means a violation of this

chapter, the rules adopted under this chapter, a special license provision, an order or emergency order issued by the commissioner [~~of health~~] or the commissioner's designee, or another enforcement procedure permitted under this chapter by a hospital that does not constitute a threat to the health, safety, and rights of the hospital's patients or other persons.

SECTION 3.0581. Sections 241.059(a), (b), and (d) through (n), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner of health~~] may assess an administrative penalty against a hospital that violates this chapter, a rule adopted pursuant to this chapter, a special license provision, an order or emergency order issued by the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter. The *department* [~~commissioner~~] shall assess an administrative penalty against a hospital that violates Section 166.004.

(b) In determining the amount of the penalty, the *department* [~~commissioner of health~~] shall consider:

(1) the hospital's previous violations;

(2) the seriousness of the violation;

(3) any threat to the health, safety, or rights of the hospital's patients;

(4) the demonstrated good faith of the hospital; and

(5) such other matters as justice may require.

(d) When it is determined that a violation has occurred, the *department* [~~commissioner of health shall issue a report that states the facts on which the determination is based and the commissioner's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.~~

[~~(e) Within 14 days after the date the report is issued, the commissioner of health~~] shall give written notice of the *violation* [~~report~~] to the person, delivered by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the *department* [~~commissioner of health~~] or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the *department* [~~commissioner of health~~], the *department* [~~commissioner~~] by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the *department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall hold the hearing. The department* [~~commissioner of health~~] shall [~~set a hearing and~~] give notice of the hearing to the person. [~~The hearing shall be held by the department.~~] The *administrative law judge* [~~person~~] conducting the hearing shall make findings of fact and conclusions of law and promptly issue to the *department* [~~commissioner~~] a *written* proposal for a decision about the occurrence of the violation and the amount of the penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~commissioner~~] by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the *department's* [~~commissioner of health's~~] order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the *department's* [~~commissioner of health's~~] order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30–day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the *department's* [~~board's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner of health~~] by certified mail.

(l) When the *department* [~~commissioner of health~~] receives a copy of an affidavit under Subsection (k)(2), *the department* [~~he~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the *department* [~~commissioner of health~~] may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the *department* [~~commissioner of health~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.0582. Sections 241.060(a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~board~~] may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter relating to the provision of mental health, chemical dependency, or rehabilitation services.

(d) If the *department* [~~commissioner~~] determines that a violation has occurred, the *department* [~~commissioner may issue to the board a report that states the facts on which the determination is based and the commissioner's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.~~

[~~(e) Within 14 days after the date the report is issued, the commissioner~~] shall give written notice of the *violation* [~~report~~] to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing

may accept the determination and recommended penalty of the *department* [~~commissioner~~] or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the *department* [~~commissioner~~], the *department* [~~board~~] by order shall [~~approve the determination and~~] impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the *department* [~~commissioner~~] shall *refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall hold the hearing. The department shall* [~~set a hearing and~~] give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~board~~] a *written* proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~board~~] by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the *department's* [~~board's~~] order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the *department's* [~~board's~~] order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the *department's* [~~board's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(l) The *department* [~~commissioner~~] on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the *department* [~~commissioner~~] may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the *department's* order [~~of the board~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.0583. Section 241.101(i), Health and Safety Code, is amended to read as follows:

(i) Graduate medical education may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to training programs accredited by the Accreditation Council *for* [~~on~~] Graduate Medical Education and by the American Osteopathic Association.

SECTION 3.0584. Sections 241.104(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall adopt fees for hospital plan reviews according to a schedule based on the estimated construction costs.

(c) The department shall charge a fee for field surveys of construction plans reviewed under this section. The *executive commissioner* [~~board~~] by rule shall adopt a fee schedule for the surveys that provides a minimum fee of $500 and a maximum fee of $1,000 for each survey conducted.

SECTION 3.0585. Sections 241.123(a), (b), (d), (e), (f), and (g), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall adopt standards for the provision of rehabilitation services by a hospital to ensure the health and safety of a patient receiving the services.

(b) The standards [~~adopted by the board~~] at a minimum shall require a hospital that provides comprehensive medical rehabilitation:

(1) to have a director of comprehensive medical rehabilitation who is:

(A) a licensed physician;

(B) either board certified or eligible for board certification in a medical specialty related to rehabilitation; and

(C) qualified by training and experience to serve as medical director;

(2) to have medical supervision by a licensed physician for 24 hours each day; and

(3) to provide appropriate therapy to each patient by an interdisciplinary team consisting of licensed physicians, rehabilitation nurses, and therapists as are appropriate for the patient's needs.

(d) A hospital shall prepare for each patient receiving inpatient rehabilitation services a written treatment plan designed for that patient's needs for treatment and care. The *executive commissioner* [~~board~~] by rule shall specify a time after admission of a patient for inpatient rehabilitation services by which a hospital must evaluate the patient for the patient's initial treatment plan and by which a hospital must provide copies of the plan after evaluation.

(e) A hospital shall prepare for each patient receiving inpatient rehabilitation services a written continuing care plan that addresses the patient's needs for care after discharge, including recommendations for treatment and care and information about the availability of resources for treatment or care. The *executive commissioner* [~~board~~] by rule shall specify the time before discharge by which the hospital must provide a copy of the continuing care plan. *Department* [~~The board's~~] rules may allow a facility to provide the continuing care plan by a specified time after discharge if providing the plan before discharge is impracticable.

(f) A hospital shall provide a copy of a treatment or continuing care plan prepared under this section to the following persons in the person's primary language, if practicable:

(1) the patient;

(2) a person designated by the patient; and

(3) as specified by *department* [~~board~~] rule, family members or other persons with responsibility for or demonstrated participation in the patient's care or treatment.

(g) Rules adopted by the *executive commissioner* [~~board~~] under this subchapter may not conflict with a federal rule, regulation, or standard.

SECTION 3.0586. Section 241.151(5), Health and Safety Code, is amended to read as follows:

(5) "Legally authorized representative" means:

(A) a parent or legal guardian if the patient is a minor;

(B) a legal guardian if the patient has been adjudicated incapacitated to manage the patient's personal affairs;

(C) an agent of the patient authorized under a *medical* [~~durable~~] power of attorney [~~for health care~~];

(D) an attorney ad litem appointed for the patient;

(E) a person authorized to consent to medical treatment on behalf of the patient under Chapter 313;

(F) a guardian ad litem appointed for the patient;

(G) a personal representative or heir of the patient, as defined by *Chapter 22, Estates* [~~Section 3, Texas Probate~~] Code, if the patient is deceased;

(H) an attorney retained by the patient or by the patient's legally authorized representative; or

(I) a person exercising a power granted to the person in the person's capacity as an attorney-in-fact or agent of the patient by a statutory durable power of attorney that is signed by the patient as principal.

SECTION 3.0587. Section 241.183(c), Health and Safety Code, as added by Chapter 217 (H.B. 15), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

(c) The *commission* [~~Health and Human Services Commission~~] shall study patient transfers that are not medically necessary but would be cost-effective. Based on the study under this subsection, if the executive commissioner determines that the transfers are feasible and desirable, the executive commissioner may adopt rules addressing those transfers.

SECTION 3.0588. Section 241.183, Health and Safety Code, as added by Chapter 917 (H.B. 1376), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

Sec. 241.183. POSTED NOTICE. Subject to Section 241.006, the *executive commissioner* [~~department~~] shall adopt rules for a notice to be posted in a conspicuous place in the facility described by Section 241.181 that notifies prospective patients that the facility is an emergency room and charges rates comparable to a hospital emergency room.

SECTION 3.0589. Section 241.184, Health and Safety Code, as added by Chapter 917 (H.B. 1376), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

Sec. 241.184. ADMINISTRATIVE PENALTY. The *department* [~~commissioner of health~~] may assess an administrative penalty under Section 241.059 against a hospital that violates this subchapter.

SECTION 3.0590. The heading to Chapter 242, Health and Safety Code, is amended to read as follows:

CHAPTER 242. CONVALESCENT AND NURSING *FACILITIES* [~~HOMES~~] AND RELATED INSTITUTIONS

SECTION 3.0591. Sections 242.002(1) and (2), Health and Safety Code, are amended to read as follows:

(1) *"Commission" means the Health and* [~~"Board" means the Texas Board of~~] Human Services *Commission.*

(2) "Commissioner" means the commissioner of *aging and disability* [~~human~~] services.

SECTION 3.0592. Section 242.0021(d), Health and Safety Code, is amended to read as follows:

(d) The *executive commissioner* [~~department~~] may adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person.

SECTION 3.0593. Section 242.003, Health and Safety Code, is amended to read as follows:

Sec. 242.003. EXEMPTIONS. Except as otherwise provided, this chapter does not apply to:

(1) a hotel or other similar place that furnishes only food, lodging, or both, to its guests;

(2) a hospital;

(3) an establishment conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules;

(4) an establishment that furnishes, in addition to food, shelter, and laundry, only baths and massages;

(5) an institution operated by a person licensed by the Texas Board of Chiropractic Examiners;

(6) a facility that:

(A) primarily engages in training, habilitation, rehabilitation, or education of clients or residents;

(B) is operated under the jurisdiction of a state or federal agency, including the *commission, department,* Department of Assistive and Rehabilitative Services, [~~Department of Aging and Disability Services,~~] Department of State Health Services, [~~Health and Human Services Commission,~~] Texas Department of Criminal Justice, and *United States* Department of Veterans Affairs; and

(C) is certified through inspection or evaluation as meeting the standards established by the state or federal agency;

(7) a foster care type residential facility that serves fewer than five persons and operates under rules adopted by [~~the Texas Department of Human Services or~~] the executive commissioner [~~of the Health and Human Services Commission, as applicable~~]; and

(8) a facility licensed under Chapter 252 or exempt from licensure under Section 252.003.

SECTION 3.0594. Section 242.013, Health and Safety Code, is amended to read as follows:

Sec. 242.013. PAPERWORK REDUCTION RULES. (a) The *executive commissioner* [~~department~~] shall[~~:~~

[~~(1)~~] adopt rules to reduce the amount of paperwork an institution must complete and retain.

(a-1) The department shall[~~; and~~

[~~(2)~~] attempt to reduce the amount of paperwork to the minimum amount required by state and federal law unless the reduction would jeopardize resident safety.

(b) The department[~~, the contracting agency,~~] and providers shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care.

SECTION 3.0595. Section 242.032(e), Health and Safety Code, is amended to read as follows:

(e) In making the evaluation required by Subsection (d), the department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant or license holder and any other person described by Subsection (d) operated an institution at any time before the date on which the application is made. The *executive commissioner* [~~department~~] by rule shall determine what constitutes a satisfactory compliance history. The department may consider and evaluate the compliance history of the applicant and any other person described by Subsection (d) for any period during which the applicant or other person operated an institution in this state or in another state or jurisdiction. The department may also require the applicant or license holder to file information relating to the history of the financial condition of the applicant or license holder and any other person described by Subsection (d) with respect to an institution operated in another state or jurisdiction at any time before the date on which the application is made.

SECTION 3.0596. Section 242.033(e), Health and Safety Code, is amended to read as follows:

(e) The report required for license renewal under Subsection (d)(3) must comply with *department* rules [~~adopted by the board~~] that specify the date of submission of the report, the information it must contain, and its form.

SECTION 3.0597. Sections 242.0335(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The department shall maintain, and keep current, a list of license holders that operate an institution in this state and that have excellent operating records according to the information available to the department. The *executive commissioner* [~~department~~] by rule shall establish specific criteria for *the department to designate* [~~designating~~] a license holder as eligible for the list.

(c) An applicant for a change of ownership license must meet all applicable requirements that an applicant for renewal of a license must meet under this subchapter, including under Section 242.032(d), and under rules [~~that the department has~~] adopted under this subchapter. Any requirement relating to inspections or to an accreditation review applies only to institutions operated by the license holder at the time the application is made for the change of ownership license.

SECTION 3.0598. Sections 242.0336(b–2), (b–3), (b–4), and (d–1), Health and Safety Code, are amended to read as follows:

(b–2) Notwithstanding Section 242.0335, the *executive commissioner* [~~department~~] shall establish criteria under which the department may waive the 30–day requirement or the notification requirement of Subsection (b–1). The criteria may include the occurrence of forcible entry and detainer, death, or divorce or other events that affect the ownership of the institution by the existing license holder.

(b–3) After receipt of an application or written notification described by Subsection (b–1), the department may place a hold on payments to the existing license holder in an amount not to exceed the average of the monthly vendor payments paid to the facility, as determined by the department. The department shall release funds to the previous license holder not later than the 120th day after the date on which the final reporting requirements are met and any resulting informal reviews or formal appeals are resolved. The department may reduce the amount of funds released to the previous license holder by the amount owed to the department or the *commission* [~~Health and Human Services Commission~~] under the previous license holder's Medicaid contract or license.

(b–4) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules for the department that define a change of ownership. In adopting the rules, the executive commissioner shall consider:

(1) the proportion of ownership interest that is being transferred to another person;

(2) the addition or removal of a stockholder, partner, owner, or other controlling person;

(3) the reorganization of the license holder into a different type of business entity; and

(4) the death or incapacity of a stockholder, partner, or owner.

(d–1) The *executive commissioner* [~~department~~] shall establish criteria under which *the department may substitute* a desk review of the facility's compliance with applicable requirements [~~may be substituted~~] for the on-site inspection or survey under Subsection (d).

SECTION 3.0599. Sections 242.034(a), (d), and (h), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] may establish by rule license fees for institutions licensed by the department under this chapter. The license fee may not exceed $375 plus:

(1) $15 for each unit of capacity or bed space for which a license is sought; and

(2) a background examination fee imposed under Subsection (d).

(d) The *executive commissioner by rule* [~~board~~] may establish a background examination fee in an amount necessary to defray the department's expenses in administering its duties under Sections 242.032(d) and (e).

(h) The license fees established under this chapter are an allowable cost for reimbursement under the medical assistance program administered by the *commission* [~~Texas Department of Human Services~~] under Chapter 32, Human Resources Code. Any fee increases shall be reflected in reimbursement rates prospectively.

SECTION 3.0600. Section 242.035(b), Health and Safety Code, is amended to read as follows:

(b) Unless prohibited by another state or federal requirement, the department shall allow a licensed institution to operate a portion of the institution under the standards of a lower licensing category. The *executive commissioner* [~~board~~] shall establish procedures and standards to accommodate an institution's operation under the lower category.

SECTION 3.0601. Section 242.036(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] may adopt *and*[~~,~~] publish[~~,~~] and *the department may* enforce minimum standards relating to the grading of an institution[~~, other than an institution that provides maternity care,~~] in order to recognize those institutions that provide more than the minimum level of services and personnel as established by the *executive commissioner* [~~board~~].

SECTION 3.0602. Sections 242.037(a), (c), (d), (e), (f), (h), and (i), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] shall make and *the department shall* enforce rules and minimum standards to implement this chapter, including rules and minimum standards relating to quality of life, quality of care, and residents' rights.

(c) The rules and standards adopted by the *executive commissioner* [~~department~~] may not be less stringent than the Medicaid certification standards and regulations imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100–203.

(d) To implement Sections 242.032(d) and (e), the *executive commissioner* [~~department~~] by rule shall adopt minimum standards for the background and qualifications of any person described by Section 242.032(d). The department may not issue or renew a license if a person described by Section 242.032 does not meet the minimum standards adopted under this section.

(e) In addition to standards or rules required by other provisions of this chapter, the *executive commissioner* [~~board~~] shall adopt *and*[~~,~~] publish[~~,~~] and *the department shall* enforce minimum standards relating to:

(1) the construction of an institution, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) the regulation of the number and qualification of all personnel, including management and nursing personnel, responsible for any part of the care given to the residents;

(3) requirements for in-service education of all employees who have any contact with the residents;

(4) training on the care of persons with Alzheimer's disease and related disorders for employees who work with those persons;

(5) sanitary and related conditions in an institution and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(6) the nutritional needs of each resident according to good nutritional practice or the recommendations of the physician attending the resident;

(7) equipment essential to the residents' health and welfare;

(8) the use and administration of medication in conformity with applicable law and rules;

(9) care and treatment of residents and any other matter related to resident health, safety, and welfare;

(10) licensure of institutions; and

(11) implementation of this chapter.

(f) The *executive commissioner* [~~board~~] shall adopt *and*[,] publish[,] and *the department shall* enforce minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents in an institution and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by *department* [~~board~~] rule, on a schedule determined by *department* [~~board~~] rule.

(h) [~~The board shall adopt each rule adopted by the Texas Board of Health under~~] Section 161.0051 *applies* [~~as part of the rules and standards adopted under this chapter that apply~~] to institutions serving residents who are elderly persons, *and any rules and standards adopted under that section are considered to be rules and standards adopted under this chapter.*

(i) The minimum standards adopted [~~by the board~~] under this section must require that each institution, as part of an existing training program, provide each registered nurse, licensed vocational nurse, nurse aide, and nursing assistant who provides nursing services in the institution at least one hour of training each year in caring for people with dementia.

SECTION 3.0603. Section 242.038, Health and Safety Code, is amended to read as follows:

Sec. 242.038. REASONABLE TIME TO COMPLY. The *executive commissioner* [~~board~~] by rule shall give an institution that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard.

SECTION 3.0604. Sections 242.0385(a) and (d), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule shall adopt a procedure under which a person proposing to construct or modify an institution may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the *executive commissioner* [~~department~~] shall set reasonable deadlines by which the department must complete review of submitted plans.

(d) A fee collected under this section shall be deposited in the general revenue fund [~~and may be appropriated only to the department to conduct reviews under this section~~].

SECTION 3.0605. Section 242.039, Health and Safety Code, is amended to read as follows:

Sec. 242.039. FIRE SAFETY REQUIREMENTS. (a) The *executive commissioner* [~~board~~] shall adopt rules necessary to specify the edition of the Life Safety Code of the National Fire Protection Association that will be used to establish the life safety requirements for an institution licensed under this chapter.

(b) The *executive commissioner* [~~board~~] shall adopt the edition of the Life Safety Code of the National Fire Protection Association for fire safety as designated by federal law and regulations for an institution or portion of an institution that is constructed after September 1, 1993, and for an institution or portion of an institution that was operating or approved for construction on or before September 1, 1993.

(c) The *executive commissioner* [~~board~~] may not require more stringent fire safety standards than those required by federal law and regulation. The rules adopted under this section may not prevent an institution licensed under this chapter from voluntarily conforming to fire safety standards that are compatible with, equal to, or more stringent than those adopted by the *executive commissioner* [~~board~~].

(d) Licensed health care facilities in existence at the time of the effective date of this subsection may have their existing use or occupancy continued if such facilities comply with fire safety standards and ordinances in existence at the time of the effective date of this subsection.

(e) Notwithstanding any other provision of this section, a municipality shall have the authority to enact additional and higher fire safety standards applicable to new construction beginning on or after the effective date of this subsection.

[~~(f)(1) An advisory committee is created to propose rules for adoption by the department concerning the applicability of municipal ordinances and regulations to the remodeling and renovation of existing structures to be used as health care facilities licensed under this chapter.~~

[~~(2) The advisory committee shall be appointed by the board and composed as follows:~~

[~~(A) two municipal fire marshals;~~

[~~(B) four individuals representing the nursing home industry;~~

[~~(C) the commissioner of human services or a designee;~~

[~~(D) one building official from a municipality that has adopted the Uniform Building Code;~~

[~~(E) one building official from a municipality that has adopted the Standard Building Code;~~

[~~(F) one architect licensed under state law;~~

[~~(G) one member of the Texas Board of Human Services; and~~

[~~(H) one state Medicaid director or designee.~~

[~~(3) The advisory committee shall serve without compensation or remuneration of any kind.~~]

(g) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules to implement an expedited inspection process that allows an applicant for a license or for a renewal of a license to obtain a life safety code and physical plant inspection not later than the 15th day after the date the request is made. The department may charge a fee to recover the cost of the expedited inspection. The rules must permit the department to *charge* [~~set~~] different fee amounts based on the size and type of institution.

SECTION 3.0606. Sections 242.040(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) The department shall establish a system for certifying institutions that meet stan-

dards adopted by the *executive commissioner* [~~board~~] concerning the specialized care and treatment of persons with Alzheimer's disease and related disorders.

(c) The *executive commissioner* [~~board~~] by rule may adopt standards for the specialized care and treatment of persons with Alzheimer's disease and related disorders and provide procedures for institutions applying for certification under this section. The rules must provide for a three-year certification period.

(d) The *executive commissioner by rule* [~~board~~] may establish and *the department may collect* [~~charge~~] fees for the certification in an amount necessary to administer this section.

SECTION 3.0607. Section 242.042(a), Health and Safety Code, is amended to read as follows:

(a) Each institution shall prominently and conspicuously post for display in a public area of the institution that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by the department that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the department;

(3) a notice in a form prescribed by the department stating that licensing inspection reports and other related reports which show deficiencies cited by the department are available at the institution for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the institution;

(4) a concise summary of the most recent inspection report relating to the institution;

(5) notice that the department can provide summary reports relating to the quality of care, recent investigations, litigation, and other aspects of the operation of the institution;

(6) notice that the Texas Board of Nursing Facility Administrators, *if applicable,* can provide information about the nursing facility administrator;

(7) any notice or written statement required to be posted under Section 242.072(c);

(8) notice that informational materials relating to the compliance history of the institution are available for inspection at a location in the institution specified by the sign;

(9) notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 260A.014 and 260A.015; and

(10) a sign required to be posted under Section 260A.006(a).

SECTION 3.0608. Sections 242.043(a) and (h), Health and Safety Code, are amended to read as follows:

(a) The department or the department's representative may make any inspection, survey, or investigation that it considers necessary and may enter the premises of an institution at reasonable times to make an inspection, survey, or investigation in accordance with *department* [~~board~~] rules.

(h) The *executive commissioner* [~~department~~] shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the *executive commissioner* [~~department~~] considers proper.

SECTION 3.0609. Section 242.044(b), Health and Safety Code, is amended to read as follows:

(b) For at least two unannounced inspections each licensing period of an institution [~~other than one that provides maternity care~~], the department shall invite at least one person as a citizen advocate from:

(1) the *AARP* [~~American Association of Retired Persons~~];

(2) the Texas Senior Citizen Association;

(3) [~~the Texas Retired Federal Employees;~~

[~~(4)~~] the department's Certified *Long-term* [~~Long Term~~] Care Ombudsman; or

(4) [~~(5)~~] another statewide organization for the elderly.

SECTION 3.0610. Section 242.045(b), Health and Safety Code, is amended to read as follows:

(b) In this section, "unauthorized person" does not include:

(1) the department;

(2) the office of the attorney general;

(3) a statewide organization for the elderly, including the *AARP and* [~~American Association of Retired Persons,~~] the Texas Senior Citizen Association[~~, and the Texas Retired Federal Employees~~];

(4) an ombudsman or representative of the *department* [~~Texas Department on Aging~~];

(5) a representative of an agency or organization when a Medicare or Medicaid survey is made concurrently with a licensing inspection; or

(6) any other person or entity authorized by law to make an inspection or to accompany an inspector.

SECTION 3.0611. Section 242.046(a), Health and Safety Code, is amended to read as follows:

(a) The department shall hold an open hearing in a licensed institution[~~, other than an institution that provides maternity care,~~] if the department has taken a punitive action against the institution in the preceding 12 months or if the department receives a complaint from an ombudsman, advocate, resident, or relative of a resident relating to a serious or potentially serious problem in the institution and the department has reasonable cause to believe the complaint is valid. The department is not required to hold more than one open meeting in a particular institution in each year.

SECTION 3.0612. Sections 242.047(a), (b), (c), and (e), Health and Safety Code, are amended to read as follows:

(a) The department shall accept an annual accreditation review from *The* [~~the~~] Joint Commission [~~on Accreditation of Health Organizations~~] for a nursing *facility* [~~home~~] instead of an inspection for renewal of a license under Section 242.033 and in satisfaction of the requirements for certification [~~by the department~~] for participation in the medical assistance program under Chapter 32, Human Resources Code, and the federal Medicare program, but only if:

(1) the nursing *facility* [~~home~~] is accredited by *The Joint Commission* [~~the commission~~] under *The Joint Commission's* [~~the commission's~~] long-term care standards;

(2) *The Joint Commission* [~~the commission~~] maintains an annual inspection or review program [~~that,~~] for each nursing *facility that the department determines* [~~home,~~] meets the [~~department's~~] applicable minimum standards [~~as confirmed by the board~~];

(3) *The Joint Commission* [~~the commission~~] conducts an annual on-site inspection or review of the *facility* [~~home~~];

(4) the nursing *facility* [~~home~~] submits to the department a copy of its annual accreditation review from *The Joint Commission* [~~the commission~~] in addition to the application, fee, and any report required for renewal of a license or for certification, as applicable; and

(5) the department has:

(A) determined whether a waiver or authorization from a federal agency is necessary under federal law, including for federal funding purposes, before the depart-

ment accepts an annual accreditation review from *The Joint Commission* [~~the joint commission~~]:

(i) instead of an inspection for license renewal purposes;

(ii) as satisfying the requirements for certification [~~by the department~~] for participation in the medical assistance program; or

(iii) as satisfying the requirements for certification [~~by the department~~] for participation in the federal Medicare program; and

(B) obtained any necessary federal waivers or authorizations.

(b) The department shall coordinate its licensing and certification activities with *The Joint Commission* [~~the commission~~].

(c) The department and *The Joint Commission* [~~the commission~~] shall sign a memorandum of agreement to implement this section. The memorandum must provide that if all parties to the memorandum do not agree in the development, interpretation, and implementation of the memorandum, any area of dispute is to be resolved by the *executive commissioner* [~~board~~].

(e) This section does not require a nursing *facility* [~~home~~] to obtain accreditation from *The Joint Commission* [~~the commission~~].

SECTION 3.0613. Sections 242.049(a), (b), (c), (e), (f), (g), and (i), Health and Safety Code, are amended to read as follows:

(a) The department may evaluate data for quality of care in nursing *facilities* [~~homes~~].

(b) The department may gather data on a form or forms to be provided by the department to improve the quality of care in nursing *facilities* [~~homes~~] and may provide information to nursing *facilities* [~~homes~~] which will allow them to improve and maintain the quality of care which they provide. Data referred to in this section can include information compiled from documents otherwise available under Chapter 552, Government Code, including but not limited to individual survey reports and investigation reports.

(c) All licensed nursing *facilities* [~~homes~~] in the state may be required to submit information designated by the department as necessary to improve the quality of care in nursing *facilities* [~~homes~~].

(e) The information and reports, compilations, and analyses developed by the department for quality improvement shall be used only for the evaluation and improvement of quality care in nursing *facilities* [~~homes~~]. No department proceeding or record shall be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity, and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Evidence.

(f) Notwithstanding Subsection (d), the department shall transmit reports, compilations, and analyses of the information provided by a nursing *facility* [~~home~~] to that nursing *facility* [~~home~~], and such disclosure shall not be violative of this section nor shall it constitute a waiver of confidentiality.

(g) A member, agent, or employee of the department may not disclose or be required to disclose a communication made to the department or a record or proceeding of the department required to be submitted under this section except to the nursing *facility* [~~home~~] in question or its agents or employees.

(i) Any information, reports, and other documents produced which are subject to any means of legal compulsion or which are considered to be public information under *Chapter 260A* [~~Subchapter E~~] and the rules adopted under that *chapter* [~~subchapter~~] shall continue to be subject to legal compulsion and be treated as public information under *Chapter 260A* [~~Subchapter E after the effective date of this Act~~], even though such information, reports, and other documents may be used in the collection, compilation, and analysis described in Subsections (b) and (d).

SECTION 3.0614. Section 242.052, Health and Safety Code, is amended to read as follows:

Sec. 242.052. DRUG TESTING OF EMPLOYEES. (a) An institution may establish a drug testing policy for employees of the institution. An institution that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the *executive commissioner* [~~board~~] or may use another drug testing policy.

(b) The *executive commissioner* [~~board~~] by rule shall adopt a model drug testing policy for use by institutions. The model drug testing policy must be designed to ensure the safety of residents through appropriate drug testing and to protect the rights of employees. The model drug testing policy must:

(1) require at least one scheduled drug test each year for each employee of an institution that has direct contact with a resident in the institution; and

(2) authorize random, unannounced drug testing for employees described by Subdivision (1).

SECTION 3.0615. Section 242.062(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall provide for the placement of residents during the institution's suspension or closing to ensure their health and safety.

SECTION 3.0616. Sections 242.065(e) and (i), Health and Safety Code, are amended to read as follows:

(e) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The *executive commissioner* [~~department~~] by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(i) In this section, "affiliate" means:

(1) with respect to a partnership other than a limited partnership, each partner of the partnership;

(2) with respect to a corporation:

(A) an officer;

(B) a director;

(C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(D) a controlling individual;

(3) with respect to an individual:

(A) each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and

(B) each corporation or other business entity in which the individual or another affiliate of the individual is:

(i) an officer;

(ii) a director;

(iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(iv) a controlling individual;

(4) with respect to a limited partnership:

(A) a general partner; and

(B) a limited partner who is a controlling individual;

(5) with respect to a limited liability company:

(A) an owner who is a manager as described by the Texas Limited Liability Company *Law, as described by Section 1.008(e), Business Organizations Code* [~~Act (Article 1528n, Vernon's Texas Civil Statutes)~~]; and

(B) each owner who is a controlling individual; and

(6) with respect to any other business entity, a controlling individual.

SECTION 3.0617. Section 242.066(d), Health and Safety Code, is amended to read as follows:

(d) The *executive commissioner* [~~board~~] shall establish gradations of penalties in accordance with the relative seriousness of the violation.

SECTION 3.0618. Sections 242.067(g) and (h), Health and Safety Code, are amended to read as follows:

(g) If the person charged with the violation consents to the administrative penalty recommended by the department, does not timely respond to a notice sent under Subsection (c) or (e), or fails to correct the violation to the department's satisfaction, the *department* [~~commissioner or the commissioner's designee~~] shall assess the *recommended* administrative penalty [~~recommended by the department~~].

(h) If the *department* [~~commissioner or the commissioner's designee~~] assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

SECTION 3.0619. Section 242.068(a), Health and Safety Code, is amended to read as follows:

(a) An administrative law judge *of the State Office of Administrative Hearings* shall order a hearing and *the department shall* give notice of the hearing if a person charged under Section 242.067(c) requests a hearing.

SECTION 3.0620. Sections 242.069(a), (b), (e), (f), and (g), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] shall give notice of the decision taken under Section 242.068(d) to the person charged. If the *department* [~~commissioner~~] finds that a violation has occurred and has assessed an administrative penalty, the *department* [~~commissioner~~] shall give written notice to the person charged of:

(1) the findings;

(2) the amount of the penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;

(4) whether payment of the penalty or other action under Section 242.071 is required; and

(5) the person's right to judicial review of the order.

(b) Not later than the 30th day after the date on which the *department's* [~~commissioner's~~] order is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the failure to correct the violation to the department's satisfaction, or all of the above.

(e) If a penalty is reduced or not assessed, the *department* [~~commissioner~~] shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(f) Accrued interest on amounts remitted by the *department* [~~commissioner~~] under Subsection (e)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid under Subsection (b) and ending on the date the penalty is remitted.

(g) Interest under Subsection (d) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the notice of the *department's* [~~commissioner's~~] order is received by the person and ending on the date the penalty is paid.

SECTION 3.0621. Sections 242.071(a) and (i), Health and Safety Code, are amended to read as follows:

(a) In lieu of demanding payment of an administrative penalty assessed under Section 242.066, the *department* [~~commissioner~~] may, in accordance with this section, allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the institution affected by the violation.

(i) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, [~~the department shall deny~~] a pending request for a hearing submitted by the person under Section 242.067(d) *shall be denied.*

SECTION 3.0622. Section 242.072(a), Health and Safety Code, is amended to read as follows:

(a) If the *department* [~~commissioner~~] finds that an institution has committed an act for which a civil penalty may be imposed under Section 242.065, the *department* [~~commissioner~~] may, as appropriate under the circumstances, order the institution to immediately suspend admissions.

SECTION 3.0623. Section 242.074(d), Health and Safety Code, is amended to read as follows:

(d) The *executive commissioner* [~~department~~] shall adopt rules to implement this section. The rules shall include the conditions that constitute a significant change in an institution's financial condition that are required to be reported under Subsection (a).

SECTION 3.0624. Section 242.095(b), Health and Safety Code, is amended to read as follows:

(b) The trustee may petition the court to order the release to the trustee of any payment owed the trustee for care and services provided to the residents if the payment has been withheld, including a payment withheld by the *commission* [~~Texas Department of Human Services~~] at the recommendation of the department.

SECTION 3.0625. Section 242.096(d), Health and Safety Code, is amended to read as follows:

(d) The department shall disburse money from the nursing and convalescent home trust fund as ordered by the court in accordance with *department* [~~board~~] rules.

SECTION 3.0626. Sections 242.0965(d) and (e), Health and Safety Code, are amended to read as follows:

(d) The department shall disburse money from the assisted living facility trust fund as ordered by the court in accordance with *department* [~~board~~] rules.

(e) Any unencumbered amount in the assisted living facility trust fund in excess of $500,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund [~~and may be appropriated only to the department for its use in administering and enforcing Chapter 247~~].

SECTION 3.0627. Sections 242.097(a) and (c), Health and Safety Code, are amended to read as follows:

(a) In addition to the license fee provided by Section 242.034, the *executive commissioner by rule* [~~department~~] shall adopt an annual fee to be [~~charged and~~] collected *by the department* if the amount of the nursing and convalescent home trust fund is less than $10,000,000. The fee shall be deposited to the credit of the nursing and convalescent home trust fund created by this subchapter.

(c) The *executive commissioner* [~~department~~] shall set the fee for each nursing and convalescent home at $1 for each licensed unit of capacity or bed space in that home or in an amount necessary to provide not more than $10,000,000 in the fund. The total fees assessed in a year may not exceed $20 for each licensed unit of capacity or bed space in a home.

SECTION 3.0628. Sections 242.0975(a) and (c), Health and Safety Code, are amended to read as follows:

(a) In addition to the license fee provided by Section 247.024, the *executive commissioner by rule* [~~department~~] shall adopt an annual fee to be [~~charged and~~] collected *by the department* if the amount of the assisted living facility trust fund is less than $500,000. The fee shall be deposited to the credit of the assisted living facility trust fund created by this subchapter.

(c) The *executive commissioner* [~~department~~] shall set the fee on the basis of the number of beds in assisted living facilities required to pay the fee and in an amount necessary to provide not more than $500,000 in the assisted living facility trust fund.

SECTION 3.0629. Section 242.098(d), Health and Safety Code, is amended to read as follows:

(d) The amount that remains unreimbursed on the expiration of one year after the date on which the funds were received is delinquent and the *department* [~~Texas Department of Human Services~~] may determine that the home is ineligible for a Medicaid provider contract.

SECTION 3.0630. Section 242.156(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~department~~] shall specify the details of the examination.

SECTION 3.0631. Section 242.158, Health and Safety Code, is amended to read as follows:

Sec. 242.158. IDENTIFICATION OF CERTAIN NURSING *FACILITY* [~~HOME~~] RESIDENTS REQUIRING MENTAL HEALTH OR *INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~] SERVICES. (a) Each resident of a nursing *facility* [~~home~~] who is considering making a transition to a community-based care setting shall be identified to determine the presence of a mental illness or *intellectual disability* [~~mental retardation~~], regardless of whether the resident is receiving treatment or services for a mental illness or *intellectual disability* [~~mental retardation~~].

(b) In identifying residents having a mental illness or *intellectual disability* [~~mental retardation~~], the department shall use an identification process that is at least as effective as the mental health and *intellectual disability* [~~mental retardation~~] identification process established by federal law. The results of the identification process may not be used to prevent a resident from remaining in the nursing *facility* [~~home~~] unless the nursing *facility* [~~home~~] is unable to provide adequate care for the resident.

(c) The department shall compile [~~and provide to the Texas Department of Mental Health and Mental Retardation~~] information regarding each resident identified as having a mental illness or *intellectual disability* [~~mental retardation~~] before the resident makes a transition from the nursing *facility* [~~home~~] to a community-based care setting. *The department shall provide to the Department of State Health Services information regarding each resident identified as having a mental illness.*

(d) The *department and the* [~~Texas~~] Department of *State Health Services* [~~Mental Health and Mental Retardation~~] shall use the information *compiled and* provided under Subsection (c) solely for the purposes of:

(1) determining the need for and funding levels of mental health and *intellectual disability* [~~mental retardation~~] services for residents making a transition from a nursing *facility* [~~home~~] to a community-based care setting;

(2) providing mental health or *intellectual disability* [~~mental retardation~~] services to an identified resident after the resident makes that transition; and

(3) referring an identified resident to a local mental health or *local intellectual and developmental disability* [~~mental retardation~~] authority or private provider for additional mental health or *intellectual disability* [~~mental retardation~~] services.

(e) This section does not authorize the department to decide for a resident of a nursing *facility* [~~home~~] that the resident will make a transition from the nursing *facility* [~~home~~] to a community-based care setting.

SECTION 3.0632. Section 242.181(1), Health and Safety Code, is amended to read as follows:

(1) "*Person with a disability* [~~Handicapped person~~]" means a person whose physical or mental functioning is impaired to the extent that the person needs medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

SECTION 3.0633. Section 242.182, Health and Safety Code, is amended to read as follows:

Sec. 242.182. RESPITE CARE. (a) An institution licensed under this chapter may provide respite care for an elderly *person* or *a* [~~handicapped~~] person *with a disability* according to a plan of care.

(b) The *executive commissioner* [~~board~~] may adopt rules for the regulation of respite care provided by an institution licensed under this chapter.

SECTION 3.0634. Section 242.185, Health and Safety Code, is amended to read as follows:

Sec. 242.185. INSPECTIONS. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect an institution's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any rules the *executive commissioner* [~~board~~] may adopt to regulate respite care services.

SECTION 3.0635. Section 242.204, Health and Safety Code, is amended to read as follows:

Sec. 242.204. RULES. The *executive commissioner* [~~board~~] shall adopt rules governing:

(1) the content of the disclosure statement required by this subchapter, consistent with the information categories required by Section 242.202(d); and

(2) the amount of an administrative penalty to be assessed for a violation of this subchapter.

SECTION 3.0636. Sections 242.221(c) and (e), Health and Safety Code, are amended to read as follows:

(c) The department and the *commission* [~~Health and Human Services Commission~~] shall work together to apply for all available federal funds to help pay for the automated system.

(e) The department shall charge a fee to nursing facilities that do not receive their Medicaid reimbursements electronically. The *executive commissioner by rule* [~~department~~] shall set the fee in an amount necessary to cover the costs of manually processing and sending the reimbursements.

SECTION 3.0637. Section 242.226, Health and Safety Code, is amended to read as follows:

Sec. 242.226. RULES. The *executive commissioner* [~~department~~] shall adopt rules

and make policy changes as necessary to improve the efficiency of the reimbursement process and to maximize the automated reimbursement system's capabilities.

SECTION 3.0638. Section 242.251, Health and Safety Code, is amended to read as follows:

Sec. 242.251. SCOPE OF SUBCHAPTER. This subchapter applies to any dispute between an institution licensed under this chapter and the department relating to:

(1) renewal of a license under Section 242.033;

(2) suspension or revocation of a license under Section 242.061;

(3) assessment of a civil penalty under Section 242.065;

(4) assessment of a monetary penalty under Section 242.066; or

(5) assessment of a penalty as described by Section *32.021(n)* [~~32.021(k)~~], Human Resources Code.

SECTION 3.0639. Section 242.264(a), Health and Safety Code, is amended to read as follows:

(a) The arbitrator may enter any order that may be entered by the department, *executive commissioner* [~~board~~], commissioner, or court under this chapter in relation to a dispute described by Section 242.251.

SECTION 3.0640. Section 242.302, Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 242.302. POWERS AND DUTIES OF DEPARTMENT *AND EXECUTIVE COMMISSIONER*. (a) The *executive commissioner* [~~board~~] may adopt rules consistent with this subchapter. *The executive commissioner shall adopt and publish a code of ethics for nursing facility administrators.*

(b) The department shall:

(1) [~~adopt and publish a code of ethics for nursing facility administrators;~~

[~~(2) establish the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;~~

[~~(3)~~] spend funds necessary for the proper administration of the department's assigned duties under this subchapter; *and*

(2) periodically assess the continuing education needs of license holders to determine whether specific course content should be required [~~(4) establish reasonable and necessary fees for the administration and implementation of this subchapter; and~~

[~~(5) establish a minimum number of hours of continuing education required to renew a license issued under this subchapter and periodically assess the continuing education needs of license holders to determine whether specific course content should be required~~].

(c) The department is the licensing agency for the healing arts, as provided by 42 U.S.C. Section 1396g.

(d) The executive commissioner shall establish:

(1) the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;

(2) reasonable and necessary fees for the administration and implementation of this subchapter; and

(3) a minimum number of hours of continuing education required to renew a license issued under this subchapter.

SECTION 3.0641. Section 242.303(d), Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(d) The committee shall advise the *department* [~~board~~] on the licensing of nursing fa-

cility administrators, including the content of applications for licensure and of the examination administered to license applicants under Section 242.306. The committee shall review and recommend rules and minimum standards of conduct for the practice of nursing facility administration. The committee shall review all complaints against administrators and make recommendations to the department regarding disciplinary actions. Failure of the committee to review complaints and make recommendations in a timely manner shall not prevent the department from taking disciplinary action.

SECTION 3.0642. Section 242.304(a), Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(a) The *executive commissioner, in consultation with the department,* [~~board~~] by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this subchapter. The *executive commissioner* [~~board~~] by rule may set different licensing fees for different categories of licenses.

SECTION 3.0643. Sections 242.306(b) and (c), Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, are amended to read as follows:

(b) The *department* [~~board~~] shall prescribe the form of the application and *the executive commissioner* may by rule establish dates by which applications and fees must be received.

(c) An applicant for a nursing facility administrator's license must take a licensing examination under this subchapter. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the *executive commissioner* [~~board~~] that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:

(1) the needs served by nursing facilities;

(2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and

(3) the elements of nursing facility administration.

SECTION 3.0644. Section 242.307(d), Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(d) The *executive commissioner* [~~board~~] may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

SECTION 3.0645. Sections 242.308(c), (d), and (e), Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, are amended to read as follows:

(c) A license is valid for two years. The *executive commissioner* [~~board~~] by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(d) The *executive commissioner* [~~board~~] by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.

(e) The *executive commissioner* [~~board~~] by rule may provide for a license holder to be placed on inactive status.

SECTION 3.0646. Section 242.309, Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 242.309. PROVISIONAL LICENSE. (a) The *department* [~~board~~] shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;

(2) has passed a national or other examination recognized by the *department* [~~board~~] relating to the practice of nursing facility administration; and

(3) is sponsored by a person licensed by the *department* [~~board~~] under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The *department* [~~board~~] may waive the requirement of Subsection (a)(3) for an applicant if the *department* [~~board~~] determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the *department* [~~board~~] approves or denies the provisional license holder's application for a license. The *department* [~~board~~] shall issue a license under this subchapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 242.306; or

(2) the provisional license holder passes the part of the examination under Section 242.307 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:

(A) the *department* [~~board~~] verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and

(B) the provisional license holder satisfies all other license requirements under this subchapter.

(d) The *department* [~~board~~] must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The *department* [~~board~~] may extend the 180–day period if the results of an examination have not been received by the *department* [~~board~~] before the end of that period.

(e) The *executive commissioner by rule* [~~board~~] may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

SECTION 3.0647. Section 242.311, Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 242.311. MANDATORY CONTINUING EDUCATION. (a) The *executive commissioner* [~~board~~] by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The department may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by *department rule* [~~the board~~].

(b) The *executive commissioner* [~~board~~] shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The department shall adopt a procedure to assess a license holder's participation in continuing education programs.

SECTION 3.0648. Sections 242.312(c), (e), (f), and (g), Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, are amended to read as follows:

(c) The *executive commissioner* [~~board~~] by rule shall adopt a form to standardize information concerning complaints made to the department. The *executive commissioner* [~~board~~] by rule shall prescribe information to be provided to a person when the person files a complaint with the department.

(e) The *executive commissioner* [~~board~~] shall adopt rules concerning the investigation of complaints filed with the department. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the *executive commissioner* [~~board~~] be advised at least quarterly of complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed explaining the action taken on the complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures to be followed by the department in obtaining the services of a private investigator.

(f) The department shall dispose of all complaints in a timely manner. The *executive commissioner* [~~board~~] by rule shall establish a schedule for initiating a complaint investigation that is under the control of the department not later than the 30th day after the date the complaint is received by the department. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(g) The commissioner shall notify the *executive commissioner* [~~board~~] at least quarterly of complaints that have extended beyond the time prescribed by the *executive commissioner* [~~board~~] for resolving complaints so that the department may take any necessary corrective actions on the processing of complaints.

SECTION 3.0649. Section 242.315(a), Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(a) The department may impose an administrative penalty against a person licensed or regulated under this subchapter who violates this subchapter or a rule adopted [~~by the board~~] under this subchapter.

SECTION 3.0650. Section 242.316(d), Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(d) If the person requests a hearing, the department shall [~~set a hearing and~~] give notice of the hearing to the person. The hearing shall be held in accordance with the rules on contested case hearings adopted by the executive commissioner.

SECTION 3.0651. Section 242.317(a), Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

SECTION 3.0652. Section 242.318, Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

Sec. 242.318. MONITORING OF LICENSE HOLDER. The *executive commissioner* [~~department~~] by rule shall develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Rules adopted under this section shall include procedures for monitoring a license holder who is required by the department to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

SECTION 3.0653. Section 242.403, Health and Safety Code, is amended to read as

follows:

Sec. 242.403. STANDARDS FOR QUALITY OF LIFE AND QUALITY OF CARE. (a) The *executive commissioner* [~~department~~] shall adopt standards to implement Sections 242.401 and 242.402. Those standards must, at a minimum, address:

(1) admission of residents;

(2) care of residents younger than 18 years of age;

(3) an initial assessment and comprehensive plan of care for residents;

(4) transfer or discharge of residents;

(5) clinical records;

(6) infection control at the institution;

(7) rehabilitative services;

(8) food services;

(9) nutrition services provided by a director of food services who is licensed by the Texas State Board of Examiners of Dietitians or, if not so licensed, who is in scheduled consultation with a person who is so licensed as frequently and for such time as the *executive commissioner* [~~department~~] shall determine necessary to assure each resident a diet that meets the daily nutritional and special dietary needs of each resident;

(10) social services and activities;

(11) prevention of pressure sores;

(12) bladder and bowel retraining programs for residents;

(13) prevention of complications from nasogastric or gastrotomy tube feedings;

(14) relocation of residents within an institution;

(15) postmortem procedures; and

(16) appropriate use of chemical and physical restraints.

(b) The *executive commissioner* [~~department~~] may require an institution to submit information to the department, including Minimum Data Set Resident Assessments, necessary to ensure the quality of care in institutions. Information submitted to the department that identifies a resident of an institution is confidential and not subject to disclosure under Chapter 552, Government Code.

(c) The *executive commissioner* [~~department~~] may adopt standards in addition to those required by Subsection (a) to implement Sections 242.401 and 242.402.

SECTION 3.0654. Sections 242.501(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule shall adopt a statement of the rights of a resident. The statement must be consistent with Chapter 102, Human Resources Code, but shall reflect the unique circumstances of a resident at an institution. At a minimum, the statement of the rights of a resident must address the resident's constitutional, civil, and legal rights and the resident's right:

(1) to be free from abuse and exploitation;

(2) to safe, decent, and clean conditions;

(3) to be treated with courtesy, consideration, and respect;

(4) to not be subjected to discrimination based on age, race, religion, sex, nationality, or disability and to practice the resident's own religious beliefs;

(5) to place in the resident's room an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative;

(6) to privacy, including privacy during visits and telephone calls;

(7) to complain about the institution and to organize or participate in any program that presents residents' concerns to the administrator of the institution;

(8) to have information about the resident in the possession of the institution maintained as confidential;

(9) to retain the services of a physician the resident chooses, at the resident's own expense or through a health care plan, and to have a physician explain to the resident, in language that the resident understands, the resident's complete medical condition, the recommended treatment, and the expected results of the treatment, including reasonably expected effects, side effects, and risks associated with psychoactive medications;

(10) to participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;

(11) to a written statement or admission agreement describing the services provided by the institution and the related charges;

(12) to manage the resident's own finances or to delegate that responsibility to another person;

(13) to access money and property that the resident has deposited with the institution and to an accounting of the resident's money and property that are deposited with the institution and of all financial transactions made with or on behalf of the resident;

(14) to keep and use personal property, secure from theft or loss;

(15) to not be relocated within the institution, except in accordance with standards adopted [~~by the department~~] under Section 242.403;

(16) to receive visitors;

(17) to receive unopened mail and to receive assistance in reading or writing correspondence;

(18) to participate in activities inside and outside the institution;

(19) to wear the resident's own clothes;

(20) to discharge himself or herself from the institution unless the resident is an adjudicated mental incompetent;

(21) to not be discharged from the institution except as provided in the standards adopted [~~by the department~~] under Section 242.403;

(22) to be free from any physical or chemical restraints imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms; and

(23) to receive information about prescribed psychoactive medication from the person prescribing the medication or that person's designee, to have any psychoactive medications prescribed and administered in a responsible manner, as mandated by Section 242.505, and to refuse to consent to the prescription of psychoactive medications.

(c) The *executive commissioner* [~~department~~] may adopt rights of residents in addition to those required by Subsection (a) and may consider additional rights applicable to residents in other jurisdictions.

SECTION 3.0655. Section 242.601(b), Health and Safety Code, is amended to read as follows:

(b) The medication administration procedures must comply with this subchapter and the rules adopted [~~by the board~~] under Section 242.608.

SECTION 3.0656. Section 242.608, Health and Safety Code, is amended to read as follows:

Sec. 242.608. RULES FOR ADMINISTRATION OF MEDICATION. The *executive commissioner* [~~board~~] by rule shall establish:

(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to administer medication to a resident;

(2) curricula to train persons to administer medication to a resident;

(3) minimum standards for the approval of programs to train persons to administer medication to a resident and for rescinding approval; and

(4) the acts and practices that are allowed or prohibited to a permit holder.

SECTION 3.0657. Section 242.609(a), Health and Safety Code, is amended to read as follows:

(a) An application for the approval of a training program must be made to the department on a form and under rules prescribed by the *executive commissioner* [~~board~~].

SECTION 3.0658. Sections 242.610(a), (c), (d), and (g), Health and Safety Code, are amended to read as follows:

(a) To be issued or to have renewed a permit to administer medication, a person shall apply to the department on a form prescribed and under rules adopted by the *executive commissioner* [~~board~~].

(c) The *executive commissioner* [~~department~~] shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.

(d) Subject to Subsections (h)–(m), the department shall issue a permit or renew a permit to an applicant who:

(1) meets the minimum requirements adopted under Section 242.608;

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee determined by the *executive commissioner by rule* [~~board~~].

(g) The *executive commissioner* [~~board~~] by rule may adopt a system under which permits expire on various dates during the year. For the year in which the permit expiration date is changed, the department shall prorate permit fees on a monthly basis so that each permit holder pays only that portion of the permit fee that is allocable to the number of months during which the permit is valid. On renewal of the permit on the new expiration date, the total permit renewal fee is payable.

SECTION 3.0659. Section 242.611, Health and Safety Code, is amended to read as follows:

Sec. 242.611. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. The *executive commissioner by rule* [~~board~~] shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions. Except as otherwise provided by Section 242.610, the fees may not exceed:

(1) $25 for a combined permit application and examination fee; and

(2) $15 for a renewal permit application fee.

SECTION 3.0660. Sections 242.612(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~board~~] shall revoke, suspend, or refuse to renew a permit or shall reprimand a permit holder for a violation of this subchapter or a rule [~~of the board~~] adopted under this subchapter. In addition, the *department* [~~board~~] may suspend a permit in an emergency or rescind training program approval.

(c) The *department* [~~board~~] may place on probation a person whose permit is suspended. If a permit suspension is probated, the *department* [~~board~~] may require the person:

(1) to report regularly to the department on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the *department* [~~board~~]; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the *department* [~~board~~] in those areas that are the basis of the probation.

SECTION 3.0661. Section 242.613(c), Health and Safety Code, is amended to read as follows:

(c) If requested in writing by a permit holder whose permit is suspended, *an administrative law judge of* the *State Office of Administrative Hearings* [~~department~~] shall conduct a hearing to continue, modify, or rescind the emergency suspension.

SECTION 3.0662. Section 242.844, Health and Safety Code, is amended to read as follows:

Sec. 242.844. REQUIRED FORM ON ADMISSION. The *executive commissioner* [~~department~~] by rule shall prescribe a form that must be completed and signed on a resident's admission to an institution by or on behalf of the resident. The form must state:

(1) that a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) that a person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(3) that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under Subchapter R, Chapter 242, Health and Safety Code, and that if the institution refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring that the person should contact the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services;

(4) the basic procedures that must be followed to request authorized electronic monitoring;

(5) the manner in which this chapter affects the legal requirement to report abuse or neglect when electronic monitoring is being conducted; and

(6) any other information regarding covert or authorized electronic monitoring that the *executive commissioner* [~~department~~] considers advisable to include on the form.

SECTION 3.0663. Section 242.845(c), Health and Safety Code, is amended to read as follows:

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this subchapter. The *executive commissioner* [~~department~~] by rule shall prescribe:

(1) guidelines that will assist institutions, family members of residents, advocates for residents, and other interested persons to determine when a resident lacks the required capacity; and

(2) who may be considered to be a resident's legal representative for purposes of this subchapter, including:

(A) persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity; and

(B) persons who may become the legal representative for the limited purpose of this subchapter under a procedure prescribed by the *executive commissioner* [~~department~~].

SECTION 3.0664. Section 242.846(h), Health and Safety Code, is amended to read as follows:

(h) The *executive commissioner* [~~department~~] may adopt rules prescribing the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

SECTION 3.0665. Section 242.847(g), Health and Safety Code, is amended to read as follows:

(g) An institution may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The *executive commissioner* [~~department~~] may adopt rules regarding the safe placement of an electronic monitoring device.

SECTION 3.0666. Section 242.849(c), Health and Safety Code, is amended to read as follows:

(c) A person who sends more than one tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found. The *executive commissioner* [~~department~~] may adopt rules encouraging persons who send a tape or recording to the department to identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

SECTION 3.0667. Section 242.850, Health and Safety Code, is amended to read as follows:

Sec. 242.850. NOTICE AT ENTRANCE TO INSTITUTION. Each institution shall post a notice at the entrance to the institution stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The *executive commissioner* [~~department~~] by rule shall prescribe the format and the precise content of the notice.

SECTION 3.0668. Section 242.901, Health and Safety Code, is amended to read as follows:

Sec. 242.901. *DEFINITION* [~~DEFINITIONS~~]. In this subchapter, *"family*[~~:~~

[~~(1) "Department" means the Department of Aging and Disability Services.~~

[~~(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.~~

[~~(3) "Family~~] council" means a group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

SECTION 3.0669. Section 243.002, Health and Safety Code, is amended by amending Subdivisions (2) and (3) and adding Subdivision (3–a) to read as follows:

(2) *"Commissioner" means the commissioner of state health services* [~~"Board" means the Texas Board of Health~~].

(3) "Department" means the [~~Texas~~] Department of *State* Health *Services.*

(3–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0670. Sections 243.005(b), (e), and (f), Health and Safety Code, are amended to read as follows:

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the *executive commissioner by rule* [~~board~~].

(e) The license fee must be paid *every two years* [~~annually~~] on renewal of the license.

(f) The department shall issue a renewal license to a center certified under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when the center:

(1) remits any [~~annual~~] license fee; and

(2) submits the inspection results or the inspection results report from the certification body.

SECTION 3.0671. Section 243.007, Health and Safety Code, is amended to read as follows:

Sec. 243.007. *FEE AMOUNTS* [~~FEES~~]. The *executive commissioner by rule* [~~board~~] shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter *and as prescribed by Section 12.0111.*

SECTION 3.0672. Section 243.008, Health and Safety Code, is amended to read as

follows:

Sec. 243.008. *DEPOSIT OF FEES* [~~AMBULATORY SURGICAL CENTER LICENSING FUND~~]. All fees collected under this chapter shall be deposited in the state treasury to the credit of the *general revenue* [~~ambulatory surgical center licensing~~] fund [~~and may be appropriated to the department only to administer and enforce this chapter~~].

SECTION 3.0673. Section 243.009, Health and Safety Code, is amended to read as follows:

Sec. 243.009. ADOPTION OF RULES. The *executive commissioner* [~~board~~] shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ambulatory surgical center.

SECTION 3.0674. Section 243.010(c), Health and Safety Code, is amended to read as follows:

(c) This section does not authorize the *executive commissioner* [~~board~~] to:

(1) establish the qualifications of a licensed practitioner; or

(2) permit a person to provide health care services who is not authorized to provide those services under another state law.

SECTION 3.0675. Section 243.0115, Health and Safety Code, is amended to read as follows:

Sec. 243.0115. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder *to the department for a hearing, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of the office* [~~, the department~~] shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received *by the department* to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

SECTION 3.0676. Sections 243.015(h), (i), (j), (k), and (l), Health and Safety Code, are amended to read as follows:

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the *department* [~~commissioner of public health~~] by order shall [~~approve the determination and~~] impose the recommended penalty.

(i) If the person requests a hearing, the *department* [~~commissioner of public health~~] shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date, and *the department shall* give written notice of the time and place of the hearing to the person. An administrative law judge of *that office* [~~the State Office of Administrative Hearings~~] shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~commissioner of public health~~] a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~commissioner of public health~~] by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(l) The notice of the *department's* [~~commissioner's~~] order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

SECTION 3.0677. Sections 243.016(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) Within 30 days after the date an order of the *department* [~~commissioner of public health~~] under Section 243.015(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the *department's* [~~commissioner's~~] order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30–day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the *department's* [~~commissioner's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the *department* [~~commissioner of public health~~] by certified mail.

(c) If the *department* [~~commissioner of public health~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~commissioner~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

SECTION 3.0678. Section 244.002, Health and Safety Code, is amended by amending Subdivision (3) and adding Subdivision (3–a) to read as follows:

(3) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(3–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0679. Sections 244.005(b), (c), and (e), Health and Safety Code, are amended to read as follows:

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the *executive commissioner by rule* [~~board~~].

(c) The application must contain evidence that the composition of the center's staff meets the standards adopted [~~by the board~~] under this chapter for the level of license for which the application is submitted.

(e) The license fee shall be paid *every two years* [~~annually~~] on renewal of the license.

SECTION 3.0680. Section 244.007, Health and Safety Code, is amended to read as follows:

Sec. 244.007. FEES. The *executive commissioner by rule* [~~board~~] shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter *and as prescribed by Section 12.0111.*

SECTION 3.0681. Section 244.009, Health and Safety Code, is amended to read as follows:

Sec. 244.009. ADOPTION OF RULES. (a) The *executive commissioner* [~~board~~] shall adopt rules necessary to implement this chapter.

(b) The *executive commissioner* [~~board~~] shall adopt rules that establish different levels

of licenses to operate a birthing center and that provide requirements for the issuance, renewal, denial, suspension, and revocation of each level of license.

SECTION 3.0682. Section 244.010, Health and Safety Code, is amended to read as follows:

Sec. 244.010. MINIMUM STANDARDS. (a) For each level of license of a birthing center, the rules must contain minimum standards for:

(1) the qualifications for professional and nonprofessional personnel;

(2) the supervision of professional and nonprofessional personnel;

(3) the provision and coordination of treatment and services;

(4) the organizational structure, including the lines of authority and the delegation of responsibility;

(5) the keeping of clinical records; and

(6) any other aspect of the operation of a birthing center that the *executive commissioner* [~~board~~] considers necessary to protect the public.

(b) This section does not authorize the *executive commissioner* [~~board~~] to:

(1) establish the qualifications of a licensed practitioner; or

(2) permit a person to provide health care services who is not authorized to provide those services under another state law.

SECTION 3.0683. Sections 244.015(h), (i), (j), (k), and (l), Health and Safety Code, are amended to read as follows:

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the *department* [~~commissioner of public health~~] by order shall approve the determination and impose the recommended penalty.

(i) If the person requests a hearing, the *department* [~~commissioner of public health~~] shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. *The department shall* [~~and~~] give written notice of the time and place of the hearing to the person. An administrative law judge of *that office* [~~the State Office of Administrative Hearings~~] shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~commissioner of public health~~] a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~commissioner of public health~~] by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(l) The notice of the *department's* [~~commissioner's~~] order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

SECTION 3.0684. Sections 244.016(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) Within 30 days after the date an order of the *department* [~~commissioner of public health~~] under Section 244.015(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the *department's* [~~commissioner's~~] order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the *department's* [~~commissioner's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the *department* [~~commissioner of public health~~] by certified mail.

(c) If the *department* [~~commissioner of public health~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~commissioner~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

SECTION 3.0685. Section 245.002, Health and Safety Code, is amended by amending Subdivision (4) and adding Subdivision (4–a) to read as follows:

(4) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(4–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0686. Sections 245.005(b) and (c), Health and Safety Code, are amended to read as follows:

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the *executive commissioner by rule* [~~board~~].

(c) The application must contain evidence that there are one or more physicians on the staff of the facility who are licensed by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~].

SECTION 3.0687. Section 245.007, Health and Safety Code, is amended to read as follows:

Sec. 245.007. FEES. The *executive commissioner by rule* [~~board~~] shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter and Chapter 171.

SECTION 3.0688. Section 245.009, Health and Safety Code, is amended to read as follows:

Sec. 245.009. ADOPTION OF RULES. The *executive commissioner* [~~board~~] shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an abortion facility.

SECTION 3.0689. Section 245.010(d), Health and Safety Code, is amended to read as follows:

(d) This section does not authorize the *executive commissioner* [~~board~~] to:

(1) establish the qualifications of a licensed practitioner; or

(2) permit a person to provide health care services who is not authorized to provide those services under other laws of this state.

SECTION 3.0690. Section 245.018(c), Health and Safety Code, is amended to read as follows:

(c) If the person notified of the violation accepts the determination of the department,

the *department* [~~commissioner of public health or the commissioner's designee~~] shall [~~issue an~~] order [~~approving the determination and ordering~~] the person to pay the recommended penalty.

SECTION 3.0691. Section 245.019, Health and Safety Code, is amended to read as follows:

Sec. 245.019. HEARING; ORDER. (a) If the person requests a hearing, the *department shall transfer the case to the State Office of Administrative Hearings and an administrative law judge of that office shall hold the hearing.*

(a–1) The department [~~commissioner of public health or the commissioner's designee~~] shall[~~:~~

[~~(1) set a hearing;~~

[~~(2)~~] give written notice of the hearing to the person[~~; and~~

[~~(3) designate a hearings examiner to conduct the hearing~~].

(b) The *administrative law judge* [~~hearings examiner~~] shall make findings of fact and conclusions of law and shall promptly issue to the *department* [~~commissioner~~] a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty, if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the *administrative law judge* [~~hearings examiner~~], the *department* [~~commissioner~~] by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

SECTION 3.0692. Sections 245.020(a), (c), and (f), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner of public health or the commissioner's designee~~] shall give notice of the *department's* [~~commissioner's~~] order under Section 245.019(c) to the person alleged to have committed the violation. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the *department's* [~~commissioner's~~] order.

(c) Within the 30–day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the *department's* [~~commissioner's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(f) Judicial review of the order of the *department* [~~commissioner of public health~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.0693. Section 245.022(a), Health and Safety Code, is amended to read as follows:

(a) The department may assess reasonable expenses and costs against a person in an

administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date a *department* [~~board~~] order requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

SECTION 3.0694. Sections 245.023(b) and (d), Health and Safety Code, are amended to read as follows:

(b) Subsection (a) does not require the department to provide information that is not in the possession of the department. The Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] shall provide to the department information in the possession of the board that the department is required to provide under Subsection (a).

(d) An abortion facility shall provide to a woman, at the time the woman initially consults the facility, a written statement indicating the number of the toll-free telephone line maintained under Subsection (c). The written statement must be available in English and Spanish and be in substantially the following form:

"(toll-free telephone number)

You have a right to access certain information concerning this abortion facility by using the toll-free telephone number listed above. If you make a call to the number, your identity will remain anonymous. The toll-free telephone line can provide you with the following information:

(1) Whether this abortion facility is licensed by the Texas Department of *State* Health *Services*.

(2) The date of the last inspection of this facility by the Texas Department of *State* Health *Services* and any violations of law or rules discovered during that inspection that may pose a health risk to you.

(3) Any relevant fine, penalty, or judgment rendered against this facility or a doctor who provides services at this facility."

SECTION 3.0695. Section 247.0011, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (b–1) to read as follows:

(b) The *executive commissioner* [~~department~~] shall protect residents of assisted living facilities by:

(1) adopting rules relating to quality of care and quality of life; *and*

(2) adopting rules relating to the assessment of the condition and service needs of each resident.[;]

(b–1) The department shall protect residents of assisted living facilities by:

(1) [~~(3)~~] promoting policies that maximize the dignity, autonomy, privacy, and independence of each resident;

(2) [~~(4)~~] regulating the construction, maintenance, and operation of assisted living facilities;

(3) [~~(5)~~] strictly monitoring factors relating to the health, safety, welfare, and dignity of each resident;

(4) [~~(6)~~] imposing prompt and effective remedies for violations of this chapter and rules and standards adopted under this chapter;

(5) promoting [~~(7) providing~~] a residential environment that allows residents to maintain the highest possible degree of independence and self-determination; and

(6) [~~(8)~~] providing the public with helpful and understandable information relating to the operation of assisted living facilities in this state.

SECTION 3.0696. Section 247.002, Health and Safety Code, is amended by amending Subdivision (2) and adding Subdivision (4–a) to read as follows:

(2) *"Commission" means the Health and Human Services Commission* [~~"Board" means the executive commissioner of the Health and Human Services Commission~~].

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0697. Subdivision (7), Section 247.002, Health and Safety Code, is redesignated as Subdivision (2-a), Section 247.002, Health and Safety Code, and amended to read as follows:

(2-a) [~~(7)~~] "Commissioner" means the commissioner of *aging and disability services* [~~the department~~].

SECTION 3.0698. Section 247.004, Health and Safety Code, is amended to read as follows:

Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

(1) a boarding home facility as defined by Section 260.001;

(2) an establishment conducted by or for the adherents of the Church of Christ, Scientist, for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing without the use of any drug or material remedy if the establishment complies with local safety, sanitary, and quarantine ordinances and regulations;

(3) a facility conducted by or for the adherents of a qualified religious society classified as a tax-exempt organization under an Internal Revenue Service group exemption ruling for the purpose of providing personal care services without charge solely for the society's professed members or ministers in retirement, if the facility complies with local safety, sanitation, and quarantine ordinances and regulations; or

(4) a facility that provides personal care services only to persons enrolled in a program that:

(A) is funded in whole or in part by the department and that is monitored by the department or its designated local *intellectual and developmental disability* [~~mental retardation~~] authority in accordance with *department rules* [~~standards set by the department~~]; or

(B) is funded in whole or in part by the Department of State Health Services and that is monitored by that department, or by its designated local mental health authority in accordance with *department rules* [~~standards set by the department~~].

SECTION 3.0699. Section 247.005(d), Health and Safety Code, is amended to read as follows:

(d) The *executive commissioner* [~~department~~] may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

SECTION 3.0700. Section 247.021(d), Health and Safety Code, is amended to read as follows:

(d) The *executive commissioner* [~~department~~] by rule shall establish procedures to issue a six-month provisional license to existing facilities with residents. The department may issue a provisional license if:

(1) the facility is in compliance with resident care standards;

(2) the facility voluntarily discloses that the facility needs additional time to comply with life safety code and physical plant standards;

(3) the disclosure is made in writing by certified mail to the department;

(4) an investigation of the violation was not initiated and the violation was not independently detected by the department; and

(5) the disclosure is made promptly after knowledge of the information disclosed is obtained by the facility.

SECTION 3.0701. Section 247.0211(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules to implement an expedited inspection process that allows an applicant

for an assisted living facility license or for a renewal of a license to obtain a life safety code and physical plant inspection not later than the 15th day after the date the request is made.

SECTION 3.0702. Section 247.022(b), Health and Safety Code, is amended to read as follows:

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the *executive commissioner by rule* [~~board~~].

SECTION 3.0703. Sections 247.023(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The department shall issue a license if, after inspection and investigation, it finds that the applicant, the assisted living facility, and all controlling persons with respect to the applicant or facility meet the requirements of this chapter and the standards adopted under this chapter. The license expires on the second anniversary of the date of its issuance. The executive commissioner [~~of the Health and Human Services Commission~~] by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, the department shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months during which the license is valid. A license holder shall pay the total license renewal fee at the time of renewal.

(c) The *department* [~~board~~] may require participation in a continuing education program as a condition of renewal of a license. The *executive commissioner* [~~board~~] shall adopt rules to implement this subsection.

SECTION 3.0704. Sections 247.024(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner by rule* [~~department~~] shall set license fees imposed by this chapter:

(1) on the basis of the number of beds in assisted living facilities required to pay the fee; and

(2) in amounts reasonable and necessary to defray the cost of administering this chapter, but not to exceed $1,500.

(b) The *executive commissioner* [~~board~~] shall establish by rule a base fee schedule and a per bed fee schedule.

(c) All fees or penalties collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund [~~and shall be appropriated to the department only to administer and enforce this chapter~~].

SECTION 3.0705. Section 247.025, Health and Safety Code, is amended to read as follows:

Sec. 247.025. ADOPTION OF RULES. The *executive commissioner* [~~board~~] shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an assisted living facility.

SECTION 3.0706. Sections 247.026(a), (c), (d), (f), and (i), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall prescribe minimum standards to protect the health and safety of an assisted living facility resident.

(c) The *executive commissioner* [~~board~~] shall require an assisted living facility that provides brain injury rehabilitation services to include in the facility's consumer disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitation services.

(d) The *executive commissioner* [~~board~~] may prescribe different levels of minimum

standards for assisted living facilities according to the number of residents, the type of residents, the level of personal care provided, the nutritional needs of residents, and other distinctions the *executive commissioner* [~~board~~] considers relevant. If the *executive commissioner* [~~board~~] does not prescribe minimum standards for facilities serving non-geriatric residents, *the executive commissioner* [~~it~~] must develop procedures for consideration and approval of alternate methods of compliance by such facilities with the *department's* [~~board's~~] standards.

(f) The *executive commissioner* [~~board~~] by rule shall prescribe minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents as an employee of an assisted living facility and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by *department* [~~board~~] rule, on a schedule determined by *department* [~~board~~] rule.

(i) The *executive commissioner* [~~board~~] by rule shall require each manager of an assisted living facility that has 17 beds or more to complete at least one educational course on the management of assisted living facilities not later than the first anniversary of the date the manager begins employment in that capacity.

SECTION 3.0707. Sections 247.0261(a) and (d), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule shall adopt a procedure under which a person proposing to construct or modify an assisted living facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the *executive commissioner* [~~department~~] shall set reasonable deadlines by which the department must complete review of submitted plans.

(d) A fee collected under this section shall be deposited in the general revenue fund to the credit of the assisted living account [~~and shall be appropriated only to the department to conduct reviews under this section~~].

SECTION 3.0708. Sections 247.029(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall establish a classification and license for a facility that advertises, markets, or otherwise promotes that the facility provides personal care services to residents who have Alzheimer's disease or related disorders. A facility is not required to be classified under this section to provide care or treatment to residents who have Alzheimer's disease or related disorders.

(b) The *executive commissioner* [~~board~~] shall adopt minimum standards for an assisted living facility classified under this section.

SECTION 3.0709. Sections 247.032(a) and (b), Health and Safety Code, are amended to read as follows:

(a) In this section, "accreditation commission" means the Commission on Accreditation of Rehabilitation Facilities *(CARF), The* [~~the~~] Joint Commission [~~on Accreditation of Healthcare Organizations~~], or another organization approved by the executive commissioner [~~of the Health and Human Services Commission~~].

(b) The department shall accept an accreditation survey from an accreditation commission for an assisted living facility instead of an inspection under Section 247.023 or an annual inspection or survey conducted under the authority of Section 247.027, but only if:

(1) the accreditation commission's standards meet or exceed the requirements for licensing of the executive commissioner [~~of the Health and Human Services Commission~~] for an assisted living facility;

(2) the accreditation commission maintains an inspection or survey program that, for each assisted living facility, meets the department's applicable minimum stan-

dards as confirmed by the executive commissioner [~~of the Health and Human Services Commission~~];

(3) the accreditation commission conducts an on-site inspection or survey of the facility at least as often as required by Section 247.023 or 247.027 and in accordance with the department's minimum standards;

(4) the assisted living facility submits to the department a copy of its required accreditation reports to the accreditation commission in addition to the application, the fee, and any report required for renewal of a license;

(5) the inspection or survey results are available for public inspection to the same extent that the results of an investigation or survey conducted under Section 247.023 or 247.027 are available for public inspection; and

(6) the department ensures that the accreditation commission has taken reasonable precautions to protect the confidentiality of personally identifiable information concerning the residents of the assisted living facility.

SECTION 3.0710. Section 247.033(a), Health and Safety Code, is amended to read as follows:

(a) The department may develop and implement a pilot program to authorize the use of an accreditation survey that complies with Section 247.032(b) to fulfill the requirements for a life and safety code survey or inspection or another survey or inspection required by this subchapter. If the department implements the pilot program, the department may implement the pilot program with the goal that [~~not later than August 31, 2014,~~] at least one assisted living facility will have used an accreditation survey for the purposes of this section. The accreditation commission's standards must meet or exceed the assisted living facility licensing requirements established by the executive commissioner [~~of the Health and Human Services Commission~~] as required by Section 247.032(b)(1).

SECTION 3.0711. Section 247.043(b), Health and Safety Code, is amended to read as follows:

(b) If the thorough investigation reveals that abuse, exploitation, or neglect has occurred, the department shall:

(1) implement enforcement measures, including closing the facility, revoking the facility's license, relocating residents, and making referrals to law enforcement agencies;

(2) notify the Department of *Family and* Protective [~~and Regulatory~~] Services of the results of the investigation;

(3) notify a health and human services agency, as defined by Section 531.001, Government Code, that contracts with the facility for the delivery of personal care services of the results of the investigation; and

(4) provide to a contracting health and human services agency access to the department's documents or records relating to the investigation.

SECTION 3.0712. Sections 247.045(g), (h), and (i), Health and Safety Code, are amended to read as follows:

(g) The commissioner [~~of human services~~] must approve any settlement agreement to a suit brought under this chapter.

(h) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The *executive commissioner* [~~department~~] by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(i) In this section, "affiliate" means:

(1) with respect to a partnership other than a limited partnership, each partner of the partnership;

(2) with respect to a corporation:

(A) an officer;

(B) a director;

(C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(D) a controlling individual;

(3) with respect to an individual:

(A) each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and

(B) each corporation or other business entity in which the individual or another affiliate of the individual is:

(i) an officer;

(ii) a director;

(iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(iv) a controlling individual;

(4) with respect to a limited partnership:

(A) a general partner; and

(B) a limited partner who is a controlling individual;

(5) with respect to a limited liability company:

(A) an owner who is a manager *under* [~~as described by~~] the Texas Limited Liability Company *Law as described by Section 1.008(e), Business Organizations Code* [~~Act (Article 1528n, Vernon's Texas Civil Statutes)~~]; and

(B) each owner who is a controlling individual; and

(6) with respect to any other business entity, a controlling individual.

SECTION 3.0713. Section 247.0451(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~board~~] shall establish gradations of penalties in accordance with the relative seriousness of the violation.

SECTION 3.0714. Sections 247.0453(h) and (i), Health and Safety Code, are amended to read as follows:

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the *department* [~~commissioner or the commissioner's designee~~] shall assess the [~~penalty~~] recommended *penalty* [~~by the department~~].

(i) If the *department* [~~commissioner or the commissioner's designee~~] assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

SECTION 3.0715. Sections 247.0454(a), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) An administrative law judge shall order a hearing and *the department shall* give notice of the hearing if a person charged with a violation under Section 247.0451 timely requests a hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law

and promptly issue to the *department* [~~commissioner or the commissioner's designee~~] a written *proposal for* decision regarding the occurrence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the *department* [~~commissioner or the commissioner's designee~~] by order may:

(1) find that a violation has occurred and assess an administrative penalty; or

(2) find that a violation has not occurred.

(e) If the *department* [~~commissioner or the commissioner's designee~~] finds that a violation has not occurred, the *department* [~~commissioner or the commissioner's designee~~] shall order that all records reflecting that the department found a violation had occurred and attempted to impose an administrative penalty shall be expunged except:

(1) records obtained by the department during its investigation; and

(2) the administrative law judge's findings of fact.

SECTION 3.0716. Sections 247.0455(a), (b), (f), and (g), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner or the commissioner's designee~~] shall give notice of the findings made under Section 247.0454(d) to the person charged. If the *department* [~~commissioner or the commissioner's designee~~] finds that a violation has occurred, the *department* [~~commissioner or the commissioner's designee~~] shall give to the person charged written notice of:

(1) the findings;

(2) the amount of the administrative penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;

(4) whether action under Section 247.0457 is required in lieu of payment of all or part of the penalty; and

(5) the person's right to judicial review of the *department* order [~~of the commissioner or the commissioner's designee~~].

(b) Not later than the 30th day after the date on which the *department* order [~~of the commissioner or the commissioner's designee~~] is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the department's dissatisfaction with efforts to correct the violation, or any combination of these issues.

(f) If the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, the *department* [~~commissioner~~] shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on amounts remitted by the *department* [~~commissioner~~] under Subsection (f)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged.

SECTION 3.0717. Sections 247.0457(a) and (h), Health and Safety Code, are amended to read as follows:

(a) In lieu of demanding payment of an administrative penalty assessed under Section 247.0451, the *department* [~~commissioner~~] in accordance with this section may allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the assisted living facility affected by the violation.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the *commission or the State Office of Administrative Hearings, as appropriate,* [~~department~~] shall deny a pending request for a hearing submitted by the person under Section 247.0453.

SECTION 3.0718. Section 247.046, Health and Safety Code, is amended to read as follows:

Sec. 247.046. COOPERATION AMONG AGENCIES. The *executive commissioner by rule for the department and* [~~board,~~] the Department of *Family and* Protective [~~and Regulatory~~] Services[~~,~~] and the attorney general *by rule* shall adopt [~~by rule~~] a memorandum of understanding that:

(1) defines *those agencies'* [~~each agency's~~] responsibilities concerning assisted living facilities and coordinates *those agencies'* [~~each agency's~~] activities;

(2) details coordinated procedures to be used by *those agencies* [~~each agency~~] in responding to complaints relating to neglect or abuse of residents of facilities, to substandard facilities, and to unlicensed facilities;

(3) identifies enforcement needs *those agencies* [~~each agency~~] may have in order to perform *their* [~~its~~] duties under the memorandum of understanding, including any need for access to information or to facilities under investigation or operating under a plan of correction; and

(4) provides a plan for correcting violations in substandard or unlicensed assisted living facilities that specifies the conditions under which it is appropriate to impose such a plan and that outlines a schedule of implementation for the plan.

SECTION 3.0719. Section 247.050(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt procedures to monitor the status of unlicensed assisted living facilities. As part of these procedures, the department shall:

(1) maintain a registry of all reported unlicensed assisted living facilities for the purpose of periodic follow-up by the field staff in each region; and

(2) prepare a quarterly report that shows the number of:

(A) complaints relating to unlicensed assisted living facilities that are received;

(B) complaints that are investigated;

(C) unsubstantiated complaints;

(D) substantiated complaints; and

(E) cases referred to the attorney general.

SECTION 3.0720. Sections 247.051(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~Health and Human Services Commission~~] by rule shall establish an informal dispute resolution process to address disputes between a facility and the department concerning a statement of violations prepared by the department in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a statement of violations. The informal dispute resolution process must require:

(1) the assisted living facility to request informal dispute resolution not later than the 10th day after the date of notification by the department of the violation of a standard or standards;

(2) the *commission* [~~Health and Human Services Commission~~] to complete the process not later than the 90th day after the date of receipt of a request from the assisted living facility for informal dispute resolution;

(3) that, not later than the 10th business day after the date an assisted living facility requests an informal dispute resolution, the department forward to the assisted living facility a copy of all information that is referred to in the disputed statement of violations or on which a citation is based in connection with the survey, inspection, investigation, or other visit, excluding:

(A) the name of any complainant, witness, or informant;

(B) any information that would reasonably lead to the identification of a complainant, witness, or informant;

(C) information obtained from or contained in the records of the facility;

(D) information that is publicly available; or

(E) information that is confidential by law;

(4) the *commission* [~~Health and Human Services Commission~~] to give full consideration to all factual arguments raised during the informal dispute resolution process that:

(A) are supported by references to specific information that the facility or department relies on to dispute or support findings in the statement of violations; and

(B) are provided by the proponent of the argument to the *commission* [~~Health and Human Services Commission~~] and the opposing party;

(5) that informal dispute resolution staff give full consideration to the information provided by the assisted living facility and the department;

(6) that ex parte communications concerning the substance of any argument relating to a survey, inspection, investigation, visit, or statement of violations under consideration not occur between the informal dispute resolution staff and the assisted living facility or the department; and

(7) that the assisted living facility and the department be given a reasonable opportunity to submit arguments and information supporting the position of the assisted living facility or the department and to respond to arguments and information presented against them.

(b) The *commission* [~~Health and Human Services Commission~~] may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

SECTION 3.0721. Section 247.061(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~department~~] and the attorney general shall adopt by rule a memorandum of understanding that:

(1) defines *the department's and the attorney general's* [~~each agency's~~] responsibilities concerning assisted living facilities;

(2) outlines and coordinates procedures to be used by those agencies in responding to complaints concerning assisted living facilities; and

(3) provides a plan for correcting violations or deficiencies in assisted living facilities.

SECTION 3.0722. Section 247.062(a), Health and Safety Code, is amended to read as follows:

(a) The department shall prepare a directory of assisted living facilities that includes the name of the owner, the address and telephone number of the facility, the number of beds in the facility, and the facility's accessibility to *persons with disabilities* [~~disabled persons~~].

SECTION 3.0723. Section 247.063, Health and Safety Code, is amended to read as follows:

Sec. 247.063. REFERRALS. (a) If the [~~Texas~~] Department of *State Health Services, the department,* [~~Mental Health and Mental Retardation or~~] a local mental health *authority,* or *a local intellectual and developmental disability* [~~mental retardation~~] authority refers a patient or client to an assisted living facility, the referral may not be made to a facility that is not licensed under this chapter.

(b) If the [~~Texas~~] Department of *State Health Services* [~~Mental Health and Mental Retardation~~] or a local mental health or *intellectual and developmental disability* [~~mental retardation~~] authority gains knowledge of an assisted living facility that is not operated or licensed by the *department or* [~~Texas Department of Mental Health and Mental Retardation,~~] the authority[~~, or the Texas Department of Human Services~~] and that has four or more residents who are unrelated to the proprietor of the facility, the [~~Texas~~] Department of *State Health Services* [~~Mental Health and Mental Retardation~~] or the authority shall report the name, address, and telephone number of the facility to the *department* [~~Texas Department of Human Services~~].

SECTION 3.0724. Section 247.0631, Health and Safety Code, is amended to read as follows:

Sec. 247.0631. ACCESS. An employee of the [~~Texas~~] Department of *State Health Services* [~~Mental Health and Mental Retardation~~] or an employee of a local mental health *or intellectual and developmental disability* [~~and mental retardation~~] authority may enter an assisted living facility as necessary to provide services to a resident of the facility.

SECTION 3.0725. Section 247.066(e), Health and Safety Code, is amended to read as follows:

(e) To facilitate obtaining the written statements required under Subsections (b–1) and (c)(1)–(3), the department shall develop standard forms that must be used under Subsections (b–1) or (c)(1)–(3), as appropriate. The *executive commissioner by rule* [~~department~~] shall develop criteria under which the department will determine, based on a resident's specific situation, whether it will grant or deny a request for a waiver under Subsection (b–1) or (c)(4).

SECTION 3.0726. Section 247.094(a), Health and Safety Code, is amended to read as follows:

(a) The arbitrator may enter any order that may be entered by the department, *executive commissioner* [~~board~~], commissioner, or court under this chapter in relation to a dispute described by Section 247.081.

SECTION 3.0727. Section 248.002, Health and Safety Code, is amended by amending Subdivisions (1) and (2) and adding Subdivision (2–a) to read as follows:

(1) *"Commissioner" means the commissioner of state health services* [~~"Board" means the Texas Board of Health~~].

(2) "Department" means the [~~Texas~~] Department of *State* Health *Services.*

(2–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0728. Section 248.003, Health and Safety Code, is amended to read as follows:

Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

(1) a home and community support services agency required to be licensed under Chapter 142;

(2) a person required to be licensed under Chapter 241 (Texas Hospital Licensing Law);

(3) an institution required to be licensed under Chapter 242;

(4) an ambulatory surgical center required to be licensed under Chapter 243 (Texas Ambulatory Surgical Center Licensing Act);

(5) a birthing center required to be licensed under Chapter 244 (Texas Birthing Center Licensing Act);

(6) a facility required to be licensed under Chapter 245 (Texas Abortion Facility Reporting and Licensing Act);

(7) a *general residential operation* [~~child care institution~~], foster group home, foster [~~family~~] home, and child-placing agency, for children in foster care or other residential care who are under the conservatorship of the Department of *Family and* Protective [~~and Regulatory~~] Services; or

(8) a person providing medical or nursing care or services under a license or permit issued under other state law.

SECTION 3.0729. Sections 248.022(a) and (b), Health and Safety Code, are amended to read as follows:

(a) An applicant for a license must submit an application to the department on a form prescribed by the department and in accordance with *department* [~~board~~] rules.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the *executive commissioner by rule* [~~board~~].

SECTION 3.0730. Section 248.023, Health and Safety Code, is amended to read as follows:

Sec. 248.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The department shall issue a license to an applicant if on inspection and investigation it finds that the applicant meets the requirements of this chapter and *department* [~~the~~] rules [~~adopted by the board~~].

(b) A license shall be renewed at the times and in accordance with *department* [~~the~~] rules [~~established by the board~~].

SECTION 3.0731. Sections 248.024(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner by rule* [~~board~~] shall establish a license application fee *and a license renewal fee* in *amounts as prescribed by Section 12.0111* [~~the amount of $25 for each facility bed or $200, whichever is greater, but the fees may not exceed $1,000~~].

(b) The *executive commissioner by rule* [~~board~~] may establish other reasonable and necessary fees in amounts that are adequate, with the license application and license renewal fees, to collect sufficient revenue to meet the expenses necessary to administer this chapter. The fees may include construction plan review and inspection fees.

(d) All fees received by the department shall be deposited to the credit of the General Revenue Fund [~~and may be appropriated only to the department to administer this chapter~~].

SECTION 3.0732. Section 248.026, Health and Safety Code, is amended to read as follows:

Sec. 248.026. DUTIES OF *EXECUTIVE COMMISSIONER* [~~BOARD~~]. (a) The *executive commissioner* [~~board~~] shall adopt rules necessary to implement this chapter. The rules must establish minimum standards for special care facilities relating to:

(1) the issuance, renewal, denial, suspension, and revocation of the license required by this chapter;

(2) the qualifications, duties, and supervision of professional and nonprofessional personnel and volunteers;

(3) residents' rights;

(4) medical and nursing care and services provided by a license holder;

(5) the organizational structure, lines of authority, delegation of responsibility, and operation of a special care facility;

(6) records of care and services kept by the license holder, including the disposal or destruction of those records;

(7) safety, fire prevention, and sanitary provisions;

(8) transfer of residents in a medically appropriate manner from or to a special care facility;

(9) construction plan approval and inspection; and

(10) any aspects of a special care facility as necessary to protect the public or residents of the facility.

(b) Subsection (a) does not authorize the *executive commissioner* [~~board~~] to establish the qualifications of licensed health care providers or permit the *executive commissioner* [~~board~~] to authorize persons to provide health care services who are not authorized to provide those services under other state law.

SECTION 3.0733. Section 248.027(a), Health and Safety Code, is amended to read as follows:

(a) If there are no local regulations in effect or enforced in the area in which a special care facility is located, the facility's construction must conform to the minimum standards established by the *executive commissioner* [~~board~~].

SECTION 3.0734. Sections 248.029(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall adopt standards for the designation of a special care facility licensed under this chapter as a residential AIDS hospice. Those standards shall be consistent with other standards adopted under this chapter and consistent with the purposes for which special care facilities are created.

(b) In adopting the standards, the *executive commissioner* [~~board~~] shall consider rules adopted for the designation of a hospice under Chapter 142 and shall establish specific standards requiring:

(1) the provision of exclusively palliative care by a facility;

(2) the provision of bereavement services;

(3) the provision of support services to the family of a client;

(4) the participation of a registered nurse in the development of an initial plan of care for a client and periodic review of the plan of care by an interdisciplinary team of the facility; and

(5) clinical and medical review of patient care services by a physician who acts as a medical consultant.

SECTION 3.0735. Section 248.052, Health and Safety Code, is amended to read as follows:

Sec. 248.052. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend any license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder *to the department for a hearing, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office* [~~, the department~~] shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received *by the department* to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

SECTION 3.0736. Section 248.053, Health and Safety Code, is amended to read as follows:

Sec. 248.053. INJUNCTION. (a) The department may request that the attorney general petition a district court to restrain a license holder or other person from continuing to violate this chapter or any rule adopted by the *executive commissioner* [~~board~~] under this chapter. Venue for a suit for injunctive relief is in Travis County.

(b) On application for injunctive relief and a finding that a license holder or other

person has violated this chapter or *department* [~~board~~] rules, the district court shall grant the injunctive relief that the facts warrant.

SECTION 3.0737. Section 248.054, Health and Safety Code, is amended to read as follows:

Sec. 248.054. CIVIL PENALTY. A license holder or person who violates this chapter or a rule adopted by the *executive commissioner* [~~board~~] under this chapter is liable for a civil penalty, to be imposed by a district court, of not more than $1,000 for each day of violation. All penalties collected under this section shall be deposited to the credit of the General Revenue Fund.

SECTION 3.0738. Section 248.101(a), Health and Safety Code, is amended to read as follows:

(a) The department [~~of health~~] may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

SECTION 3.0739. Section 248.104(b), Health and Safety Code, is amended to read as follows:

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the *department* [~~commissioner of public health~~] by order shall [~~approve the determination and~~] impose the recommended penalty.

SECTION 3.0740. Section 248.105, Health and Safety Code, is amended to read as follows:

Sec. 248.105. HEARING. (a) If the person requests a hearing, the *department* [~~commissioner of public health~~] shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. *The department shall* [~~and~~] give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~commissioner of public health~~] a *written* proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

SECTION 3.0741. Section 248.106, Health and Safety Code, is amended to read as follows:

Sec. 248.106. DECISION BY *DEPARTMENT* [~~COMMISSIONER~~]. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~commissioner of public health~~] by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the *department's* [~~commissioner's~~] order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

SECTION 3.0742. Section 248.107, Health and Safety Code, is amended to read as follows:

Sec. 248.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date the order of the *department* [~~commissioner of public health~~] under Section 248.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the *department's* [~~commissioner's~~] order contesting the occurrence of the violation, the amount of the penalty, or both.

SECTION 3.0743. Section 248.108, Health and Safety Code, is amended to read as follows:

Sec. 248.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30–day period prescribed by Section 248.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the *department's* [~~commissioner's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the *department* [~~commissioner of public health~~] by certified mail.

(b) If the *department* [~~commissioner of public health~~] receives a copy of an affidavit under Subsection (a)(2), the *department* [~~commissioner~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

SECTION 3.0744. Section 248A.052(a), Health and Safety Code, is amended to read as follows:

(a) An applicant for a prescribed pediatric extended care center license shall submit to the department in accordance with *department* [~~executive commissioner~~] rules:

(1) a sworn application on the form prescribed by the department;

(2) a letter of credit as prescribed by the department to demonstrate the applicant's financial viability; and

(3) the required fees.

SECTION 3.0745. Section 248A.053(b), Health and Safety Code, is amended to read as follows:

(b) A person applying to renew a center license shall:

(1) submit a renewal application to the department on the form prescribed by the department at least 60 days but not more than 120 days before expiration of the license;

(2) submit the renewal fee in the amount required by [~~the~~] department *rule*; and

(3) comply with any other requirements specified by *department* [~~executive commissioner~~] rule.

SECTION 3.0746. Section 248A.101(b), Health and Safety Code, is amended to read as follows:

(b) To protect the health and safety of the public and ensure the health, safety, and comfort of the minors served by a center, the rules must establish minimum center standards, including:

(1) standards relating to the issuance, renewal, denial, suspension, probation, and revocation of a license to operate a center;

(2) standards relating to the provision of family-centered basic services that include individualized medical, developmental, and family training services;

(3) based on the size of the building and the number of minors served, building construction and renovation standards, including standards for plumbing, electrical, glass, manufactured buildings, accessibility for *persons with physical disabilities* [~~the physically disabled~~], and fire protection;

(4) based on the size of the building and the number of minors served, building

maintenance conditions relating to plumbing, heating, lighting, ventilation, adequate space, fire protection, and other conditions;

(5) standards relating to the minimum number of and qualifications required for personnel who provide personal care or basic services to the minors served;

(6) standards relating to the sanitary conditions within a center and its surroundings, including water supply, sewage disposal, food handling, and general hygiene;

(7) standards relating to the programs offered by the center to promote and maintain the health and development of the minors served and to meet the training needs of the minors' parents or legal guardians;

(8) standards relating to physician-prescribed supportive services;

(9) standards relating to transportation services; and

(10) standards relating to maintenance of patient medical records and program records in accordance with other law and with accepted professional standards and practices.

SECTION 3.0747. Sections 248A.103(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The executive commissioner *by rule* shall set fees imposed by this chapter in amounts reasonable and necessary to cover the cost of administering this chapter.

(b) A fee collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund [~~and shall be appropriated to the department to administer and enforce this chapter~~].

SECTION 3.0748. Section 248A.152(b), Health and Safety Code, is amended to read as follows:

(b) A center may not provide services other than services regulated under this chapter and *department* [~~executive commissioner~~] rule.

SECTION 3.0749. Section 248A.251, Health and Safety Code, is amended to read as follows:

Sec. 248A.251. IMPOSITION OF PENALTY. The *department* [~~commissioner~~] may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or standard adopted or order issued under this chapter.

SECTION 3.0750. Section 248A.254(b), Health and Safety Code, is amended to read as follows:

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the *department* [~~commissioner~~] by order shall approve the determination and impose the recommended penalty.

SECTION 3.0751. Section 248A.255, Health and Safety Code, is amended to read as follows:

Sec. 248A.255. HEARING. (a) If the person requests a hearing, the *department* [~~commissioner~~] shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~commissioner~~] a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

SECTION 3.0752. Section 248A.256, Health and Safety Code, is amended to read as follows:

Sec. 248A.256. DECISION BY *DEPARTMENT* [~~COMMISSIONER~~]. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~commissioner~~] by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the *department's* [~~commissioner's~~] order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

SECTION 3.0753. Section 248A.257, Health and Safety Code, is amended to read as follows:

Sec. 248A.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not later than the 30th day after the date the order of the *department* [~~commissioner~~] imposing an administrative penalty under Section 248A.256 becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the *department's* [~~commissioner's~~] order contesting the occurrence of the violation, the amount of the penalty, or both.

SECTION 3.0754. Section 248A.258, Health and Safety Code, is amended to read as follows:

Sec. 248A.258. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 248A.257, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account in the court registry; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the *department's* [~~commissioner's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the *department* [~~commissioner~~] by certified mail.

(b) If the *department* [~~commissioner~~] receives a copy of an affidavit under Subsection (a)(2), the *department* [~~commissioner~~] may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

SECTION 3.0755. Section 250.001(3), Health and Safety Code, as amended by Chapters 605 (S.B. 944) and 1168 (S.B. 492), Acts of the 83rd Legislature, Regular Session, 2013, is reenacted and amended to read as follows:

(3) "Facility" means:

(A) a nursing *facility* [~~home~~], custodial care home, or other institution licensed by the Department of Aging and Disability Services under Chapter 242;

(B) an assisted living facility licensed by the Department of Aging and Disability Services under Chapter 247;

(C) a home and community support services agency licensed under Chapter 142;

(D) an adult day care facility licensed by the Department of Aging and Disability Services under Chapter 103, Human Resources Code;

(E) *an ICF-IID* [~~a facility for persons with mental retardation~~] licensed under Chapter 252;

(F) an adult foster care provider that contracts with the Department of Aging and Disability Services;

(G) a facility that provides mental health services and that is operated by or contracts with the Department of State Health Services;

(H) a local mental health [~~or mental retardation~~] authority designated under Section 533.035 *or a local intellectual and developmental disability authority designated under Section 533.035*;

(I) a person exempt from licensing under Section 142.003(a)(19);

(J) a special care facility licensed by the Department of State Health Services under Chapter 248; [~~or~~]

(K) a mental health service unit of a hospital licensed under Chapter 241*; or*

(L) [~~(K)~~] a prescribed pediatric extended care center licensed by the Department of Aging and Disability Services under Chapter 248A.

SECTION 3.0756. Section 250.002(d), Health and Safety Code, is amended to read as follows:

(d) *The executive commissioner of the Health and Human Services Commission* [~~A regulatory agency~~] may adopt rules relating to the processing of information requested or obtained under this chapter.

SECTION 3.0757. Sections 250.006(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A person for whom the facility or the individual employer is entitled to obtain criminal history record information may not be employed in a facility or by an individual employer if the person has been convicted of an offense listed in this subsection:

(1) an offense under Chapter 19, Penal Code (criminal homicide);

(2) an offense under Chapter 20, Penal Code (kidnapping, [~~and~~] unlawful restraint, *and smuggling of persons*);

(3) an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or Section 21.11, Penal Code (indecency with a child);

(4) an offense under Section 22.011, Penal Code (sexual assault);

(5) an offense under Section 22.02, Penal Code (aggravated assault);

(6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);

(7) an offense under Section 22.041, Penal Code (abandoning or endangering child);

(8) an offense under Section 22.08, Penal Code (aiding suicide);

(9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);

(10) an offense under Section 25.08, Penal Code (sale or purchase of [~~a~~] child);

(11) an offense under Section 28.02, Penal Code (arson);

(12) an offense under Section 29.02, Penal Code (robbery);

(13) an offense under Section 29.03, Penal Code (aggravated robbery);

(14) an offense under Section 21.08, Penal Code (indecent exposure);

(15) an offense under Section 21.12, Penal Code (improper relationship between educator and student);

(16) an offense under Section 21.15, Penal Code (improper photography or visual recording);

(17) an offense under Section 22.05, Penal Code (deadly conduct);

(18) an offense under Section 22.021, Penal Code (aggravated sexual assault);

(19) an offense under Section 22.07, Penal Code (terroristic threat);

(20) an offense under Section 32.53, Penal Code (exploitation of [~~a~~] child, elderly individual, or disabled individual);

(21) an offense under Section 33.021, Penal Code (online solicitation of a minor);

(22) an offense under Section 34.02, Penal Code (money laundering);

(23) an offense under Section 35A.02, Penal Code (Medicaid fraud);

(24) an offense under Section 36.06, Penal Code (obstruction or retaliation);

(25) an offense under Section 42.09, Penal Code (cruelty to livestock animals), or under Section 42.092, Penal Code (cruelty to nonlivestock animals); or

(26) a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed by this subsection.

(b) A person may not be employed in a position the duties of which involve direct contact with a consumer in a facility or may not be employed by an individual employer before the fifth anniversary of the date the person is convicted of:

(1) an offense under Section 22.01, Penal Code (assault), that is punishable as a Class A misdemeanor or as a felony;

(2) an offense under Section 30.02, Penal Code (burglary);

(3) an offense under Chapter 31, Penal Code (theft), that is punishable as a felony;

(4) an offense under Section 32.45, Penal Code (misapplication of fiduciary property or property of [~~a~~] financial institution), that is punishable as a Class A misdemeanor or a felony;

(5) an offense under Section 32.46, Penal Code (securing execution of [~~a~~] document by deception), that is punishable as a Class A misdemeanor or a felony;

(6) an offense under Section 37.12, Penal Code (false identification as peace officer*; misrepresentation of property*); or

(7) an offense under Section 42.01(a)(7), (8), or (9), Penal Code (disorderly conduct).

SECTION 3.0758. Section 251.001, Health and Safety Code, is amended by amending Subdivisions (2), (3), and (8) and adding Subdivision (7–a) to read as follows:

(2) "Commissioner" means the commissioner of *state* [~~public~~] health *services*.

(3) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(7–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(8) "Medical review board" means a medical review board that:

(A) is appointed by a renal disease network organization which includes this state; and

(B) has a contract with the *Centers for Medicare and Medicaid Services* [~~Health Care Financing Administration of the United States Department of Health and Human Services~~] under Section 1881, Title XVIII, Social Security Act (42 U.S.C. Section 1395rr).

SECTION 3.0759. Sections 251.002(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner by rule* [~~board~~] shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter *and as prescribed by Section 12.0111.*

(b) In setting fees under this section, the *executive commissioner* [~~board~~] shall consider setting a range of license and renewal fees based on the number of dialysis stations at each end stage renal disease facility and the patient census.

SECTION 3.0760. Section 251.003, Health and Safety Code, is amended to read as follows:

Sec. 251.003. ADOPTION OF RULES. The *executive commissioner* [~~board~~] shall adopt rules to implement this chapter, including requirements for the issuance, renewal,

denial, suspension, and revocation of a license to operate an end stage renal disease facility.

SECTION 3.0761. Sections 251.013(a), (f), and (g), Health and Safety Code, are amended to read as follows:

(a) An applicant for a license under this chapter must submit an application to the department on a form prescribed by the *department* [~~board~~].

(f) The license is renewable *every two years* [~~annually~~] after submission of:

(1) the renewal application and fee; and

(2) *a* [~~an annual~~] report on a form prescribed by the *department* [~~board~~].

(g) The [~~annual~~] report required under Subsection (f) must include information related to the quality of care at the end stage renal disease facility. The report must be in the form and documented by evidence as required by *department* [~~board~~] rule.

SECTION 3.0762. Section 251.015(a), Health and Safety Code, is amended to read as follows:

(a) A medical review board shall advise the *executive commissioner and the department* [~~board~~] on minimum standards and rules to be adopted *by the executive commissioner* under this chapter.

SECTION 3.0763. Section 251.032, Health and Safety Code, is amended to read as follows:

Sec. 251.032. MINIMUM REQUIREMENTS; TRAINING. The *department* rules adopted [~~by the board~~] under Section 251.003 shall establish:

(1) minimum standards for the curricula and instructors used to train individuals to act as dialysis technicians;

(2) minimum standards for the determination of the competency of individuals who have been trained as dialysis technicians;

(3) minimum requirements for documentation that an individual has been trained and determined to be competent as a dialysis technician and the acceptance of that documentation by another end stage renal disease facility that may later employ the individual; and

(4) the acts and practices that are allowed or prohibited for dialysis technicians.

SECTION 3.0764. Section 251.052(b), Health and Safety Code, is amended to read as follows:

(b) In this section, "unauthorized person" does not include:

(1) the department;

(2) *the Health and Human Services Commission, including the office of the inspector general;*

(3) the office of the attorney general; or

(4) [~~(3)~~] any other person authorized by law to make an inspection or to accompany an inspector.

SECTION 3.0765. Section 251.0621, Health and Safety Code, is amended to read as follows:

Sec. 251.0621. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder, *the department shall refer the matter to the State Office of Administrative Hearings, and an administrative law judge of that office* [~~the department~~] shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or

rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

SECTION 3.0766. Section 251.067(c), Health and Safety Code, is amended to read as follows:

(c) If the person notified of the violation accepts the determination of the department, the *department* [~~commissioner or the commissioner's designee~~] shall [~~issue an~~] order [~~approving the determination and ordering that~~] the person *to* pay the recommended penalty.

SECTION 3.0767. Section 251.068, Health and Safety Code, is amended to read as follows:

Sec. 251.068. HEARING; ORDER. (a) If the person notified fails to respond in a timely manner to the notice under Section 251.067(b) or if the person requests a hearing, the *department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall conduct the hearing.*

(a–1) The department [~~commissioner or the commissioner's designee~~] shall[~~:~~

[~~(1) set a hearing;~~

[~~(2)~~] give written notice of the hearing to the person[~~; and~~

[~~(3) designate a hearings examiner to conduct the hearing~~].

(b) The *administrative law judge* [~~hearings examiner~~] shall make findings of fact and conclusions of law and shall promptly issue to the *department* [~~commissioner~~] a *written* proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the *administrative law judge* [~~hearings examiner~~], the *department* [~~commissioner~~] by order may find that a violation has occurred and may assess a penalty, or may find that no violation has occurred.

SECTION 3.0768. Sections 251.069(a), (c), and (f), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner or the commissioner's designee~~] shall give notice of the *department's* [~~commissioner's~~] order under Section 251.068(c) to the person notified. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the *department's* [~~commissioner's~~] order.

(c) Within the 30–day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the *department's* [~~board's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(f) Judicial review of the *department's* order [~~of the board~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.0769. Section 251.071(a), Health and Safety Code, is amended to read as follows:

(a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date *a department* [~~of a board~~] order requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

SECTION 3.0770. The heading to Chapter 252, Health and Safety Code, is amended to read as follows:

CHAPTER 252. INTERMEDIATE CARE FACILITIES FOR *INDIVIDUALS WITH AN INTELLECTUAL DISABILITY* [~~THE MENTALLY RETARDED~~]

SECTION 3.0771. Section 252.001, Health and Safety Code, is amended to read as follows:

Sec. 252.001. PURPOSE. The purpose of this chapter is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards for the provision of services to individuals residing in intermediate care facilities for *individuals with an intellectual disability* [~~the mentally retarded~~] and the establishment, construction, maintenance, and operation of facilities providing this service that, in light of advancing knowledge, will promote quality in the delivery of services and treatment of residents.

SECTION 3.0772. Section 252.002, Health and Safety Code, is amended by amending Subdivisions (1), (2), (4), and (7) and adding Subdivisions (1–a) and (3–a) to read as follows:

(1) *"Commission" means the Health and Human Services Commission* [~~"Board" means the Texas Board of Human Services~~].

(1–a) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services.

(3–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Facility" means a home or an establishment that:

(A) furnishes food, shelter, and treatment or services to four or more *individuals* [~~persons~~] unrelated to the owner;

(B) is primarily for the diagnosis, treatment, or rehabilitation of *individuals* [~~persons~~] with *an intellectual disability* [~~mental retardation~~] or related conditions; and

(C) provides in a protected setting continuous evaluation, planning, 24–hour supervision, coordination, and integration of health or rehabilitative services to help each resident function at the resident's greatest ability.

(7) "Resident" means an individual, including a client, with *an intellectual disability* [~~mental retardation~~] or a related condition who is residing in a facility licensed under this chapter.

SECTION 3.0773. Section 252.003, Health and Safety Code, is amended to read as follows:

Sec. 252.003. EXEMPTIONS. Except as otherwise provided by this chapter, this chapter does not apply to:

(1) an establishment that:

(A) [~~(1)~~] provides training, habilitation, rehabilitation, or education to individuals with *an intellectual disability* [~~mental retardation~~] or [~~a~~] related *conditions* [~~condition~~];

(B) [~~(2)~~] is operated under the jurisdiction of a state or federal agency, including the *department, commission,* Department of Assistive and Rehabilitative Services, [~~Department of Aging and Disability Services,~~] Department of State Health Services, [~~Health and Human Services Commission,~~] Texas Department of Criminal Justice, and *United States* Department of Veterans Affairs; *and*

(C) [~~(3)~~] is certified through inspection or evaluation as meeting the standards established by the state or federal agency; *or* [~~and~~]

(2) an establishment that [~~(4)~~] is conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of *individuals who are ill and* [~~the sick~~] who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules.

SECTION 3.0774. Section 252.007, Health and Safety Code, is amended to read as follows:

Sec. 252.007. PAPERWORK REDUCTION RULES. (a) The *executive commissioner* [~~department and any designee of the department~~] shall[~~:~~

[~~(1)~~] adopt rules to reduce the amount of paperwork a facility must complete and retain.

(a-1) The department shall[~~; and~~

[~~(2)~~] attempt to reduce the amount of paperwork to the minimum amount required by state and federal law unless the reduction would jeopardize resident safety.

(b) The department[~~, any designee of the department,~~] and each facility shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care.

SECTION 3.0775. Section 252.008, Health and Safety Code, is amended to read as follows:

Sec. 252.008. RULES GENERALLY. [~~(a)~~] The *executive commissioner* [~~board~~] shall adopt rules related to the administration and implementation of this chapter.

[~~(b) The department and the Texas Department of Mental Health and Mental Retardation shall cooperate in developing proposed rules under this section. Before the board adopts a rule applicable to a facility, the board shall present the proposed rule to the commissioner of mental health and mental retardation for review of the effects of the proposed rule. Not later than the 31st day after the date the proposed rule is received, the commissioner of mental health and mental retardation shall provide the board a written statement of the effects of the proposed rule. The board shall consider the statement in adopting a rule under this section.~~]

SECTION 3.0776. Section 252.009(a), Health and Safety Code, is amended to read as follows:

(a) Whenever possible, the department shall:

(1) use the services of and consult with state and local agencies in carrying out the department's functions under this chapter; and

(2) use the facilities of the department [~~or a designee of the department~~], particularly in establishing and maintaining standards relating to the humane treatment of residents.

SECTION 3.0777. Section 252.0311(c), Health and Safety Code, is amended to read as follows:

(c) The executive commissioner [~~of the Health and Human Services Commission~~] may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

SECTION 3.0778. Sections 252.033(e), (f), and (h), Health and Safety Code, are amended to read as follows:

(e) The renewal report required under Subsection (d)(2) must be filed in accordance with rules adopted by the *executive commissioner* [~~department~~] that specify the form of the report, the date it must be submitted, and the information it must contain.

(f) The department may not issue a license for new beds or an expansion of an existing facility under this chapter unless the addition of new beds or the expansion is included in the plan approved by the *commission* [~~Health and Human Services Commission~~] in accordance with Section *533A.062* [~~533.062~~].

(h) The *executive commissioner* [~~department~~] by rule shall define specific, appropriate, and objective criteria on which *the department* [~~it~~] may deny an initial license application or license renewal or revoke a license.

SECTION 3.0779. Sections 252.034(a) and (d), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule may adopt a fee for a license issued under this chapter. The fee may not exceed $150 plus $5 for each unit of capacity or bed space for which the license is sought.

(d) The *executive commissioner by rule* [~~board~~] may adopt an additional fee for the approval of an increase in bed space.

SECTION 3.0780. Section 252.036, Health and Safety Code, is amended to read as follows:

Sec. 252.036. MINIMUM STANDARDS. *(a)* The *executive commissioner* [~~board~~] may adopt[~~, publish, and enforce~~] minimum standards relating to:

(1) the construction or remodeling of a facility, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) sanitary and related conditions in a facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(3) equipment essential to the residents' health and welfare;

(4) the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure resident safety;

(5) behavior management, including use of seclusion and physical restraints;

(6) policies and procedures for the control of communicable diseases in employees and residents;

(7) the use and administration of medication in conformity with applicable law and rules for pharmacy services;

(8) specialized nutrition support such as delivery of enteral feedings and parenteral nutrients;

(9) requirements for in-service education of each employee who has any contact with residents;

(10) the regulation of the number and qualification of all personnel, including management and professional support personnel, responsible for any part of the care given to residents; and

(11) the quality of life and the provision of active treatment to residents.

(b) The department shall enforce the adopted minimum standards.

SECTION 3.0781. Section 252.037, Health and Safety Code, is amended to read as follows:

Sec. 252.037. REASONABLE TIME TO COMPLY. The *executive commissioner* [~~board~~] by rule shall give a facility that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard.

SECTION 3.0782. Sections 252.0375(a) and (d), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule shall adopt a procedure under which a person proposing to construct or modify a facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the *executive commissioner* [~~department~~] shall set reasonable deadlines by which the department must complete review of submitted plans.

(d) A fee collected under this section shall be deposited in the general revenue fund [~~and may be appropriated only to the department to conduct reviews under this section~~].

SECTION 3.0783. Sections 252.038(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall adopt the fire safety standards applicable to the facility. The fire safety standards must be the same as the fire safety standards established by an edition of the Life Safety Code of the National Fire Protection Association. If required by federal law or regulation, the edition selected may be different for facilities or portions of facilities operated or approved for construction at different times.

(d) The rules adopted under this section do not prevent a facility licensed under this chapter from voluntarily conforming to fire safety standards that are compatible with, equal to, or more stringent than those adopted by the *executive commissioner* [~~board~~].

SECTION 3.0784. Sections 252.040(a) and (h), Health and Safety Code, are amended to read as follows:

(a) The department or the department's designee may make any inspection, survey, or investigation that it considers necessary and may enter the premises of a facility at reasonable times to make an inspection, survey, or investigation in accordance with *department* [~~board~~] rules.

(h) The *executive commissioner* [~~department~~] shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the department considers proper.

SECTION 3.0785. Section 252.041(d), Health and Safety Code, is amended to read as follows:

(d) As considered appropriate and necessary by the department, the department may invite at least one person as a citizen advocate to participate in inspections. The invited advocate must be an individual who has an interest in or who is employed by or affiliated with an organization or entity that represents, advocates for, or serves individuals with *an intellectual disability* [~~mental retardation~~] or a related condition.

SECTION 3.0786. Section 252.061(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall provide for the placement of residents during the facility's suspension or closing to ensure their health and safety.

SECTION 3.0787. Sections 252.065(c), (d), (e), and (g), Health and Safety Code, are amended to read as follows:

(c) The *executive commissioner* [~~department~~] by rule shall specify each violation for which an administrative penalty may be assessed. In determining which violations warrant penalties, the *executive commissioner* [~~department~~] shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(2) whether the affected facility had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The *executive commissioner* [~~department~~] by rule shall establish a specific and detailed schedule of appropriate and graduated penalties for each violation based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients;

(2) the history of previous violations;

(3) whether the affected facility had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation;

(6) the size of the facility; and

(7) any other matters that justice may require.

(e) The *executive commissioner* [~~department~~] by rule shall provide the facility with a reasonable period of time, not less than 45 days, following the first day of a violation to correct the violation before *the department may assess* [~~assessing~~] an administrative penalty if a plan of correction has been implemented. This subsection does not apply to a violation described by Subsections (a)(2)–(8) or to a violation that the department determines:

(1) has resulted in serious harm to or the death of a resident;

(2) constitutes a serious threat to the health or safety of a resident; or

(3) substantially limits the institution's capacity to provide care.

(g) The *executive commissioner* [~~department~~] shall establish a system to ensure standard and consistent application of penalties regardless of the facility location.

SECTION 3.0788. Section 252.066(c), Health and Safety Code, is amended to read as follows:

(c) If the person notified under this section of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the *department* [~~commissioner of human services or the commissioner's designee~~] shall issue an order approving the determination and ordering that the person pay the proposed penalty.

SECTION 3.0789. Section 252.067, Health and Safety Code, is amended to read as follows:

Sec. 252.067. HEARING; ORDER. (a) If the person notified *under Section 252.066* requests a hearing, *an administrative law judge* [~~the department~~] shall[~~:~~

[~~(1)~~] set a hearing *and the department shall*[~~;~~

[~~(2)~~] give written notice of the hearing to the person[~~; and~~

[~~(3) designate a hearings examiner to conduct the hearing~~].

(b) The *administrative law judge* [~~hearings examiner~~] shall make findings of fact and conclusions of law and shall promptly issue to the *department* [~~commissioner of human services or the commissioner's designee~~] a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the *administrative law judge* [~~hearings examiner~~], the *department* [~~commissioner of human services or the commissioner's designee~~] by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

SECTION 3.0790. Section 252.071, Health and Safety Code, as amended by Chapters 619 (S.B. 1376) and 1284 (S.B. 1839), Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 252.071. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty authorized by this subchapter, the department may allow a person subject to the penalty to use, under the supervision of the department, all or part

of the amount of the penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a facility resident.

(c) The department may not offer amelioration to a person if the department determines that the charged violation constitutes immediate jeopardy to the health and safety of a facility resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 252.067.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 252.067 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the facility that will improve services to or quality of care of residents of the facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a timeline for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(g) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the *commission or the State Office of Administrative Hearings, as appropriate,* [~~department~~] shall deny a pending request for a hearing submitted by the person under Section 252.066(b).

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

(j) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the facility.

SECTION 3.0791. Section 252.093(d), Health and Safety Code, is amended to read as follows:

(d) If possible, the court shall appoint as trustee an individual whose background includes *intellectual disability* [~~mental retardation~~] service administration.

SECTION 3.0792. Section 252.095(b), Health and Safety Code, is amended to read as follows:

(b) The fee collected under this section shall be in the amount prescribed by Section *242.097(c)* [~~242.097(b)~~] and shall be deposited to the credit of the nursing and convalescent home trust fund established under Section 242.096.

SECTION 3.0793. Sections 252.096(b) and (d), Health and Safety Code, are amended to read as follows:

(b) Interest on unreimbursed amounts begins to accrue on the date on which the money is disbursed to the facility. The rate of interest is the rate determined under *Section 304.003, Finance Code* [~~Section 2, Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes)~~], to be applicable to judgments rendered during the month in which the money is disbursed to the facility.

(d) The amount that remains unreimbursed on the first anniversary of the date on which the money is received is delinquent and the *commission* [~~Texas Department of Mental Health and Mental Retardation~~] may determine that the facility is ineligible for a Medicaid provider contract.

SECTION 3.0794. Section 252.151, Health and Safety Code, is amended to read as follows:

Sec. 252.151. ADMINISTRATION OF MEDICATION. The *executive commissioner* [~~department~~] shall adopt rules relating to the administration of medication in facilities.

SECTION 3.0795. Section 252.152(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~department~~] shall specify the details of the examination.

SECTION 3.0796. Section 252.182, Health and Safety Code, is amended to read as follows:

Sec. 252.182. RESPITE CARE. (a) A facility licensed under this chapter may provide respite care for an individual who has a diagnosis of *an intellectual disability* [~~mental retardation~~] or a related condition without regard to whether the individual is eligible to receive intermediate care services under federal law.

(b) The *executive commissioner* [~~board~~] may adopt rules for the regulation of respite care provided by a facility licensed under this chapter.

SECTION 3.0797. Section 252.185, Health and Safety Code, is amended to read as follows:

Sec. 252.185. INSPECTIONS. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect a facility's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any rules the *executive commissioner* [~~board~~] may adopt to regulate respite care services.

SECTION 3.0798. Sections 252.202(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A quality assurance fee is imposed on each facility for which a license fee must be paid under Section 252.034, on each facility owned by a community mental health and *intellectual disability* [~~mental retardation~~] center, as described by Subchapter A, Chapter 534, and on each facility owned by the *department* [~~Texas Department of Mental Health and Mental Retardation~~]. The fee:

(1) is an amount established under Subsection (b) multiplied by the number of patient days as determined in accordance with Section 252.203;

(2) is payable monthly; and

(3) is in addition to other fees imposed under this chapter.

(b) The *commission* [~~Health and Human Services Commission~~] or the department at the direction of the commission shall set the quality assurance fee for each day in the amount necessary to produce annual revenues equal to an amount that is not more than six percent of the facility's total annual gross receipts in this state. The fee is subject to a prospective adjustment as necessary.

SECTION 3.0799. Section 252.204, Health and Safety Code, is amended to read as follows:

Sec. 252.204. REPORTING AND COLLECTION. (a) The *commission* [~~Health and~~

~~Human Services Commission~~] or the department at the direction of the commission shall collect the quality assurance fee.

(b) Each facility shall:

(1) not later than the 20th day after the last day of a month file a report with the *commission* [~~Health and Human Services Commission~~] or the department, as appropriate, stating the total patient days for the month; and

(2) not later than the 30th day after the last day of the month pay the quality assurance fee.

SECTION 3.0800. Sections 252.205(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~Health and Human Services Commission~~] shall adopt rules for the administration of this subchapter, including rules related to the imposition and collection of the quality assurance fee.

(b) The *executive commissioner* [~~Health and Human Services Commission~~] may not adopt rules granting any exceptions from the quality assurance fee.

SECTION 3.0801. Section 252.206, Health and Safety Code, is amended to read as follows:

Sec. 252.206. QUALITY ASSURANCE FUND. (a) The quality assurance fund is *an account in the general revenue fund* [~~a fund outside the state treasury held by the Texas Treasury Safekeeping Trust Company~~]. Notwithstanding any other law, the comptroller shall deposit fees collected under this subchapter to the credit of the fund.

(b) The quality assurance fund is composed of[~~:~~

[~~(1)~~] fees deposited to the credit of the fund under this subchapter[~~; and~~

[~~(2) the earnings of the fund~~].

(c) Money deposited to the quality assurance fund [~~remains the property of the fund and~~] may be *appropriated* [~~used~~] only for the purposes of this subchapter.

SECTION 3.0802. Sections 252.207(a) and (c), Health and Safety Code, are amended to read as follows:

(a) Subject to legislative appropriation and state and federal law, the *commission* [~~Health and Human Services Commission~~] may use money in the quality assurance fund, together with any federal money available to match that money:

(1) to offset expenses incurred to administer the quality assurance fee under this chapter;

(2) to increase reimbursement rates paid under the Medicaid program to facilities or waiver programs for *individuals* [~~persons~~] with *an intellectual disability* [~~mental retardation~~] operated in accordance with 42 U.S.C. Section 1396n(c) and its subsequent amendments; or

(3) for any other health and human services purpose approved by the governor and Legislative Budget Board.

(c) If money in the quality assurance fund is used to increase a reimbursement rate in the Medicaid program, the *commission* [~~Health and Human Services Commission~~] shall ensure that the reimbursement methodology used to set that rate describes how the money in the fund will be used to increase the rate and provides incentives to increase direct care staffing and direct care wages and benefits.

SECTION 3.0803. Section 252.208, Health and Safety Code, is amended to read as follows:

Sec. 252.208. INVALIDITY; FEDERAL FUNDS. If any portion of this subchapter is held invalid by a final order of a court that is not subject to appeal, or if the *commission* [~~Health and Human Services Commission~~] determines that the imposition of the fee and the expenditure as prescribed by this subchapter of amounts collected will not entitle the state to receive additional federal funds under the Medicaid program, the commis-

sion shall stop collection of the quality assurance fee and shall return, not later than the 30th day after the date collection is stopped, any money collected, but not spent, under this subchapter to the facilities that paid the fees in proportion to the total amount paid by those facilities.

SECTION 3.0804. Section 253.002(b), Health and Safety Code, is amended to read as follows:

(b) If the *department* [~~Department of Aging and Disability Services~~] receives a report that an employee of a facility licensed under Chapter 252 or of an individual employer committed reportable conduct, the department shall forward that report to the Department of Family and Protective Services for investigation.

SECTION 3.0805. Section 253.003(c), Health and Safety Code, is amended to read as follows:

(c) If the employee notified of the violation accepts the determination of the department or fails to timely respond to the notice, the *department* [~~commissioner or the commissioner's designee~~] shall [~~issue an~~] order [~~approving the determination and ordering~~] that the reportable conduct be recorded in the registry under Section 253.007.

SECTION 3.0806. Section 253.004, Health and Safety Code, is amended to read as follows:

Sec. 253.004. HEARING; ORDER. (a) If the employee requests a hearing, *an administrative law judge of the State Office of Administrative Hearings shall conduct a hearing and* the department shall[~~:~~

[~~(1) set a hearing;~~

[~~(2)~~] give written notice of the hearing to the employee[~~; and~~

[~~(3) designate a hearings examiner to conduct the hearing~~].

(a–1) The *administrative law judge* [~~department~~] must complete the hearing and the hearing record not later than the 120th day after the date the department receives a request for a hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the *department* [~~commissioner or the commissioner's designee~~]*.* a proposal for decision as to the occurrence of the reportable conduct.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the *department* [~~commissioner or the commissioner's designee~~] by order may find that the reportable conduct has occurred. If the *department* [~~commissioner or the commissioner's designee~~] finds that the reportable conduct has occurred, the *department* [~~commissioner or the commissioner's designee~~] shall issue an order *on that* [~~approving the~~] determination.

SECTION 3.0807. Section 253.0055, Health and Safety Code, is amended to read as follows:

Sec. 253.0055. REMOVAL OF NURSE AIDE FINDING. If a finding of reportable conduct is the basis for an entry in the nurse aide registry maintained under Chapter 250 and the entry is subsequently removed from the nurse aide registry, the *department* [~~commissioner or the commissioner's designee~~] shall immediately remove the record of reportable conduct from the employee misconduct registry maintained under Section 253.007.

SECTION 3.0808. Section 253.009(a), Health and Safety Code, is amended to read as follows:

(a) Each facility or individual employer as defined in this chapter and each agency as defined in Section 48.401, Human Resources Code, shall notify its employees in a manner prescribed by the *department* [~~Department of Aging and Disability Services~~]:

(1) about the employee misconduct registry; and

(2) that an employee may not be employed if the employee is listed in the registry.

SECTION 3.0809. Section 254.001(5), Health and Safety Code, is amended to read as follows:

(5) "Freestanding emergency medical care facility" means a facility, structurally separate and distinct from a hospital, that receives an individual and provides emergency care, as defined by *Subdivision* [~~Subsection~~] (2).

SECTION 3.0810. Sections 254.051(b) and (e), Health and Safety Code, are amended to read as follows:

(b) Except as provided by Section 254.052, a facility or person may not hold itself out to the public as a freestanding emergency medical care facility or use any similar term, as defined by department rule, that would give the impression that the facility or person is providing emergency care unless the facility or person holds a license issued under this chapter. [~~The use of the term "emergency" or a similar term is also subject to Section 254.152.~~]

(e) *A license may be issued only for the establishment or operation of* [~~The executive commissioner by rule shall establish a classification for~~] a facility that is in continuous operation 24 hours per day and 7 days per week [~~and a classification for a facility that is in operation 7 days per week and at least 12 hours per day~~].

SECTION 3.0811. Section 254.053(b), Health and Safety Code, is amended to read as follows:

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner *by rule*.

SECTION 3.0812. Section 254.102, Health and Safety Code, is amended to read as follows:

Sec. 254.102. FEES. The executive commissioner *by rule* shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

SECTION 3.0813. Section 254.151(c), Health and Safety Code, is amended to read as follows:

(c) The minimum standards under this section shall apply to *all* facilities *licensed under this chapter* [~~operating 24 hours a day and 7 days per week and facilities operating less than 24 hours a day and 7 days per week~~].

SECTION 3.0814. Section 254.202(c), Health and Safety Code, is amended to read as follows:

(c) On written request of the license holder *to the department for a hearing, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office* [~~, the department~~] shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received *by the department* to determine if the emergency suspension is to be continued, modified, or rescinded.

SECTION 3.0815. Sections 254.205(h), (i), (j), and (k), Health and Safety Code, are amended to read as follows:

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the *department* [~~commissioner of state health services~~] by order shall [~~approve the determination and~~] impose the recommended penalty.

(i) If the person requests a hearing, the *department* [~~commissioner of state health services~~] shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. *The department shall* [~~and~~] give written notice of the time and place of the hearing to the person. An administrative law judge of *that office* [~~the State Office of Administrative Hearings~~] shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~commissioner of state health services~~] a *written* proposal for [~~a~~] decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for [~~a~~] decision, the *department* [~~commissioner of state health services~~] by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

SECTION 3.0816. Sections 254.206(a), (b), (c), and (g), Health and Safety Code, are amended to read as follows:

(a) Within 30 days after the date an order of the *department* [~~commissioner of state health services~~] under Section 254.205(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the *department's* [~~commissioner's~~] order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the *department's* [~~commissioner's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the *department* [~~executive commissioner~~] by certified mail.

(c) If the *department* [~~commissioner of state health services~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~commissioner~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the *judgment* [~~judgement~~] of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

SECTION 3.0817. Section 255.001(2), Health and Safety Code, is amended to read as follows:

(2) "Long-term care facility" means a nursing institution, an assisted living facility, or an *ICF-IID* [~~intermediate care facility for the mentally retarded~~] licensed under Chapter 242, 247, or 252, or certified under Chapter 32, Human Resources Code.

SECTION 3.0818. Section 259.006(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner of the Health and Human Services Commission* [~~department~~] may adopt rules to administer and enforce this chapter.

SECTION 3.0819. Section 260A.007(d), Health and Safety Code, is amended to read as follows:

(d) The *executive commissioner* [~~department~~] shall adopt rules governing the conduct

of investigations, including procedures to ensure that the complainant and the resident, the resident's next of kin, and any person designated to receive information concerning the resident receive periodic information regarding the investigation.

SECTION 3.0820. Subchapter A, Chapter 263, Health and Safety Code, is amended by adding Section 263.0001 to read as follows:

Sec. 263.0001. DEFINITION. In this chapter, "executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0821. Section 263.001(a), Health and Safety Code, is amended to read as follows:

(a) Two or more adjacent counties may act together to carry out the purposes of this chapter and construct one or more hospitals for their joint use as provided by this chapter for a single county if:

(1) each of the counties has fewer than 15,000 inhabitants; and

(2) the *executive commissioner* [~~Texas Board of Health~~] approves.

SECTION 3.0822. Section 263.002, Health and Safety Code, is amended to read as follows:

Sec. 263.002. ADDITIONAL HOSPITAL. A county may maintain more than one county hospital if considered advisable by the commissioners court of the county and approved by the *executive commissioner* [~~Texas Board of Health~~].

SECTION 3.0823. Section 263.023(b), Health and Safety Code, is amended to read as follows:

(b) The commissioners court shall provide for the construction of the hospital within six months after the date the number of inhabitants of the municipality exceeds 10,000 except that the *executive commissioner* [~~Texas Board of Health~~] may, for good cause, extend this period.

SECTION 3.0824. Section 263.027, Health and Safety Code, is amended to read as follows:

Sec. 263.027. APPROVAL OF CONSTRUCTION OR REPAIR [~~BY BOARD OF HEALTH~~]. If requested by the commissioners court of a county, the *executive commissioner* [~~Texas Board of Health~~] must approve plans for the construction, alteration, or repair of a hospital or facility under this chapter before the construction, alteration, or repair may begin.

SECTION 3.0825. Section 263.101(c), Health and Safety Code, is amended to read as follows:

(c) A hospital established or maintained under this chapter is subject to inspection by an authorized representative of:

(1) the *Department* [~~Texas Board~~] of *State* Health *Services*;

(2) the commissioners court; or

(3) a state board of charities, if such a board is created.

SECTION 3.0826. The heading to Section 263.102, Health and Safety Code, is amended to read as follows:

Sec. 263.102. [~~TEXAS BOARD OF HEALTH~~] RULES AND PUBLICATIONS.

SECTION 3.0827. Section 263.102(a), Health and Safety Code, is amended to read as follows:

(a) The board of managers shall print, or purchase from the *Department* [~~Texas Board~~] of *State* Health *Services* at the actual cost of printing:

(1) rules adopted by the *executive commissioner* [~~Texas Board of Health~~] for the care of persons having a communicable disease and for the prevention and spread of communicable disease; and

(2) bulletins and other publications prepared by the *department* [~~Texas Department~~

~~of Health~~] providing information about the cause, nature, treatment, and prevention of disease.

SECTION 3.0828. Section 281.001, Health and Safety Code, is amended by adding Subdivision (3) to read as follows:

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0829. Section 281.0515, Health and Safety Code, is amended to read as follows:

Sec. 281.0515. PROCEDURES FOR HEALTH MAINTENANCE ORGANIZATION. A district may establish a health maintenance organization in accordance with *Chapter 843, Insurance Code,* [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~] to provide or arrange for health care services for the residents of the district.

SECTION 3.0830. Section 281.053(a), Health and Safety Code, is amended to read as follows:

(a) The district may be inspected by a representative of the commissioners court *or* [~~,~~] the *Department* [~~Texas Board~~] of *State* Health *Services* [~~, or the Texas Department of Human Services~~].

SECTION 3.0831. Section 281.073(b), Health and Safety Code, is amended to read as follows:

(b) The period that medical records are retained shall be in accordance with rules relating to the retention of medical records adopted by the *executive commissioner* [~~Texas Department of Health~~] and with other applicable federal and state laws and rules.

SECTION 3.0832. Section 281.092(a), Health and Safety Code, is amended to read as follows:

(a) As soon as practicable after the close of the fiscal year, the administrator shall make a report to the board, commissioners court, *executive commissioner* [~~Texas Board of Health~~], and comptroller.

SECTION 3.0833. Section 283.049(a), Health and Safety Code, is amended to read as follows:

(a) The district facilities may be inspected by a representative of the *Department* [~~Texas Board~~] of *State* Health *Services* or any other state *agency or* board authorized to supervise a hospital.

SECTION 3.0834. Section 283.082(a), Health and Safety Code, is amended to read as follows:

(a) As soon as practicable after the close of the fiscal year, the administrator shall make a report to the commissioners court, *executive commissioner of the* [~~Texas Board of~~] Health *and Human Services Commission,* and comptroller.

SECTION 3.0835. Section 311.001(a), Health and Safety Code, is amended to read as follows:

(a) A hospital may not, as a condition to beginning a hospital internship or residency, require a United States citizen who resides in this state and who holds a diploma from a medical school outside the United States that is listed in the *AVICENNA* [~~World~~] Directory *for Medicine* [~~of Medical Schools~~] published by the *University of Copenhagen, in collaboration with the* World Health Organization *and the World Federation for Medical Education,* to:

(1) take an examination other than an examination required by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~] to be taken by a graduate of a medical school in the United States before allowing that graduate to begin an internship or residency;

(2) complete a period of internship or graduate clinical training; or

(3) be certified by the Educational *Commission* [~~Council~~] for Foreign Medical Graduates.

SECTION 3.0836. Section 311.002(g), Health and Safety Code, is amended to read as follows:

(g) The [~~Texas~~] Department of *State* Health *Services* or other appropriate licensing agency may enforce this section by assessing an administrative penalty, obtaining an injunction, or providing any other appropriate remedy, including suspending, revoking, or refusing to renew a hospital's license.

SECTION 3.0837. Sections 311.003(c) and (d), Health and Safety Code, are amended to read as follows:

(c) The [~~Texas~~] Department of *State* Health *Services* shall administer the state funds for reimbursement under this section, and may spend not more than $100,000 each fiscal year from earned federal funds or private donations to implement this section.

(d) The *executive commissioner of the Health and Human Services Commission* [~~Texas Board of Health~~] shall adopt rules that establish qualifications for reimbursement and provide procedures for applying for reimbursement.

SECTION 3.0838. Section 311.004(a), Health and Safety Code, is amended by adding Subdivision (1–a) to read as follows:

(1–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0839. Sections 311.004(c) and (f), Health and Safety Code, are amended to read as follows:

(c) *Unless the department authorizes an exemption for the reason stated in Subsection (d), the* [~~The~~] department shall require each hospital to implement and enforce the statewide standardized patient risk identification system *under which a patient with a specific medical risk may be readily identified through the use of the system to communicate to hospital personnel the existence of that risk* [~~developed under Subsection (b) unless the department authorizes an exemption for the reason stated in Subsection (d)~~].

(f) The executive commissioner [~~of the Health and Human Services Commission~~] may adopt rules to implement this section.

SECTION 3.0840. Section 311.031, Health and Safety Code, is amended by amending Subdivision (4) and adding Subdivision (6–a) to read as follows:

(4) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(6–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0841. Section 311.032(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt necessary rules consistent with this subchapter to govern the reporting and collection of data.

SECTION 3.0842. Sections 311.033(a) and (c), Health and Safety Code, are amended to read as follows:

(a) A hospital shall submit to the department financial and utilization data for that hospital, including data relating to the hospital's:

(1) total gross revenue, including:

(A) Medicare gross revenue;

(B) Medicaid gross revenue;

(C) other revenue from state programs;

(D) revenue from local government programs;

(E) local tax support;

(F) charitable contributions;

(G) other third party payments;

(H) gross inpatient revenue; and

(I) gross outpatient revenue;

(2) total deductions from gross revenue, including:

(A) contractual allowance; and

(B) any other deductions;

(3) charity care;

(4) bad debt expense;

(5) total admissions, including:

(A) Medicare admissions;

(B) Medicaid admissions;

(C) admissions under a local government program;

(D) charity care admissions; and

(E) any other type of admission;

(6) total discharges;

(7) total patient days;

(8) average length of stay;

(9) total outpatient visits;

(10) total assets;

(11) total liabilities;

(12) estimates of unreimbursed costs of subsidized health services reported separately in the following categories:

(A) emergency care and trauma care;

(B) neonatal intensive care;

(C) free-standing community clinics;

(D) collaborative efforts with local government or private agencies in preventive medicine, such as immunization programs; and

(E) other services that satisfy the definition of "subsidized health services" contained in Section *311.031(15)* [~~311.031(13)~~];

(13) donations;

(14) total cost of reimbursed and unreimbursed research;

(15) total cost of reimbursed and unreimbursed education separated into the following categories:

(A) education of physicians, nurses, technicians, and other medical professionals and health care providers;

(B) scholarships and funding to medical schools, colleges, and universities for health professions education;

(C) education of patients concerning diseases and home care in response to community needs;

(D) community health education through informational programs, publications, and outreach activities in response to community needs; and

(E) other educational services that satisfy the definition of "education-related costs" under Section 311.031(6).

(c) The data must be submitted in the form *prescribed by the department* and at the time established by [~~the~~] department *rule*.

SECTION 3.0843. Section 311.0335, Health and Safety Code, is amended to read as

follows:

Sec. 311.0335. MENTAL HEALTH AND CHEMICAL DEPENDENCY DATA. (a) A hospital that provides mental health or chemical dependency services shall submit to the department financial and utilization data relating to the mental health and chemical dependency services provided by the hospital, including data for inpatient and outpatient services relating to:

(1) patient demographics, including race, ethnicity, age, gender, and county of residence;

(2) admissions;

(3) discharges, including length of inpatient treatment;

(4) specific diagnoses and procedures according to criteria prescribed by the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition, Revised, or a later version prescribed by [~~the~~] department *rule*;

(5) total charges and the components of the charges;

(6) payor sources; and

(7) use of mechanical restraints.

(b) The data must be submitted in the form *prescribed by the department* and at the time established by [~~the~~] department *rule*.

SECTION 3.0844. Section 311.035(c), Health and Safety Code, is amended to read as follows:

(c) The department shall enter into an interagency agreement with the [~~Texas Department of Mental Health and Mental Retardation, Texas Commission on Alcohol and Drug Abuse, and~~] Texas Department of Insurance relating to the mental health and chemical dependency data collected under Section 311.0335. The agreement shall address the collection, analysis, and sharing of the data by the agencies.

SECTION 3.0845. Section 311.042, Health and Safety Code, is amended by adding Subdivision (3–a) and amending Subdivisions (7), (11), (13), and (14) to read as follows:

(3–a) "Department" means the Department of State Health Services.

(7) "Government-sponsored program unreimbursed costs" means the unreimbursed cost to the hospital of providing health care services to the beneficiaries of Medicare, the *TRICARE program of the United States Department of Defense* [~~Civilian Health and Medical Program of the Uniformed Services~~], and other federal, state, or local government health care programs.

(11) "Research-related costs" means those amounts defined as research-related costs in Section *311.031(14)* [~~311.031(12)~~].

(13) "Subsidized health services" means those amounts defined as subsidized health services in Section *311.031(15)* [~~311.031(13)~~].

(14) "Unreimbursed costs" means costs as defined in Section *311.031(16)* [~~311.031(14)~~].

SECTION 3.0846. Section 311.045(a), Health and Safety Code, is amended to read as follows:

(a) A nonprofit hospital or hospital system shall annually satisfy the requirements of this subchapter and of Sections 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, to provide community benefits which include charity care and government-sponsored indigent health care by complying with one or more of the standards set forth in Subsection (b). The hospital or hospital system shall file a statement with the *Center for* [~~Bureau of State~~] Health *Statistics* [~~Data and Policy Analysis~~] at the department and the chief appraiser of the local appraisal district no later than the 120th day after the hospital's or hospital system's fiscal year ends, stating which of the standards in Subsection (b) have been satisfied, provided, however, that the first report shall be filed no later than the 120th day after the end of the hospital's or hospital system's fiscal year ending

during 1994. For hospitals in a hospital system, the corporate parent may elect to satisfy the charity care requirements of this subchapter for each of the hospitals within the system on a consolidated basis.

SECTION 3.0847. Sections 311.0456(a) and (e), Health and Safety Code, are amended to read as follows:

(a) In this section, *"nonprofit*[~~:~~

[~~(1) "Department" means the Department of State Health Services.~~

[~~(2) "Nonprofit~~] hospital" has the meaning assigned by Section 311.042(9)(A).

(e) For the purposes of Subsection (b), a corporation certified by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] as a nonprofit organization under Section 162.001, Occupations Code, whose sole member is a qualifying hospital or hospital system is considered a nonprofit hospital or hospital system.

SECTION 3.0848. Section 311.046(b), Health and Safety Code, is amended to read as follows:

(b) A nonprofit hospital shall file the annual report of the community benefits plan with the *Center for* [~~Bureau of State~~] Health *Statistics* [~~Data and Policy Analysis~~] at the department. The report shall be filed no later than April 30 of each year. In addition to the annual report, a completed worksheet as required by Subsection (a)(5) shall be filed no later than 10 working days after the date the hospital files its Medicare cost report.

SECTION 3.0849. Section 312.002, Health and Safety Code, is amended by amending Subdivision (3) and adding Subdivision (3–a) to read as follows:

(3) "Coordinating entity" means a nonprofit corporation under the Texas *Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code,* [~~Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)~~] that is a health organization approved and certified by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~] under Chapter 162, Occupations Code.

(3–a) "Department" means the Department of State Health Services.

SECTION 3.0850. Section 312.005, Health and Safety Code, is amended to read as follows:

Sec. 312.005. APPROVAL OF CONTRACTS. (a) To be effective, a contract under Section 312.004 must be submitted to the *department* [~~board~~].

(b) [~~The commissioner shall review the contract on behalf of the board.~~] The *department* [~~commissioner~~] shall approve the contract if the [~~commissioner finds the~~] contract furthers the purposes of this chapter.

(c) The *department* [~~commissioner~~] may disapprove a contract only after notice to all parties and a hearing.

(d) The *department* [~~commissioner~~] may not modify a contract.

(e) The contract takes effect:

(1) when it is approved by the *department* [~~commissioner~~]; or

(2) on the 31st day after the date on which the contract is filed with the *department* [~~board~~] by a medical and dental unit, supported medical or dental school, or coordinating entity that is a party to the contract, if the *department* [~~commissioner~~] does not approve or disapprove the contract within 30 days after the date on which the contract is filed.

SECTION 3.0851. Section 314.001, Health and Safety Code, is amended by amending Subdivision (3) and adding Subdivision (3–a) to read as follows:

(3) "Department" means the [~~Texas~~] Department of *State* Health *Services.*

(3–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0852. Section 314.002(c), Health and Safety Code, is amended to read as follows:

(c) The department shall review the application in accordance with the standards set forth in Subsections (e) and (f) and shall, if requested, hold a public hearing in accordance with rules adopted by the *executive commissioner* [~~department~~]. The department shall grant or deny the application within 120 days of the date of filing of the application and that decision must be in writing and set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the attorney general, and any intervenor within 10 days of its issuance.

SECTION 3.0853. Section 314.008, Health and Safety Code, is amended to read as follows:

Sec. 314.008. *EXCLUSIONS;* AUTHORITY TO ADOPT RULES[~~; EFFECTIVE DATE~~]. (a) This *chapter* [~~Act~~] specifically excludes ground and/or air ambulance services.

(b) The *executive commissioner* [~~department~~] shall have the authority to adopt rules to implement the requirements of this chapter. [~~Such rules shall be adopted by March 1, 1994, at which time hospitals may file an application with the department for a certification of public advantage.~~]

SECTION 3.0854. Section 321.001, Health and Safety Code, is amended by adding Subdivision (1–a) to read as follows:

(1–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0855. Sections 321.002(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~Texas Board of Mental Health and Mental Retardation, Texas Board of Health, and Texas Commission on Alcohol and Drug Abuse~~] by rule shall [~~each~~] adopt a "patient's bill of rights" that includes the applicable rights included in this chapter, Subtitle C of Title 7, Chapters 241, 462, 464, and 466, and any other provisions the *executive commissioner considers* [~~agencies consider~~] necessary to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services in an inpatient facility. In addition, *the executive commissioner* [~~each agency~~] shall adopt rules that:

(1) provide standards to prevent the admission of a minor to a facility for treatment of a condition that is not generally recognized as responsive to treatment in an inpatient treatment setting; and

(2) prescribe the procedure for presenting the applicable bill of rights and obtaining each necessary signature if:

(A) the patient cannot comprehend the information because of illness, age, or other factors; or

(B) an emergency exists that precludes immediate presentation of the information.

(b) The *executive commissioner* [~~Board of Protective and Regulatory Services~~] by rule shall adopt a "children's bill of rights" for a minor receiving treatment in a child-care facility for an emotional, mental health, or chemical dependency problem.

SECTION 3.0856. Section 322.001(1), Health and Safety Code, is amended to read as follows:

(1) "Facility" means:

(A) a *general residential operation* [~~child-care institution~~], as defined by Section 42.002, Human Resources Code, including a state-operated facility, [~~that is a residential treatment center or a child-care institution~~] serving children with *an intellectual disability* [~~mental retardation~~];

(B) an *ICF–IID* [~~intermediate care facility~~] licensed by the Department of Aging and Disability Services under Chapter 252 or operated by that department and exempt under Section 252.003 from the licensing requirements of that chapter;

(C) a mental hospital or mental health facility, as defined by Section 571.003;

(D) an institution, as defined by Section 242.002;

(E) an assisted living facility, as defined by Section 247.002; or

(F) a treatment facility, as defined by Section 464.001.

SECTION 3.0857. Section 323.002(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner of the Health and Human Services Commission* [~~department~~] shall adopt procedures for submission, approval, and modification of a plan required under this section.

SECTION 3.0858. Section 341.001, Health and Safety Code, is amended by amending Subdivision (2) and adding Subdivision (3–a) to read as follows:

(2) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(3–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0859. Section 341.002, Health and Safety Code, is amended to read as follows:

Sec. 341.002. RULES FOR SANITATION AND HEALTH PROTECTION. The *executive commissioner* [~~board~~] may:

(1) adopt rules consistent with the purposes of this chapter; and

(2) establish standards and procedures for the management and control of sanitation and for health protection measures.

SECTION 3.0860. Sections 341.014(c) and (e), Health and Safety Code, are amended to read as follows:

(c) A privy may not be constructed within 75 feet of a drinking water well or of a human habitation, other than a habitation to which the privy is appurtenant, without approval by the local health authority or the *department* [~~board~~]. A privy may not be constructed or maintained over an abandoned well or over a stream.

(e) Material and human excreta removed from a privy vault or from any other place shall be handled in a manner that does not create a public health nuisance. The material and human excreta may not be deposited within 300 feet of a highway unless buried or treated in accordance with the instructions of the local health authority or the *department* [~~board~~].

SECTION 3.0861. Section 341.017(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt reasonable rules to require railroads to provide adequate sanitation facilities for railroad maintenance-of-way employees.

SECTION 3.0862. Section 341.018(c), Health and Safety Code, is amended to read as follows:

(c) The *department* [~~board~~] shall promote rodent control programs in rat-infested areas and in localities in which typhus fever has appeared.

SECTION 3.0863. Sections 341.064(b) and (l), Health and Safety Code, are amended to read as follows:

(b) The bacterial content of the water in a public swimming pool may not exceed the safe limits prescribed by *department* [~~the board's~~] standards. A minimum free residual chlorine of 2.0 parts for each one million units of water in a public spa and a minimum free residual chlorine of 1.0 part for each one million units of water in other public swimming pools, or any other method of disinfectant approved by the department, must be maintained in a public swimming pool in use.

(l) In adopting rules governing lifesaving equipment to be maintained by a public swimming pool, the *executive commissioner* [~~board~~] may not require a separate throwing line longer than two-thirds the maximum width of the pool.

SECTION 3.0864. Section 341.0645(b), Health and Safety Code, is amended to read as follows:

(b) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt by rule pool safety standards necessary to prevent drowning. The standards must be at least as stringent as those imposed under the federal Virginia Graeme Baker Pool and Spa Safety Act (15 U.S.C. Section 8001 et seq.).

SECTION 3.0865. Sections 341.068(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules to implement Subsection (a), including a rule that in providing sufficient restrooms a ratio of not less than 2:1 women's-to-men's restrooms or other minimum standards established in consultation with the Texas State Board of Plumbing Examiners shall be maintained if the use of the restrooms is designated by gender. The rules shall apply to facilities where the public congregates and on which construction is started on or after January 1, 1994, or on which structural alterations, repairs, or improvements exceeding 50 percent of the entire facility are undertaken on or after January 1, 1994.

(d) The *executive commissioner* [~~board~~] may adopt rules consistent with Subsection (c)(1) to define "facilities where the public congregates."

SECTION 3.0866. Section 341.0695, Health and Safety Code, is amended by amending Subsection (f) and adding Subsection (i–1) to read as follows:

(f) The *executive commissioner* [~~department~~] may by rule adopt methods other than chlorination for the purpose of disinfecting interactive water features and fountains.

(i–1) The executive commissioner by rule shall prescribe the amount of the fee the department may collect under Subsection (i).

SECTION 3.0867. Sections 341.082(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The environmental health officer must be a registered professional engineer. The officer must file a copy of the officer's oath and appointment with the *department* [~~board~~].

(c) The environmental health officer shall assist the *department* [~~board~~] in enforcing this chapter and is subject to:

(1) the authority of the *department* [~~board~~]; and

(2) removal from office in the same manner as a municipal health authority.

SECTION 3.0868. Section 345.001, Health and Safety Code, is amended by amending Subdivisions (2) and (2–a) and adding Subdivisions (2–b) and (2–c) to read as follows:

(2) *"Commissioner" means the commissioner of state health services.*

(2–a) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(2–b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(2–c) [~~(2–a)~~] "Floor model" means new bedding placed in a retail sales area for display purposes.

SECTION 3.0869. Section 345.0055(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~department~~] may adopt rules relating to material used in new or renovated bedding, including rules:

(1) requiring the use of burn resistant material; and

(2) prohibiting or restricting the use of secondhand or recycled material.

SECTION 3.0870. Section 345.007, Health and Safety Code, is amended to read as follows:

Sec. 345.007. ADVISORY COMMISSION. The *executive commissioner* [~~Texas Board of Health~~] may appoint an advisory commission composed of representatives of consum-

ers and the bedding industry to assist the *executive commissioner and the department* [~~board~~] in implementing this chapter.

SECTION 3.0871. Section 345.022(f), Health and Safety Code, is amended to read as follows:

(f) The *executive commissioner* [~~department~~] may adopt rules that:

(1) require that the label state conformity with burn resistant material requirements or identify any chemical treatment applied to the bedding; and

(2) exempt from the requirements of this section a custom upholstery business that does not repair or renovate bedding for resale.

SECTION 3.0872. Section 345.024(c), Health and Safety Code, is amended to read as follows:

(c) A person may not use in the manufacture, repair, or renovation of bedding a material that has not been cleaned and germicidally treated by a process or treatment approved by the department if the material:

(1) has been used by a person with a communicable disease; or

(2) is filthy, oily, *or* stained, or harbors [~~loathsome~~] insects or pathogenic organisms.

SECTION 3.0873. Section 345.027, Health and Safety Code, is amended to read as follows:

Sec. 345.027. COLOR OF LABEL AND LETTERING. The *executive commissioner* [~~department~~] may adopt rules governing the color of label required under this subchapter and the color of the lettering on the label.

SECTION 3.0874. Section 345.041(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~Texas Board of Health~~] by rule may exempt from the permit requirement of this section a custom upholstery business that does not repair or renovate bedding for resale.

SECTION 3.0875. Sections 345.043(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner by rule* [~~Texas Board of Health~~] shall set the fees for an initial permit issued under this chapter and for renewal of a permit issued under this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

(c) A permit expires *two years* [~~one year~~] after the date of issuance.

SECTION 3.0876. Section 345.0435(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules necessary to implement this subchapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a permit issued under this subchapter.

SECTION 3.0877. Section 345.045(b), Health and Safety Code, is amended to read as follows:

(b) The executive commissioner [~~of the Health and Human Services Commission,~~] by rule[~~;~~] may establish additional requirements regulating the sanitary condition of a permit holder's place of business. The holder of a germicidal treatment permit who germicidally treats not more than 10 items at the permit holder's place of business each week is exempt from any additional requirements regulating the sanitary condition of a permit holder's place of business adopted under this subsection.

SECTION 3.0878. Section 345.082, Health and Safety Code, is amended to read as follows:

Sec. 345.082. RULEMAKING AUTHORITY. The *executive commissioner* [~~department~~] may adopt rules to implement and enforce this chapter.

SECTION 3.0879. Section 345.102(c), Health and Safety Code, is amended to read as follows:

(c) If the person notified of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the *department* [~~commissioner of public health or the commissioner's designee~~] shall [~~issue an~~] order [~~approving the determination and ordering that~~] the person *to* pay the proposed penalty.

SECTION 3.0880. Section 345.103, Health and Safety Code, is amended to read as follows:

Sec. 345.103. HEARING; ORDER. (a) If the person notified requests a hearing, the department shall *refer the matter to the State Office of Administrative Hearings. The department shall*[~~:~~

[~~(1) set a hearing;~~

[~~(2)~~] give written notice of the hearing to the person[~~; and~~

[~~(3) designate a hearings examiner to conduct the hearing~~].

(b) *An administrative law judge of the State of Office of Administrative Hearings* [~~The hearings examiner~~] shall make findings of fact and conclusions of law and shall promptly issue to the *department* [~~commissioner of public health or the commissioner's designee~~] a *written* proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the *administrative law judge* [~~hearings examiner~~], the *department* [~~commissioner of public health or the commissioner's designee~~] by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

SECTION 3.0881. Section 345.106(a), Health and Safety Code, is amended to read as follows:

(a) At the request of the *department* [~~commissioner of public health~~], the attorney general may petition the district court for a temporary restraining order to restrain a continuing violation of this chapter or a threat of a continuing violation of this chapter if the *department* [~~commissioner of public health~~] finds that:

(1) a person has violated, is violating, or is threatening to violate this chapter; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

SECTION 3.0882. Section 345.107(a), Health and Safety Code, is amended to read as follows:

(a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's permit is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date on which the order issued by the *department* [~~commissioner of public health or the commissioner's designee~~] requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

SECTION 3.0883. Section 345.131(1), Health and Safety Code, is amended to read as follows:

(1) "Authorized agent" means an employee of the department who is designated by the commissioner [~~of public health~~] to enforce the provisions of this chapter.

SECTION 3.0884. Section 345.132, Health and Safety Code, is amended to read as follows:

Sec. 345.132. DETAINED OR EMBARGOED BEDDING. (a) The *department* [~~commissioner of public health or an authorized agent~~] may detain or embargo bedding under this section if the *department* [~~commissioner or the authorized agent~~] finds or has probable cause to believe that the article violates this chapter or a rule or standard adopted under this chapter.

(b) The *department* [~~commissioner of public health or an authorized agent~~] shall affix to detained or embargoed bedding a tag or other appropriate marking that gives notice that:

(1) the bedding violates or is suspected of violating this chapter or a rule or standard adopted under this chapter; and

(2) the bedding has been detained or embargoed.

(c) The tag or marking on detained or embargoed bedding must warn all persons not to use the bedding, remove the bedding from the premises, or dispose of the bedding by sale or otherwise until permission for use, removal, or disposal is given by the *department* [~~commissioner of public health, the authorized agent,~~] or a court.

(d) A person may not use detained or embargoed bedding, remove detained or embargoed bedding from the premises, or dispose of detained or embargoed bedding by sale or otherwise without permission of the *department* [~~commissioner of public health, the authorized agent,~~] or a court.

(e) The *department* [~~commissioner of public health or an authorized agent~~] shall remove the tag or other marking from detained or embargoed bedding if the *department* [~~commissioner or an authorized agent~~] finds that the bedding does not violate this chapter or a rule or standard adopted under this chapter.

SECTION 3.0885. Sections 345.133(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) If the claimant of the detained or embargoed bedding or the claimant's agent fails or refuses to transfer the bedding to a secure place after the tag or other appropriate marking has been affixed as provided by Section 345.132, the *department* [~~commissioner of public health or an authorized agent~~] may order the transfer of the bedding to one or more secure storage areas to prevent unauthorized use, removal, or disposal.

(b) The *department* [~~commissioner of public health or an authorized agent~~] may provide for the transfer of the bedding if the claimant of the bedding or the claimant's agent does not carry out the transfer order in a timely manner.

(d) The commissioner [~~of public health~~] may request the attorney general to bring an action in the district court in Travis County to recover the costs of the transfer. In a judgment in favor of the state, the court may award costs, attorney's fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

SECTION 3.0886. Sections 345.135(a), (b), (c), (e), (g), and (h), Health and Safety Code, are amended to read as follows:

(a) In conjunction with the detention or embargo of bedding under this subchapter, the commissioner [~~of public health~~] may order bedding to be recalled from commerce.

(b) The *commissioner's* [~~commissioner of public health's~~] recall order may require the bedding to be removed to one or more secure areas approved by the commissioner or an authorized agent.

(c) The recall order must be in writing and signed by the commissioner [~~of public health~~].

(e) The recall order is effective until the order:

(1) expires on its own terms;

(2) is withdrawn by the commissioner [~~of public health~~]; or

(3) is reversed by a court in an order denying condemnation under Section 345.134.

(g) If the claimant or the claimant's agent fails or refuses to carry out the recall order in a timely manner, the commissioner [~~of public health~~] may provide for the recall of the bedding. The costs of the recall shall be assessed against the claimant of the bedding or the claimant's agent.

(h) The commissioner [~~of public health~~] may request the attorney general to bring an

action in the district court of Travis County to recover the costs of the recall. In a judgment in favor of the state, the court may award costs, attorney's fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

SECTION 3.0887. Section 345.137, Health and Safety Code, is amended to read as follows:

Sec. 345.137. CORRECTION BY PROPER LABELING OR PROCESSING. (a) A court may order the delivery of detained or embargoed bedding that violates this chapter or a rule or standard adopted under this chapter to the claimant of the bedding for labeling or processing under the supervision of an agent of the commissioner [~~of public health~~] or an authorized agent if:

(1) the decree has been entered in the suit relating to the detained or embargoed bedding;

(2) the claimant has paid the costs, fees, and expenses of the suit;

(3) the violation can be corrected by proper labeling or processing; and

(4) a good and sufficient bond, conditioned on the correction of the violation by proper labeling or processing, has been executed.

(b) The claimant shall pay the costs of the supervision of the labeling or processing by the agent of the commissioner [~~of public health~~] or an authorized agent.

(c) The court shall order that the bedding be returned to the claimant and the bond discharged on the representation to the court by the commissioner [~~of public health~~] or an authorized agent that the article no longer violates this chapter or a rule or standard adopted under this chapter and that the expenses of the supervision are paid.

SECTION 3.0888. Section 361.003(5), Health and Safety Code, is amended to read as follows:

(5) "Commission" means the Texas [~~Natural Resource Conservation~~] Commission *on Environmental Quality*.

SECTION 3.0889. Sections 361.018(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The commission has the powers under this chapter necessary or convenient to carry out its responsibilities concerning the regulation of the management of hazardous waste components of radioactive waste under the jurisdiction of the [~~Texas~~] Department of *State* Health *Services*.

(b) The commission shall consult with the [~~Texas~~] Department of *State* Health *Services* concerning regulation and management under this section, except for activities solely under the commission's jurisdiction.

SECTION 3.0890. Section 361.039, Health and Safety Code, is amended to read as follows:

Sec. 361.039. CONSTRUCTION OF OTHER LAWS. Except as specifically provided by this chapter, this chapter does not diminish or limit the authority of the commission, the [~~Texas~~] Department of *State* Health *Services*, or a local government in performing the powers, functions, and duties vested in those governmental entities by other law.

SECTION 3.0891. The heading to Subchapter B, Chapter 361, Health and Safety Code, is amended to read as follows:

SUBCHAPTER B. POWERS AND DUTIES OF [~~TEXAS NATURAL RESOURCE CONSERVATION~~] COMMISSION

SECTION 3.0892. Section 361.560(3), Health and Safety Code, is amended to read as follows:

(3) "Medical waste" includes animal waste, bulk blood and blood products, microbiological waste, pathological waste, sharps, and special waste from health care-

related facilities as those terms are defined in 25 TAC Section 1.132 ([~~Tex. Dept. of Health,~~] Definition, Treatment, and Disposition of Special Waste from Health Care–Related Facilities). The term does not include medical waste produced on farmland and ranchland as defined in *former* Section 252.001(6), Agriculture Code. The term does not include artificial, nonhuman materials removed from a patient and requested by the patient, including but not limited to orthopedic devices and breast implants.

SECTION 3.0893. Section 382.002(b), Health and Safety Code, is amended to read as follows:

(b) It is intended that this chapter be vigorously enforced and that violations of this chapter or any rule or order of the Texas [~~Natural Resource Conservation~~] Commission *on Environmental Quality* result in expeditious initiation of enforcement actions as provided by this chapter.

SECTION 3.0894. Section 382.003(4), Health and Safety Code, is amended to read as follows:

(4) "Commission" means the Texas [~~Natural Resource Conservation~~] Commission *on Environmental Quality*.

SECTION 3.0895. Section 382.019(c), Health and Safety Code, is amended to read as follows:

(c) The commission or any other state agency may not adopt a rule requiring the use of Stage II vapor recovery systems that control motor vehicle refueling emissions at a gasoline dispensing facility in this state until the United States Environmental Protection Agency determines that the use of the system is required for compliance with the federal Clean Air Act (42 U.S.C. 7401 et seq.), except the commission may adopt rules requiring such vapor recovery systems installed in nonattainment areas if it can be demonstrated to be necessary for the attainment of federal ozone ambient air quality standards or, following appropriate health studies and in consultation with the [~~Texas~~] Department of *State* Health *Services*, it is determined to be necessary for the protection of public health.

SECTION 3.0896. Section 385.001(2), Health and Safety Code, is amended to read as follows:

(2) *"Executive commissioner"* [~~"Board"~~] means the *executive commissioner of the Health and Human Services Commission* [~~Texas Board of Health~~].

SECTION 3.0897. The heading to Section 385.002, Health and Safety Code, is amended to read as follows:

Sec. 385.002. POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER* [~~BOARD~~].

SECTION 3.0898. Sections 385.002(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall establish voluntary guidelines for indoor air quality in government buildings, including guidelines for ventilation and indoor air pollution control systems. The *executive commissioner* [~~board~~] may adopt other rules necessary to implement this chapter.

(b) In establishing the guidelines, the *executive commissioner* [~~board~~] shall consider:

(1) the potential chronic effects of air contaminants on human health;

(2) the potential effects of insufficient ventilation of the indoor environment on human health;

(3) the potential costs of health care for the short-term and long-term effects on human health that may result from exposure to indoor air contaminants; and

(4) the potential costs of compliance with a proposed guideline.

(d) The *executive commissioner's* [~~board's~~] guidelines may differ for different pollution sources or different areas of the state and may differ for buildings that are regularly occupied or visited by children.

SECTION 3.0899. Section 401.003, Health and Safety Code, is amended by amending Subdivision (6) and adding Subdivision (9–a) to read as follows:

(6) "Department" means the Department of State Health Services or other department designated by the executive commissioner [~~of the Health and Human Services Commission~~].

(9-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0900. Section 401.004(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Subsection (b), "low-level radioactive waste" means radioactive material that:

(1) is discarded or unwanted and is not exempt by *department* [~~board~~] rule adopted under Section 401.106;

(2) is waste, as that term is defined by 10 C.F.R. Section 61.2; and

(3) is subject to:

(A) concentration limits established under 10 C.F.R. Section 61.55, or compatible rules established by the *executive commissioner* [~~department~~] or commission, as applicable; and

(B) disposal criteria established under Title 10, Code of Federal Regulations, or established by the department or commission, as applicable.

SECTION 3.0901. Section 401.015(a), Health and Safety Code, is amended to read as follows:

(a) The radiation advisory board is composed of the following 18 members appointed by the governor:

(1) one representative from industry who is trained in nuclear physics, science, or nuclear engineering;

(2) one representative from labor;

(3) one representative from agriculture;

(4) one representative from the insurance industry;

(5) one individual who is engaged in the use and application of nuclear physics in medicine and is certified by the American Board of Radiology or licensed by the Texas Board of Licensure for Professional Medical Physicists;

(6) one hospital administrator;

(7) one individual licensed by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~] who specializes in nuclear medicine;

(8) one individual licensed by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~] who specializes in pathology;

(9) one individual licensed by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~] who specializes in radiology;

(10) one representative from the nuclear utility industry;

(11) one representative from the radioactive waste industry;

(12) one representative from the petroleum industry;

(13) one health physicist certified by the American Board of Health Physics;

(14) one individual licensed by the State Board of Dental Examiners;

(15) one representative from the uranium mining industry; and

(16) three representatives of the public.

SECTION 3.0902. Section 401.0152, Health and Safety Code, is amended to read as follows:

Sec. 401.0152. INFORMATION ABOUT STANDARDS OF CONDUCT. The *department* [~~commissioner or the commissioner's designee~~] shall provide to members of the ad-

visory board, as often as necessary, information regarding the requirements for office under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

SECTION 3.0903. Section 401.019, Health and Safety Code, as amended by Chapters 553 (H.B. 212) and 554 (H.B. 213), Acts of the 75th Legislature, Regular Session, 1997, is reenacted and amended to read as follows:

Sec. 401.019. ADVISORY BOARD DUTIES. The advisory board shall:

(1) review and evaluate state radiation policies and programs;

(2) make recommendations and furnish technical advice to the department, the commission, the Railroad Commission of Texas, and other state agencies that may be required on matters relating to development, use, and regulation of sources of radiation [~~to the department, the Texas Natural Resource Conservation Commission, the Railroad Commission of Texas, and other state agencies~~]; and

(3) review proposed rules and guidelines of any state agency [~~of the department, the Texas Natural Resource Conservation Commission, the Railroad Commission of Texas, and other state agencies~~] relating to regulation of sources of radiation and recommend changes in proposed or existing rules and guidelines relating to those matters.

SECTION 3.0904. Section 401.051, Health and Safety Code, is amended to read as follows:

Sec. 401.051. ADOPTION OF RULES AND GUIDELINES. The *executive commissioner* [~~board~~] and commission each within *the* [~~its~~] jurisdiction *of that officer or agency* may adopt rules and guidelines relating to control of sources of radiation.

SECTION 3.0905. Sections 401.052(a), (b), (c), and (e), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt rules that provide for transportation and routing of radioactive material and waste in this state.

(b) Rules adopted under this section for low-level radioactive waste must:

(1) to the extent practicable, be compatible with United States Department of Transportation and *federal commission* [~~United States Nuclear Regulatory Commission~~] regulations relating to the transportation of low-level radioactive waste;

(2) require each shipper and *carrier* [~~transporter~~] of low-level radioactive waste to adopt an emergency plan approved by the department for responding to transportation accidents;

(3) require the notification and reporting of accidents to the department and to local emergency planning committees in the county where the accident occurs;

(4) require each shipper to adopt a quality control program approved by the department to verify that shipping containers are suitable for shipment to a licensed disposal facility;

(5) assess a fee on shippers for shipments to a Texas low-level radioactive waste disposal facility of low-level radioactive waste originating in Texas or out-of-state; and

(6) require a *carrier* [~~transporter~~] to carry liability insurance in an amount the *executive commissioner* [~~board~~] determines is sufficient to cover damages likely to be caused by a shipping accident in accordance with regulations imposed by the United States Department of Transportation and the *federal commission* [~~United States Nuclear Regulatory Commission~~].

(c) In adopting rules under this section, the *executive commissioner* [~~board~~] shall consult with the advisory board and the commission.

(e) Money expended from the perpetual care account to respond to accidents involving low-level radioactive waste must be reimbursed to the perpetual care account by the responsible shipper or *carrier* [~~transporter~~] according to rules adopted by the *executive commissioner* [~~board~~].

SECTION 3.0906. Section 401.057(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] or commission by rule may provide exemptions to the records requirements under Subsections (a)(1) and (3).

SECTION 3.0907. Section 401.064, Health and Safety Code, is amended to read as follows:

Sec. 401.064. INSPECTION OF X-RAY EQUIPMENT. (a) The *executive commissioner* [~~board~~] shall adopt rules relating to the frequency of department inspections of electronic products.

(b) In adopting the rules, the *executive commissioner* [~~board~~] shall consider the threat to human health and safety that the electronic products may present.

(c) The *executive commissioner* [~~board~~] shall adopt an inspection interval of five years for routine inspections of electronic products that present a minimal threat to human health and safety.

(d) The *executive commissioner* [~~board~~] by rule shall require a person who inspects medical, podiatric medical, dental, veterinary, or chiropractic electronic products to have special training in the design and uses of the products.

(e) The department shall conduct inspections of medical, podiatric medical, dental, veterinary, and chiropractic electronic products in a manner designed to cause as little disruption of a medical, podiatric medical, dental, veterinary, or chiropractic practice as is practicable.

(f) In adopting rules under this section relating to the inspection of medical, podiatric medical, dental, veterinary, and chiropractic electronic products, the *executive commissioner* [~~board~~] shall solicit and follow the recommendations of the State Board of Dental Examiners for the inspections of dental electronic products, the Texas State Board of Podiatric Medical Examiners for the inspection of podiatric medical electronic products, the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~] for the inspection of medical electronic products, the [~~Texas~~] State Board of Veterinary Medical Examiners for the inspection of medical electronic products used in the practice of veterinary medicine, and the *Texas* [~~State~~] Board of Chiropractic Examiners for the inspection of chiropractic electronic products, unless in conflict with federal statutes or federal rules.

SECTION 3.0908. Section 401.069, Health and Safety Code, is amended to read as follows:

Sec. 401.069. MEMORANDUM OF UNDERSTANDING. The *executive commissioner* [~~board~~] or commission must adopt as a rule any memorandum of understanding between the department or commission, as appropriate, and another state agency.

SECTION 3.0909. Section 401.103, Health and Safety Code, is amended to read as follows:

Sec. 401.103. RULES AND GUIDELINES FOR LICENSING AND REGISTRATION. (a) The *executive commissioner* [~~board~~] shall adopt rules and guidelines that provide for licensing and registration for the transportation of sources of radiation.

(b) The *executive commissioner* [~~board~~] and commission each within *the* [~~its~~] jurisdiction *of that officer or agency* shall adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation.

(c) In adopting rules and guidelines, the *executive commissioner* [~~board~~] and commission shall consider the compatibility of those rules and guidelines with federal regulatory programs.

SECTION 3.0910. Sections 401.104(a), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) Except as provided by Subsections (b) and (e), the *executive commissioner* [~~board~~] by rule shall provide for the general or specific licensing of:

(1) radioactive material; or

(2) devices or equipment using radioactive material.

(c) The *executive commissioner* [~~board~~] or commission shall provide in [~~its~~] rules *of the appropriate agency* for the issuance, amendment, suspension, and revocation of licenses.

(d) The *executive commissioner* [~~board~~] or commission, within *the* [~~its~~] jurisdiction *of that officer or agency*, may require the registration or licensing of other sources of radiation.

(e) The *executive commissioner* [~~board~~] or commission may not require a license for a person that is a party to an order issued under Section 361.188 or 361.272 for sites subject to Subchapter F, Chapter 361, or an agreement entered into under Section 361.606. This subsection does not exempt the person from complying with technical standards that a holder of a license otherwise required by this chapter for the particular activity is required to meet. The exemption granted by this subsection applies only to the assessment and remediation of the contamination at the site.

SECTION 3.0911. Section 401.105, Health and Safety Code, is amended to read as follows:

Sec. 401.105. RECOGNITION OF OTHER LICENSES. The *executive commissioner* [~~board~~] or commission, *each* within *the* [~~its~~] jurisdiction *of that officer or agency*, by rule may recognize other federal or state licenses the *executive commissioner* [~~board~~] or commission, as appropriate, considers desirable, subject to registration requirements the *executive commissioner* [~~board~~] or commission, as appropriate, may prescribe.

SECTION 3.0912. Sections 401.106(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] or commission by rule may exempt a source of radiation or a kind of use or user from the licensing or registration requirements provided by this chapter and under the agency's jurisdiction if the *executive commissioner* [~~board~~] or commission finds that the exemption of that source of radiation or kind of use or user will not constitute a significant risk to the public health and safety and the environment.

(b) The department or commission, as applicable, may exempt a source of radiation or a kind of use or user from the application of a rule adopted by the *executive commissioner* [~~department~~] or commission under this chapter if the department or commission, respectively, determines that the exemption:

(1) is not prohibited by law; and

(2) will not result in a significant risk to public health and safety and the environment.

SECTION 3.0913. Section 401.107(a), Health and Safety Code, is amended to read as follows:

(a) An application for a specific license issued by the *department* [~~board~~] or commission must be in writing and must state the information that the *executive commissioner* [~~board~~] or commission, as appropriate, by rule determines to be necessary to decide the technical, insurance, and financial qualifications or any other of the applicant's qualifications the issuing agency considers reasonable or necessary to protect the occupational and public health and safety and the environment.

SECTION 3.0914. Section 401.108(b), Health and Safety Code, is amended to read as follows:

(b) A license holder shall submit to the department or commission, as appropriate, at intervals required by *department* [~~board~~] or commission rules or the license, proof that the license holder has updated, as appropriate, the security posted under Subsection (a).

SECTION 3.0915. Section 401.109(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~department~~] or commission may require a holder of a license issued by the *applicable* agency to provide security acceptable to the *applicable* agency to assure performance of the license holder's obligations under this chapter. The department shall deposit security provided to the department under this section to the credit of the perpetual care account. The *executive commissioner* [~~department~~] by rule shall provide that any evidence of security must be made payable to the credit of the

perpetual care account. The commission shall deposit security provided to the commission under this section to the credit of the environmental radiation and perpetual care account. The commission shall provide that security must be made payable to the credit of the environmental radiation and perpetual care account.

SECTION 3.0916. Section 401.116(d), Health and Safety Code, is amended to read as follows:

(d) The agency shall give notice and *provide for* [~~hold~~] a hearing *to be conducted* to consider the license amendment if a person affected files a written complaint with the agency before the 31st day after the date on which notice is published under Subsection (b). The agency shall give notice of the hearing as provided by Section 401.114.

SECTION 3.0917. Section 401.118(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~board~~] or commission shall prescribe the form and the terms for each license it issues.

SECTION 3.0918. Section 401.224, Health and Safety Code, is amended to read as follows:

Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. The *executive commissioner* [~~department~~] shall adopt rules relating to the packaging of radioactive waste.

SECTION 3.0919. Sections 401.301(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The commission and the *executive commissioner* [~~board~~] each by rule shall set the fee in an amount that may not exceed the actual expenses annually incurred to:

(1) process applications for licenses or registrations;

(2) amend or renew licenses or registrations;

(3) make inspections of license holders and registrants; and

(4) enforce this chapter and rules, orders, licenses, and registrations under this chapter.

(d) The commission and *executive commissioner* [~~department~~] shall require that each person who holds a specific license issued by the *commission or department* [~~agency~~] pay to the *applicable* agency an additional five percent of the appropriate fee set under Subsection (b). Fees collected by the department under this subsection shall be deposited to the credit of the perpetual care account. Fees collected by the commission under this subsection shall be deposited to the environmental radiation and perpetual care account. The fees are not refundable. The holder of a specific license authorizing the extraction, processing, or concentration of uranium or thorium from ore is not required to pay the additional fee described by this subsection before the beginning of operations under the license.

SECTION 3.0920. Section 401.302(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~department~~], in coordination with the commission, *by rule* may set [~~and collect~~] an annual fee *to be collected by the department* from the operator of each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material.

SECTION 3.0921. Section 401.303(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~department~~] or commission may require the holder of a license issued by the agency to pay annually to the issuing agency an amount determined by the issuing agency if continuing or perpetual maintenance, surveillance, or other care is required after termination of a licensed activity.

SECTION 3.0922. Section 401.342(a), Health and Safety Code, is amended to read as follows:

(a) The attorney general, at the request of the department regarding an activity

under its jurisdiction, shall institute an action in a district court in Travis County or in any county in which a violation occurs or is about to occur if in the department's judgment a person has engaged in or is about to engage in an act or practice that violates or will violate this chapter, [~~or~~] a rule *adopted by the executive commissioner under this chapter, or a* license, registration, or order [~~adopted or~~] issued by the department under this chapter. The attorney general may determine the court in which suit will be instituted.

SECTION 3.0923. Section 401.343(a), Health and Safety Code, is amended to read as follows:

(a) The department or commission shall seek reimbursement, either by an order of the department or commission or a suit filed by the attorney general at the request of the department or commission, of security from the perpetual care account used by the department or commission to pay for actions, including corrective measures, to remedy spills or contamination by radioactive substances resulting from a violation of this chapter relating to an activity under the jurisdiction of the department or commission, [~~or~~] a violation of a rule *adopted under this chapter, or a violation of a* license, registration, or order [~~adopted or~~] issued by the department or commission under this chapter.

SECTION 3.0924. Section 401.384(a), Health and Safety Code, is amended to read as follows:

(a) The department may assess an administrative penalty as provided by this section and Sections 401.385–401.390 against a person who causes, suffers, allows, or permits a violation of a provision of this chapter relating to an activity under the department's jurisdiction, a rule *adopted by the executive commissioner under this chapter, an* [~~or~~] order *issued* [~~adopted~~] by the department under this chapter, or a condition of a license or registration issued by the department under this chapter.

SECTION 3.0925. Section 401.387, Health and Safety Code, is amended to read as follows:

Sec. 401.387. CONSENT TO PENALTY. (a) If the person charged with the violation consents to the penalty recommended by the department or does not respond to the notice on time, the *department* [~~commissioner or the commissioner's designee,~~] by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the report.

(b) If the *department* [~~commissioner or the commissioner's designee~~] assesses the recommended penalty, the department shall give written notice to the person charged of the decision and that person must pay the penalty.

SECTION 3.0926. Section 401.388, Health and Safety Code, is amended to read as follows:

Sec. 401.388. HEARING AND DECISION. (a) If the person charged requests a hearing, the *department* [~~commissioner~~] shall *refer the matter to the State Office of Administrative Hearings* [~~order a hearing~~] and shall give notice of *a* [~~that~~] hearing *to be held by that office.*

(b) The hearing shall be held by *an administrative law judge of the State Office of Administrative Hearings* [~~a hearing examiner designated by the commissioner~~].

(c) The *administrative law judge* [~~hearing examiner~~] shall make findings of fact and promptly issue to the *department* [~~commissioner~~] a written *proposal for* decision as to the occurrence of the violation and a recommendation of the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and the recommendations of the *administrative law judge* [~~hearing examiner~~], the *department* [~~commissioner~~] by order may find that a violation has occurred and assess an administrative penalty or may find that no violation occurred.

(e) All proceedings under Subsections (a)–(d) are subject to Chapter 2001, Government Code.

(f) The *department* [~~commissioner~~] shall give notice to the person charged of the

department's [~~commissioner's~~] decision, and if the *department* [~~commissioner~~] finds that a violation has occurred and an administrative penalty has been assessed, the *department* [~~commissioner~~] shall give to the person charged written notice of:

(1) the *department's* [~~commissioner's~~] findings;

(2) the amount of the penalty; and

(3) the person's right to judicial review of the *department's* [~~commissioner's~~] order.

SECTION 3.0927. Section 401.389, Health and Safety Code, is amended to read as follows:

Sec. 401.389. DISPOSITION OF PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date on which the *department's* [~~commissioner's~~] order is final, the person charged with the penalty shall pay the full amount of the penalty or file a petition for judicial review.

(b) If the person seeks judicial review of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (a), shall:

(1) *stay enforcement of the penalty by:*

(A) paying [~~send the amount of~~] the penalty to the *court* [~~commissioner~~] for placement in an escrow account; or

(B) posting [~~(2) post~~] with the *court* [~~commissioner~~] a supersedeas bond in a form approved by the *court* [~~commissioner~~] for the amount of the penalty*; or*

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b–1) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond [~~, the bond to be effective until judicial review of the order or decision is final~~].

(c) The *department* [~~commissioner~~] may request enforcement by the attorney general if the person charged fails to comply with this section.

(d) Judicial review of the order or decision of the *department* [~~commissioner~~] assessing the penalty shall be under Subchapter G, Chapter 2001, Government Code.

SECTION 3.0928. Section 401.390, Health and Safety Code, is amended to read as follows:

Sec. 401.390. REMITTING PENALTY PAYMENTS; RELEASING BONDS. (a) *On the date the court's judgment that an administrative penalty against a person should be* [~~If a penalty is~~] reduced or not assessed *becomes final*, the *court* [~~commissioner~~] shall *order that*:

(1) [~~remit to the person charged~~] the appropriate amount of any penalty payment plus accrued interest *be remitted to the person not later than the 30th day after that date*; or

(2) [~~execute a release of~~] the bond *be released,* if a supersedeas bond has been posted.

(b) Accrued interest on amounts remitted by the *department* [~~commissioner~~] shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid to the *department* [~~commissioner~~] under Section 401.389(a) and ending on the date the penalty is remitted.

SECTION 3.0929. Section 401.412(c), Health and Safety Code, is amended to read as follows:

(c) The commission may adopt any rules and guidelines reasonably necessary to exercise its authority under this section. In adopting rules and guidelines, the commission shall consider the compatibility of those rules and guidelines with federal regulatory programs and the rules and guidelines of the *executive commissioner* [~~board~~].

SECTION 3.0930. Section 401.414, Health and Safety Code, is amended to read as follows:

Sec. 401.414. MEMORANDA OF UNDERSTANDING. The Texas Commission on Environmental Quality, the *executive commissioner for the* Health and Human Services Commission, and the Railroad Commission of Texas by rule shall adopt memoranda of understanding defining their respective duties under this chapter.

SECTION 3.0931. Section 401.415(e), Health and Safety Code, is amended to read as follows:

(e) To ensure that the State of Texas retains its Agreement Status with the *federal commission* [~~U.S. Nuclear Regulatory Commission~~], and to ensure that radioactive materials are managed consistently to protect the public health and safety and the environment, the Railroad Commission of Texas shall issue rules on the management of oil and gas NORM waste and in so doing shall consult with the *commission* [~~Texas Natural Resource Conservation Commission~~] and the *department* [~~Department of Health~~] regarding protection of the public health and the environment. The rules of the railroad commission shall provide protection for public health, safety, and the environment equivalent to the protection provided by rules applicable to disposal of other NORM wastes having similar properties, quantities, and distribution, although the approved methods and sites for disposing of oil and gas NORM wastes may be different from those approved for other NORM wastes.

SECTION 3.0932. Section 401.421(3), Health and Safety Code, is amended to read as follows:

(3) "Mammography system" includes the following:

(A) an x-ray unit used as a source of radiation in producing images of breast tissue;

(B) an imaging system used for the formation of a latent image of breast tissue;

(C) an imaging processing device for changing a latent image of breast tissue to a visual image that can be used for diagnostic purposes;

(D) a viewing device used for the visual evaluation of an image of breast tissue if the image is produced in interpreting visual data captured on an image receptor;

(E) a medical radiological technologist who performs a mammography; and

(F) a physician who engages in, and who meets the requirements *provided* [~~adopted~~] by *department* [~~board~~] rule relating to, the reading, evaluation, and interpretation of mammograms.

SECTION 3.0933. The heading to Section 401.423, Health and Safety Code, is amended to read as follows:

Sec. 401.423. POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER AND DEPARTMENT* [~~BOARD~~].

SECTION 3.0934. Section 401.423, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (a–1) to read as follows:

(a) The *department* [~~board~~] shall:

(1) prescribe application forms for original and renewal certifications; *and*

(2) [~~adopt rules for the administration of this subchapter; and~~

[~~(3)~~] take other action necessary to enforce this subchapter.

(a–1) The executive commissioner shall adopt rules for the administration of this subchapter.

SECTION 3.0935. Sections 401.424(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) To protect the public health, the *executive commissioner* [~~board~~] by rule may adopt more stringent or additional requirements for:

(1) the certification of mammography systems; and

(2) the retention of original mammograms.

(c) To protect the public health, the *executive commissioner* [~~board~~] by rule shall adopt qualifications for a physician who reads, evaluates, and interprets a mammogram that are no less stringent than the standards of the American College of Radiology.

(d) The *department* [~~board~~] shall make available to the public copies of the criteria of the American College of Radiology mammography accreditation program or the modified criteria *provided* [~~adopted~~] by *department* [~~board~~] rule.

SECTION 3.0936. Section 401.426(a), Health and Safety Code, is amended to read as follows:

(a) A person who owns, leases, or uses or the agent of a person who owns, leases, or uses a mammography system must file a written application for certification under Section 401.424 on a form prescribed by the *department* [~~board~~].

SECTION 3.0937. Section 401.427, Health and Safety Code, is amended to read as follows:

Sec. 401.427. CERTIFICATION RENEWAL; FEES. (a) A certification is valid for three years.

(b) The *executive commissioner* [~~board~~] by rule may adopt a system under which certifications under this subchapter expire on various dates during the year.

(c) The *executive commissioner by rule* [~~board~~] shall set and *the department shall* collect an annual fee for certification holders in an amount reasonable and necessary to administer this subchapter. A certification holder who fails to pay the annual fee before the date set by the *executive commissioner* [~~board~~] shall pay the annual fee and a late fee set by the *executive commissioner* [~~board~~]. The *department* [~~board~~] may revoke the certification of a certification holder who does not pay the annual fee and late fee before the required date.

(d) A certification holder may renew the certification by filing an application for renewal and paying the annual fee before the date the certification expires. If a certification holder fails to renew the certification by the required date, the certification holder may renew the certification on payment of the annual fee and a late fee set by the *executive commissioner* [~~board~~]. If the certification is not renewed before the 181st day after the date on which the certification expired, the certification holder must apply for an original certification under this subchapter.

(e) A mammography system may not be used after the expiration date of the certification unless the holder of the expired certification has made a timely and sufficient application for renewal of the certification as provided under Section 2001.054, Government Code, and a final determination of the application by the *department* [~~board~~] has not been made.

SECTION 3.0938. Section 401.428(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules establishing the grounds for denial, suspension, revocation, or reinstatement of a certification and establishing procedures for disciplinary actions.

SECTION 3.0939. Sections 401.430(b) and (h), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall establish the routine inspection frequency for mammography systems that receive certification under this subchapter.

(h) To protect the public health, the *executive commissioner* [~~board~~] may adopt rules

concerning the grounds for posting a failure notice and the placement and size of the failure notice, and for patient notification under Subsections (f) and (g), as appropriate.

SECTION 3.0940. Subtitle A, Title 6, Health and Safety Code, is amended by adding Chapter 430 to read as follows:

CHAPTER 430. GENERAL PROVISIONS

Sec. 430.001. DEFINITIONS. In this subtitle:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.0941. Section 431.002(8), Health and Safety Code, is reenacted to read as follows:

(8) "Consumer commodity," except as otherwise provided by this subdivision, means any food, drug, device, or cosmetic, as those terms are defined by this chapter or by the federal Act, and any other article, product, or commodity of any kind or class that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or for use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of the consumption or use. The term does not include:

(A) a meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(B) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), or The Virus–Serum–Toxin Act (21 U.S.C. 151 et seq.);

(C) a drug subject to the provisions of Section 431.113(c)(1) or Section 503(b)(1) of the federal Act;

(D) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 205(e)); or

(E) a commodity subject to the provisions of Chapter 61, Agriculture Code, relating to the inspection, labeling, and sale of agricultural and vegetable seed.

SECTION 3.0942. Section 431.002(17), Health and Safety Code, is amended to read as follows:

(17) "Food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

(A) a pesticide chemical in or on a raw agricultural commodity;

(B) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;

(C) a color additive;

(D) any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, Pub. L. No. 85–929, 52

Stat. 1041 (codified as amended in various sections of 21 U.S.C.), pursuant to the federal Act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of *1906* [~~1907~~] (21 U.S.C. *601 et seq.* [~~603~~]); or

(E) a new animal drug.

SECTION 3.0943. Section 431.021, Health and Safety Code, is amended to read as follows:

Sec. 431.021. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) the adulteration or misbranding of any food, drug, device, or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of rules adopted under the authority of this chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(1) are engaged in the packaging or labeling of such commodities; or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into commerce of any article in violation of Section 431.084, 431.114, or 431.115;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by Sections 431.042–431.044; or the failure to establish or maintain any record or make any report required under Section 512(j), (l), or (m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record;

(h) the manufacture within this state of any food, drug, device, or cosmetic that is adulterated or misbranded;

(i) the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false;

(j) the use, removal, or disposal of a detained or embargoed article in violation of Section 431.048;

(k) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in commerce and results in such article being adulterated or misbranded;

(l)(1) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this chapter or the regulations promulgated under the provisions of the federal Act;

(2) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of

another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

(3) the doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

(m) the using by any person to the person's own advantage, or revealing, other than to the *department* [~~commissioner, an authorized agent~~], *to* a health authority, or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under the authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under Section 431.114 or Section 505, 515, or 520(g) of the federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sections 431.042–431.044 or Section 704 of the federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter;

(q)(1) placing or causing to be placed on any drug or device or container of any drug or device, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of any drug or device, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by Subdivision (1) [~~of this subsection~~]; or

(3) making, selling, disposing of, causing to be made, sold, or disposed of, keeping in possession, control, or custody, or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling of any drug or container so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section 510 of the federal Act, the failure to provide any information required by Section 510(j) or (k) of the federal Act, or the failure to provide a notice required by Section 510(j)(2) of the federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed under Section 518 or 520(g) of the federal Act; or

(B) furnish any notification or other material or information required by or under Section 519 or 520(g) of the federal Act;

(2) with respect to any device, the submission of any report that is required by or under this chapter that is false or misleading in any material respect;

(u) the movement of a device in violation of an order under Section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained;

(v) the failure to provide the notice required by Section 412(b) or 412(c), the failure to make the reports required by Section 412(d)(1)(B), or the failure to meet the requirements prescribed under Section 412(d)(2) of the federal Act;

(w) except as provided under Subchapter M of this chapter and Section 562.1085, Occupations Code, the acceptance by a person of an unused prescription or drug, in whole or in part, for the purpose of resale, after the prescription or drug has been originally dispensed, or sold;

(x) engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices in this state without obtaining a license issued by the department under Subchapter I, L, or N, as applicable;

(y) engaging in the manufacture of food in this state or operating as a warehouse operator in this state without having a license as required by Section 431.222 or operating as a food wholesaler in this state without having a license under Section 431.222 or being registered under Section 431.2211, as appropriate;

(z) unless approved by the United States Food and Drug Administration pursuant to the federal Act, the sale, delivery, holding, or offering for sale of a self-testing kit designed to indicate whether a person has a human immunodeficiency virus infection, acquired immune deficiency syndrome, or a related disorder or condition;

(aa) making a false statement or false representation in an application for a license or in a statement, report, or other instrument to be filed with or requested by the department under this chapter;

(bb) failing to comply with a requirement or request to provide information or failing to submit an application, statement, report, or other instrument required by the department;

(cc) performing, causing the performance of, or aiding and abetting the performance of an act described by *Subsection* [~~Subdivision~~] (x);

(dd) purchasing or otherwise receiving a prescription drug from a pharmacy in violation of Section 431.411(a);

(ee) selling, distributing, or transferring a prescription drug to a person who is not authorized under state or federal law to receive the prescription drug in violation of Section 431.411(b);

(ff) failing to deliver prescription drugs to specified premises as required by Section 431.411(c);

(gg) failing to maintain or provide pedigrees as required by Section 431.412 or 431.413;

(hh) failing to obtain, pass, or authenticate a pedigree as required by Section 431.412 or 431.413;

(ii) the introduction or delivery for introduction into commerce of a drug or prescription device at a flea market;

(jj) the receipt of a prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit, and the delivery or proffered delivery of such a drug for payment or otherwise; or

(kk) the alteration, mutilation, destruction, obliteration, or removal of all or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.

SECTION 3.0944. Section 431.022(c), Health and Safety Code, is amended to read as follows:

(c) A product containing ephedrine that is not described in Subsection (a)(3) must be labeled in accordance with *department* rules [~~adopted by the Texas Department of Health~~] to indicate that sale to persons 17 years of age or younger is prohibited.

SECTION 3.0945. Sections 431.042(a), (f), (g), and (h), Health and Safety Code, are amended to read as follows:

(a) To enforce this chapter, the *department* [~~commissioner, an authorized agent,~~] or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge:

(1) enter at reasonable times an establishment, including a factory or warehouse, in which a food, drug, device, or cosmetic is manufactured, processed, packed, or held for introduction into commerce or held after the introduction;

(2) enter a vehicle being used to transport or hold the food, drug, device, or cosmetic in commerce; or

(3) inspect at reasonable times, within reasonable limits, and in a reasonable manner, the establishment or vehicle and all equipment, finished and unfinished materials, containers, and labeling of any item and obtain samples necessary for the enforcement of this chapter.

(f) The *executive commissioner* [~~board~~] may exempt a class of persons from inspection under this section if the *executive commissioner* [~~board~~] finds that inspection as applied to the class is not necessary for the protection of the public health.

(g) *The department* [~~An authorized agent~~] or *a* health authority who makes an inspection under this section to enforce the provisions of this chapter applicable to infant formula shall be permitted, at all reasonable times, to have access to and to copy and verify records:

(1) in order to determine whether the infant formula manufactured or held in the inspected facility meets the requirements of this chapter; or

(2) that are required by this chapter.

(h) *If the department* [~~An authorized agent~~] or *a* health authority *while inspecting* [~~who makes an inspection of~~] an establishment, including a factory or warehouse, [~~and~~] obtains a sample, *the department or health authority* [~~during or on completion of the inspection and~~] before leaving the establishment[~~;~~] shall give to the owner, operator, or the owner's or operator's agent a receipt describing the sample.

SECTION 3.0946. Section 431.043, Health and Safety Code, is amended to read as follows:

Sec. 431.043. ACCESS TO RECORDS. A person who is required to maintain records under this chapter or Section 519 or 520(g) of the federal Act or a person who is in charge or custody of those records shall, at the request of *the department* [~~an authorized agent~~] or *a* health authority, permit the *department* [~~authorized agent~~] or health authority at all reasonable times access to and to copy and verify the records.

SECTION 3.0947. Section 431.044(a), Health and Safety Code, is amended to read as follows:

(a) To enforce this chapter, a carrier engaged in commerce or other person receiving a food, drug, device, or cosmetic in commerce or holding a food, drug, device, or cosmetic received in commerce shall, at the request of *the department* [~~an authorized agent~~] or *a* health authority, permit the *department* [~~authorized agent~~] or health authority at all reasonable times to have access to and to copy all records showing:

(1) the movement in commerce of the food, drug, device, or cosmetic;

(2) the holding of the food, drug, device, or cosmetic after movement in commerce; and

(3) the quantity, shipper, and consignee of the food, drug, device, or cosmetic.

SECTION 3.0948. Section 431.045(c), Health and Safety Code, is amended to read as follows:

(c) If an emergency order is issued without a hearing, the department shall *propose* [~~determine~~] a time and place for a hearing *and refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall set the time*

and place for the hearing at which the emergency order is affirmed, modified, or set aside. The hearing shall be held under the contested case provisions of Chapter 2001, Government Code, and the *department's* [~~board's~~] formal hearing rules.

SECTION 3.0949. Sections 431.047(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner, an authorized agent,~~] or a health authority may petition the district court for a temporary restraining order to restrain a continuing violation of Subchapter B or a threat of a continuing violation of Subchapter B if the *department* [~~commissioner, authorized agent,~~] or health authority finds that:

(1) a person has violated, is violating, or is threatening to violate Subchapter B; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(b) A district court, on petition of the *department* [~~commissioner, an authorized agent,~~] or a health authority, and on a finding by the court that a person is violating or threatening to violate Subchapter B shall grant any injunctive relief warranted by the facts.

(d) The *department* [~~commissioner~~] and the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief under this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses. The expenses recovered by the *department may be used by* [~~commissioner are hereby appropriated to~~] the department for the administration and enforcement of this chapter. The expenses recovered by the attorney general *may be used by* [~~are hereby appropriated to~~] the attorney general.

SECTION 3.0950. Section 431.048, Health and Safety Code, is amended to read as follows:

Sec. 431.048. DETAINED OR EMBARGOED ARTICLE. (a) The *department* [~~commissioner or an authorized agent~~] shall affix to an article that is a food, drug, device, cosmetic, or consumer commodity a tag or other appropriate marking that gives notice that the article is, or is suspected of being, adulterated or misbranded and that the article has been detained or embargoed if the *department* [~~commissioner or the authorized agent~~] finds or has probable cause to believe that the article:

(1) is adulterated;

(2) is misbranded so that the article is dangerous or fraudulent under this chapter; or

(3) violates Section 431.084, 431.114, or 431.115.

(b) The tag or marking on a detained or embargoed article must warn all persons not to use the article, remove the article from the premises, or dispose of the article by sale or otherwise until permission for use, removal, or disposal is given by the *department* [~~commissioner, the authorized agent,~~] or a court.

(c) A person may not use a detained or embargoed article, remove a detained or embargoed article from the premises, or dispose of a detained or embargoed article by sale or otherwise without permission of the *department* [~~commissioner, the authorized agent,~~] or a court. The *department* [~~commissioner or the authorized agent~~] may permit perishable goods to be moved to a place suitable for proper storage.

(d) The *department* [~~commissioner or an authorized agent~~] shall remove the tag or other marking from an embargoed or detained article if the *department* [~~commissioner or an authorized agent~~] finds that the article is not adulterated or misbranded.

(e) The *department* [~~commissioner or an authorized agent~~] may not detain or embargo an article, including an article that is distressed merchandise, that is in the possession of a person licensed under Chapter 432 and that is being held for the purpose of reconditioning in accordance with Chapter 432, unless the *department* [~~commissioner or an authorized agent~~] finds or has probable cause to believe that the article cannot be adequately reconditioned in accordance with that chapter and applicable rules.

SECTION 3.0951. Sections 431.049(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) If the claimant of the detained or embargoed articles or the claimant's agent fails or refuses to transfer the articles to a secure place after the tag or other appropriate marking has been affixed as provided by Section 431.048, the *department* [~~commissioner or an authorized agent~~] may order the transfer of the articles to one or more secure storage areas to prevent their unauthorized use, removal, or disposal.

(b) The *department* [~~commissioner or an authorized agent~~] may provide for the transfer of the article if the claimant of the article or the claimant's agent does not carry out the transfer order in a timely manner. The costs of the transfer shall be assessed against the claimant of the article or the claimant's agent.

(d) The *department* [~~commissioner~~] may request the attorney general to bring an action in the district court in Travis County to recover the costs of the transfer. In a judgment in favor of the state, the court may award costs, attorney fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

SECTION 3.0952. Section 431.0495(b), Health and Safety Code, is amended to read as follows:

(b) The commissioner's recall order may require the articles to be removed to one or more secure areas approved by the *department* [~~commissioner or an authorized agent~~].

SECTION 3.0953. Sections 431.052(a) and (c), Health and Safety Code, are amended to read as follows:

(a) A court may order the delivery of a sampled article or a detained or embargoed article that is adulterated or misbranded to the claimant of the article for labeling or processing under the supervision of [~~an agent of~~] the *department* [~~commissioner or an authorized agent~~] if:

(1) the decree has been entered in the suit;

(2) the costs, fees, and expenses of the suit have been paid;

(3) the adulteration or misbranding can be corrected by proper labeling or processing; and

(4) a good and sufficient bond, conditioned on the correction of the adulteration or misbranding by proper labeling or processing, has been executed.

(c) The court shall order that the article be returned to the claimant and the bond discharged on the representation to the court by the *department* [~~commissioner or an authorized agent~~] that the article no longer violates this chapter and that the expenses of the supervision are paid.

SECTION 3.0954. Section 431.053(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~commissioner or an authorized agent~~] shall immediately condemn or render by any means unsalable as human food an article that is a nuisance under Subsection (b) and that the *department* [~~commissioner or authorized agent~~] finds in any room, building, or other structure or in a vehicle.

SECTION 3.0955. Sections 431.054(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] may assess an administrative penalty against a person who violates Subchapter B or an order adopted or registration issued under this chapter.

(b) In determining the amount of the penalty, the *department* [~~commissioner~~] shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

SECTION 3.0956. Sections 431.055(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) If a hearing is held, *an administrative law judge of the State Office of Administrative Hearings* [~~the commissioner~~] shall make findings of fact and shall issue *to the department* a written *proposal for* decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the *department* [~~commissioner~~] may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the *department* [~~commissioner~~] shall issue an order requiring that the person pay the penalty.

SECTION 3.0957. Section 431.056, Health and Safety Code, is amended to read as follows:

Sec. 431.056. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the *department* [~~commissioner~~] shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) *file a petition for* [~~if the person seeks~~] judicial review of *the department's order contesting* the amount of the penalty, the fact of the violation, or both.

(b-1) If the person seeks judicial review within the period prescribed by Subsection (b), the person may:

(1) stay enforcement of the penalty by:

(A) *paying* [~~send~~] the amount of the penalty to the *court* [~~commissioner~~] for placement in an escrow account; or

(B) *posting* [~~post~~] with the *court* [~~commissioner~~] a *supersedeas* bond for the amount of the penalty*; or*

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b-2) If the department receives a copy of an affidavit under Subsection (b-1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved by the *court* [~~commissioner~~] and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to, [~~the commissioner or~~] post the bond *with, or file the affidavit with the court* within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

SECTION 3.0958. Section 431.057, Health and Safety Code, is amended to read as follows:

Sec. 431.057. REFUND OF ADMINISTRATIVE PENALTY. *On* [~~Not later than the 30th day after~~] the date *the court's judgment* [~~of a judicial determination~~] that an

administrative penalty against a person should be reduced or not assessed *becomes final*, the *court* [~~commissioner~~] shall *order that*:

(1) [~~remit to the person~~] the appropriate amount of any penalty payment plus accrued interest *be remitted to the person not later than the 30th day after that date*; or

(2) [~~execute a release of~~] the bond *be released,* if the person has posted a bond.

SECTION 3.0959. Section 431.058, Health and Safety Code, is amended to read as follows:

Sec. 431.058. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the *department* [~~commissioner~~] may bring a civil action to recover an administrative penalty under this subchapter.

SECTION 3.0960. Section 431.0585(a), Health and Safety Code, is amended to read as follows:

(a) At the request of the *department* [~~commissioner~~], the attorney general or a district, county, or city attorney shall institute an action in district court to collect a civil penalty from a person who has violated Section 431.021.

SECTION 3.0961. Sections 431.059(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) A person commits an offense if the person violates any of the provisions of Section 431.021 relating to unlawful or prohibited acts. A first offense under this subsection is a Class A misdemeanor unless it is shown on the trial of an offense under this subsection that the defendant was previously convicted of an offense under this subsection, in which event the offense is a state jail felony. In a criminal proceeding under this section, it is not necessary to prove intent, knowledge, recklessness, or criminal negligence of the defendant beyond the degree of culpability, if any, stated in [~~Subsection (a-2) or~~] Section 431.021[~~, as applicable,~~] to establish criminal responsibility for the violation.

(b) A person is not subject to the penalties of Subsection (a):

(1) for having received an article in commerce and having delivered or offered delivery of the article, if the delivery or offer was made in good faith, unless the person refuses to furnish, on request of the *department* [~~commissioner, an authorized agent,~~] or a health authority, the name and address of the person from whom the article was received and copies of any documents relating to the receipt of the article;

(2) for having violated Section 431.021(a) or (e) if the person establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this state from whom the person received in good faith the article, to the effect that:

(A) in the case of an alleged violation of Section 431.021(a), the article is not adulterated or misbranded within the meaning of this chapter; and

(B) in the case of an alleged violation of Section 431.021(e), the article is not an article that may not, under the provisions of Section 404 or 405 of the federal Act or Section 431.084 or 431.114, be introduced into commerce;

(3) for having violated Section 431.021, if the violation exists because the article is adulterated by reason of containing a color additive not from a batch certified in accordance with regulations promulgated under the federal Act, if the person establishes a guaranty or undertaking signed by, and containing the name and address of, the manufacturer of the color additive, to the effect that the color additive was from a batch certified in accordance with the applicable regulations promulgated under the federal Act;

(4) for having violated Section 431.021(b), (c), or (k) by failure to comply with Section 431.112(i) with respect to an article received in commerce to which neither Section 503(a) nor Section 503(b)(1) of the federal Act applies if the delivery or offered delivery was made in good faith and the labeling at the time of the delivery or offer contained the same directions for use and warning statements as were contained in the labeling at the same time of the receipt of the article; or

(5) for having violated Section 431.021(l)(2) if the person acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing would result in a drug being a counterfeit drug, or for having violated Section 431.021(l)(3) if the person doing the act or causing it to be done acted in good faith and had no reason to believe that the drug was a counterfeit drug.

(c) A publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is not liable under this section for the dissemination of the false advertisement, unless the person has refused, on the request of the *department,* [~~commissioner~~] to furnish the *department* [~~commissioner~~] the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in this state who caused the person to disseminate the advertisement.

SECTION 3.0962. Section 431.060, Health and Safety Code, is amended to read as follows:

Sec. 431.060. INITIATION OF PROCEEDINGS. (a) The attorney general, or a district, county, or municipal attorney to whom the *department* [~~commissioner, an authorized agent,~~] or a health authority reports a violation of this chapter, shall initiate and prosecute appropriate proceedings without delay.

(b) The *department* [~~commissioner, the commissioner's authorized agent,~~] or [~~the~~] attorney general may, as authorized by Section 307 of the federal Act, bring in the name of this state a suit for civil penalties or to restrain a violation of Section 401 or Section 403(b) through (i), (k), (q), or (r) of the federal Act if the food that is the subject of the proceedings is located in this state.

(c) The *department* [~~commissioner, the commissioner's authorized agent,~~] or [~~the~~] attorney general may not bring a proceeding under Subsection (b):

(1) before the 31st day after the date on which the state has given notice to the secretary of its intent to bring a suit;

(2) before the 91st day after the date on which the state has given notice to the secretary of its intent to bring a suit if the secretary has, not later than the 30th day after receiving notice from the state, commenced an informal or formal enforcement action pertaining to the food that would be the subject of the suit brought by the state; or

(3) if the secretary is diligently prosecuting a suit in court pertaining to that food, has settled a suit pertaining to that food, or has settled the informal or formal enforcement action pertaining to that food.

SECTION 3.0963. Section 431.061, Health and Safety Code, is amended to read as follows:

Sec. 431.061. MINOR VIOLATION. This chapter does not require the *department* [~~commissioner, an authorized agent,~~] or a health authority to report for prosecution or the institution of proceedings under this chapter a minor violation of this chapter if the *department* [~~commissioner, authorized agent,~~] or health authority believes that the public interest is adequately served by a suitable written notice or warning.

SECTION 3.0964. Section 431.081, Health and Safety Code, is amended to read as follows:

Sec. 431.081. ADULTERATED FOOD. A food shall be deemed to be adulterated:

(a) if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance the food shall not be considered adulterated under this subdivision if the quantity of the substance in the food does not ordinarily render it injurious to health; [~~or~~]

(2) it:

(A) bears or contains any added poisonous or added deleterious substance, other than one that is a pesticide chemical in or on a raw agricultural commodity, a food

additive, a color additive, or a new animal drug which is unsafe within the meaning of Section 431.161; [~~or~~]

(B) is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 431.161(a); [~~or~~]

(C) is, or it bears or contains, any food additive which is unsafe within the meaning of Section 431.161(a); provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 431.161(a), and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of Section 431.161 and Section 409 of the federal Act, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food, when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or

(D) is, or it bears or contains, a new animal drug, or a conversion product of a new animal drug, that is unsafe under Section 512 of the federal Act; [~~or~~]

(3) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for foods; [~~or~~]

(4) it has been produced, prepared, packed or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; [~~or~~]

(5) it is, in whole or in part, the product of a diseased animal, an animal which has died otherwise than by slaughter, or an animal that has been fed upon the uncooked offal from a slaughterhouse; [~~or~~]

(6) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect in accordance with Section 409 of the federal Act;

(b) if:

(1) any valuable constituent has been in whole or in part omitted or abstracted therefrom; [~~or~~]

(2) any substance has been substituted wholly or in part therefor; [~~or~~]

(3) damage or inferiority has been concealed in any manner; [~~or~~]

(4) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is; [~~or~~]

(5) it contains saccharin, dulcin, glucin, or other sugar substitutes except in dietary foods, and when so used shall be declared; or

(6) it be fresh meat and it contains any chemical substance containing sulphites, sulphur dioxide, or any other chemical preservative which is not approved by the United States Department of Agriculture, the Animal *and* Plant Health Inspection Service (A.P.H.I.S.) or by *department* rules [~~of the board~~];

(c) if it is, or it bears or contains, a color additive that is unsafe under Section 431.161(a); or

(d) if it is confectionery and:

(1) has any nonnutritive object partially or completely imbedded in it; provided, that this subdivision does not apply if, in accordance with *department* rules [~~of the board~~], the object is of practical, functional value to the confectionery product and would not render the product injurious or hazardous to health;

(2) bears or contains any alcohol, other than alcohol not in excess of five percent by

volume. Any confectionery that bears or contains any alcohol in excess of one-half of one percent by volume derived solely from the use of flavoring extracts and less than five percent by volume:

(A) may not be sold to persons under the legal age necessary to consume an alcoholic beverage in this state;

(B) must be labeled with a conspicuous, readily legible statement that reads, "Sale of this product to a person under the legal age necessary to consume an alcoholic beverage is prohibited";

(C) may not be sold in a form containing liquid alcohol such that it is capable of use for beverage purposes as that term is used in the Alcoholic Beverage Code;

(D) may not be sold through a vending machine;

(E) must be labeled with a conspicuous, readily legible statement that the product contains not more than five percent alcohol by volume; and

(F) may not be sold in a business establishment which derives less than 50 percent of its gross sales from the sale of confectioneries; or

(3) bears or contains any nonnutritive substance; provided, that this subdivision does not apply to a nonnutritive substance that is in or on the confectionery by reason of its use for a practical, functional purpose in the manufacture, packaging, or storage of the confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this chapter; and provided further, that the *executive commissioner* [~~board~~] may, for the purpose of avoiding or resolving uncertainty as to the application of this subdivision, adopt rules allowing or prohibiting the use of particular nonnutritive substances.

SECTION 3.0965. Section 431.082, Health and Safety Code, is amended to read as follows:

Sec. 431.082. MISBRANDED FOOD. A food shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular or fails to conform with the requirements of Section 431.181;

(b) if, in the case of a food to which Section 411 of the federal Act applies, its advertising is false or misleading in a material respect or its labeling is in violation of Section 411(b)(2) of the federal Act;

(c) if it is offered for sale under the name of another food;

(d) if it is an imitation of another food, unless its label bears, in prominent type of uniform size, the word "imitation" and immediately thereafter the name of the food imitated;

(e) if its container is so made, formed, or filled as to be misleading;

(f) if in package form unless it bears a label containing:

(1) the name and place of business of the manufacturer, packer, or distributor; and

(2) an accurate statement, in a uniform location on the principal display panel of the label, of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established, by *department* rules [~~adopted by the board~~];

(g) if any word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(h) if it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by federal regulations or *department* rules [~~of the board~~] as provided by Section 431.245, unless:

(1) it conforms to such definition and standard; and

(2) its label bears the name of the food specified in the definition and standard, and, in so far as may be required by those regulations or rules, the common names of ingredients, other than spices, flavoring, and coloring, present in such food;

(i) if it purports to be or is represented as:

(1) a food for which a standard of quality has been prescribed by federal regulations or *department* rules [~~of the board~~] as provided by Section 431.245, and its quality falls below such standard unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard; or

(2) a food for which a standard or standards of fill of container have been prescribed by federal regulations or *department* rules [~~of the board~~] as provided by Section 431.245, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard;

(j) unless its label bears:

(1) the common or usual name of the food, if any; and

(2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, and if the food purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of the fruit or vegetable juice contained in the food; except that spices, flavorings, and colors not required to be certified under Section *721(c)* [~~706(c)~~] of the federal Act, other than those sold as such, may be designated as spices, flavorings, and colors, without naming each; provided that, to the extent that compliance with the requirements of this subdivision is impractical or results in deception or unfair competition, exemptions shall be established by *department* rules [~~of the board~~];

(k) if it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the *executive commissioner* [~~board~~] determines to be, and by rule prescribed, as necessary in order to fully inform purchasers as to its value for such uses;

(l) if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that, to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by *department* rules [~~of the board~~]. The provisions of this subsection and Subsections (h) and (j) with respect to artificial coloring do not apply in the case of butter, cheese, and ice cream;

(m) if it is a raw agricultural commodity that is the produce of the soil and bears or contains a pesticide chemical applied after harvest, unless the shipping container of the commodity bears labeling that declares the presence of the chemical in or on the commodity and the common or usual name and the function of the chemical, except that the declaration is not required while the commodity, after removal from the shipping container, is being held or displayed for sale at retail out of the container in accordance with the custom of the trade;

(n) if it is a product intended as an ingredient of another food and if used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(o) if it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to the color additive as may be contained in regulations issued under Section *721* [~~706~~] of the federal Act;

(p) if its packaging or labeling is in violation of an applicable regulation issued under Section 3 or 4 of the *federal* [~~Federal~~] Poison Prevention Packaging Act of 1970 (15 U.S.C. *1472 or 1473* [~~1491 et seq.~~]);

(q)(1) [~~(q) if it contains saccharin, unless its label and labeling and retail display comply with the requirements of Sections 403(o) and 403(p) of the federal Act;~~

[~~(r) if it contains saccharin and is offered for sale, but not for immediate consumption, at a retail establishment, unless the retail establishment displays prominently, where the food is held for sale, notice that is provided by the manufacturer of the food under Section 403(o)(2) of the federal Act for consumers concerning the information required by Section 403(p) of the federal Act to be on food labels and labeling;~~

[~~(s)(1)~~] if it is a food intended for human consumption and is offered for sale, unless its label or labeling bears nutrition information that provides:

(A)(i) the serving size that is an amount customarily consumed and that is expressed in a common household measure that is appropriate to the food; or

(ii) if the use of the food is not typically expressed in a serving size, the common household unit of measure that expresses the serving size of the food;

(B) the number of servings or other units of measure per container;

(C) the total number of calories in each serving size or other unit of measure that are:

(i) derived from any source; and

(ii) derived from fat;

(D) the amount of total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugar, dietary fiber, and total protein contained in each serving size or other unit of measure; and

(E) any vitamin, mineral, or other nutrient required to be placed on the label and labeling of food under the federal Act; or

(2)(A) if it is a food distributed at retail in bulk display cases, or a food received in bulk containers, unless it has nutrition labeling prescribed by the secretary; and

(B) if the secretary determines it is necessary, nutrition labeling will be mandatory for raw fruits, vegetables, and fish, including freshwater or marine finfish, crustaceans, mollusks including shellfish, amphibians, and other forms of aquatic animal life, except that:

(3)(A) Subdivisions (1) and (2) do not apply to food:

(i) that is served in restaurants or other establishments in which food is served for immediate human consumption or that is sold for sale or use in those establishments;

(ii) that is processed and prepared primarily in a retail establishment, that is ready for human consumption, that is of the type described in Subparagraph (i), that is offered for sale to consumers but not for immediate human consumption in the establishment, and that is not offered for sale outside the establishment;

(iii) that is an infant formula subject to Section 412 of the federal Act;

(iv) that is a medical food as defined in Section 5(b) of the Orphan Drug Act (21 U.S.C. Section 360ee(b)); or

(v) that is described in Section 405, clause (2), of the federal Act;

(B) Subdivision (1) does not apply to the label of a food if the secretary determines by regulation that compliance with that subdivision is impracticable because the package of the food is too small to comply with the requirements of that subdivision and if the label of that food does not contain any nutrition information;

(C) if the secretary determines that a food contains insignificant amounts of all the nutrients required by Subdivision (1) to be listed in the label or labeling of food, the requirements of Subdivision (1) do not apply to the food if the label, labeling, or advertising of the food does not make any claim with respect to the nutritional value of the food, provided that if the secretary determines that a food contains insignificant amounts of more than half the nutrients required by Subdivision (1) to be in the label or labeling of the food, the amounts of those nutrients shall be stated in a simplified form prescribed by the secretary;

(D) if a person offers food for sale and has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers that is not more than $50,000, the requirements of this subsection do not apply to food sold by that person to consumers unless the label or labeling of food offered by that person provides nutrition information or makes a nutrition claim;

(E) if foods are subject to Section 411 of the federal Act, the foods shall comply with Subdivisions (1) and (2) in a manner prescribed by the rules; and

(F) if food is sold by a food distributor, Subdivisions (1) and (2) do not apply if the food distributor principally sells food to restaurants or other establishments in which food is served for immediate human consumption and the food distributor does not manufacture, process, or repackage the food it sells;

(r) [~~(t)~~] if it is a food intended for human consumption and is offered for sale, and a claim is made on the label, labeling, or retail display relating to the nutrient content or a nutritional quality of the food to a specific disease or condition of the human body, except as permitted by Section 403(r) of the federal Act; or

(s) [~~(u)~~] if it is a food intended for human consumption and its label, labeling, and retail display do not comply with the requirements of Section 403(r) of the federal Act pertaining to nutrient content and health claims.

SECTION 3.0966. Section 431.083, Health and Safety Code, is amended to read as follows:

Sec. 431.083. FOOD LABELING EXEMPTIONS. (a) Except as provided by Subsection (c), the *executive commissioner* [~~board~~] shall adopt rules exempting from any labeling requirement of this chapter:

(1) small open containers of fresh fruits and fresh vegetables; and

(2) food that is in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on conditions that the food is not adulterated or misbranded under the provisions of this chapter when removed from the processing, labeling, or repacking establishment.

(b) Food labeling exemptions adopted under the federal Act apply to food in this state except as modified or rejected by *department* rules [~~adopted by the board~~].

(c) The *executive commissioner* [~~board~~] may not adopt rules under Subsection (a) to exempt foods from the labeling requirements of Sections 403(q) and (r) of the federal Act.

SECTION 3.0967. Section 431.084, Health and Safety Code, is amended to read as follows:

Sec. 431.084. EMERGENCY PERMITS FOR FOODS CONTAMINATED WITH MICROORGANISMS. (a) The *department* [~~commissioner~~] shall provide for the issuance of temporary permits to a manufacturer, processor, or packer of a class of food in any locality that provides conditions for the manufacture, processing, or packing for the class of food as necessary to protect the public health only if the *department* [~~commissioner~~] finds after investigation that:

(1) the distribution in this state of a class of food may, because the food is contaminated with microorganisms during the manufacture, processing, or packing of the food in any locality, be injurious to health; and

(2) the injurious nature of the food cannot be adequately determined after the food has entered commerce.

(b) The *executive commissioner* [~~board~~] by rule shall establish standards and procedures for the enforcement of this section.

(c) During the period for which permits are issued for a class of food determined by the *department* [~~commissioner~~] to be injurious under Subsection (a), a person may not introduce or deliver for introduction into commerce the food unless the person is a

manufacturer, processor, or packer who has a permit issued by the *department* [~~commissioner~~] as authorized by rules adopted under this section.

(d) The *department* [~~commissioner~~] may immediately suspend a permit issued under this section if a condition of the permit is violated. An immediate suspension is effective on notice to the permit holder.

(e) A holder of a permit that has been suspended may at any time apply for the reinstatement of the permit. Immediately after a hearing and an inspection of the permit holder's establishment, the *department* [~~commissioner~~] shall reinstate the permit if adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

(f) A permit holder shall provide access to the permit holder's factory or establishment to *the department* [~~an authorized agent~~] to allow the *department* [~~agent~~] to determine whether the permit holder complies with the conditions of the permit. Denial of access is grounds for suspension of the permit until the permit holder freely provides the access.

SECTION 3.0968. Section 431.111, Health and Safety Code, is amended to read as follows:

Sec. 431.111. ADULTERATED DRUG OR DEVICE. A drug or device shall be deemed to be adulterated:

(a)(1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or

(2)(A) if it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or

(B) if it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess; or

(3) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(4) if it:

(A) bears or contains, for purposes of coloring only, a color additive that is unsafe under Section 431.161(a); or

(B) is a color additive, the intended use of which in or on drugs or devices is for purposes of coloring only, and is unsafe under Section 431.161(a); or

(5) if it is a new animal drug that is unsafe under Section 512 of the federal Act;

(b) if it purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standards set forth in such compendium. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under the authority of the federal Act. No drug defined in an official compendium shall be deemed to be adulterated under this *subsection* [~~paragraph~~] because it differs from the standards of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standards is plainly stated on its label. Whenever a drug is recognized in *The* [~~the~~] United States *Pharmacopeia and The* [~~Pharmacopoeia~~] National Formulary *(USP–NF)*, it shall be subject to the requirements of the *USP–NF* [~~United States Pharmacopoeia National Formulary~~];

(c) if it is not subject to *Subsection* [~~the provision of Paragraph~~] (b) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess;

(d) if it is a drug and any substance has been:

(1) mixed or packed therewith so as to reduce its quality or strength; or

(2) substituted wholly or in part therefor;

(e) if it is, or purports to be or is represented as, a device that is subject to a performance standard established under Section 514 of the federal Act, unless the device is in all respects in conformity with the standard;

(f)(1) if it is a class III device:

(A)(i) that is required by a regulation adopted under Section 515(b) of the federal Act to have an approval under that section of an application for premarket approval and that is not exempt from Section 515 as provided by Section 520(g) of the federal Act; and

(ii)(I) for which an application for premarket approval or a notice of completion of a product development protocol was not filed with the United States Food and Drug Administration by the 90th day after the date of adoption of the regulation; or

(II) for which that application was filed and approval was denied or withdrawn, for which that notice was filed and was declared incomplete, or for which approval of the device under the protocol was withdrawn;

(B) that was classified under Section 513(f) of the federal Act into class III, which under Section 515(a) of the federal Act is required to have in effect an approved application for premarket approval, that is not exempt from Section 515 as provided by Section 520(g) of the federal Act, and that does not have the application in effect; or

(C) that was classified under Section 520(l) of the federal Act into class III, which under that section is required to have in effect an approved application under Section 515 of the federal Act, and that does not have the application in effect, except that:

(2)(A) in the case of a device classified under Section 513(f) of the federal Act into class III and intended solely for investigational use, Subdivision (1)(B) does not apply to the device during the period ending on the 90th day after the date of adoption of the regulations prescribing the procedures and conditions required by Section 520(g)(2) of the federal Act; and

(B) in the case of a device subject to a regulation adopted under Section 515(b) of the federal Act, Subdivision (1) does not apply to the device during the period ending on whichever of the following dates occurs later:

(i) the last day of the 30–day calendar month beginning after the month in which the classification of the device into class III became effective under Section 513 of the federal Act; or

(ii) the 90th day after the date of adoption of the regulation;

(g) if it is a banned device;

(h) if it is a device and the methods used in, or the facilities or controls used for its manufacture, packing, storage, or installations are not in conformity with applicable requirements under Section 520(f)(1) of the federal Act or an applicable condition as prescribed by an order under Section 520(f)(2) of the federal Act; or

(i) if it is a device for which an exemption has been granted under Section 520(g) of the federal Act for investigational use and the person who was granted the exemption or any investigator who uses the device under the exemption fails to comply with a requirement prescribed by or under that section.

SECTION 3.0969. Sections 431.113(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner shall* [~~board is directed to~~] adopt rules exempting from any labeling or packaging requirement of this chapter drugs and devices that are, in ac-

cordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packaged on condition that such drugs and devices are not adulterated or misbranded under the provisions of this chapter on removal from such processing, labeling, or repacking establishment.

(b) Drugs and device labeling or packaging exemptions adopted under the federal Act shall apply to drugs and devices in this state except insofar as modified or rejected by *department* rules [~~of the board~~].

SECTION 3.0970. Section 431.114, Health and Safety Code, is amended to read as follows:

Sec. 431.114. NEW DRUGS. (a) A person shall not sell, deliver, offer for sale, hold for sale or give away any new drug unless:

(1) an application with respect thereto has been approved and the approval has not been withdrawn under Section 505 of the federal Act; and

(2) a copy of the letter of approval or approvability issued by the *United States* [~~Federal~~] Food and Drug Administration is on file with the *department* [~~commissioner~~] if the product is manufactured in this state.

(b) A person shall not use in or on human beings or animals a new drug or new animal drug limited to investigational use unless the person has filed with the *United States* [~~Federal~~] Food and Drug Administration a completed and signed *investigational new drug (IND) application* [~~"Notice of claimed investigational exemption for a new drug" form~~] in accordance with 21 C.F.R. *312.20–312.38* [~~312.1 (1980)~~] and the exemption has not been terminated. The drug shall be plainly labeled in compliance with Section 505(i) of the federal Act.

(c) This section shall not apply:

(1) to any drug that is not a new drug as defined in the federal Act;

(2) to any drug that is licensed under the Public Health *Service* [~~Services~~] Act [~~of July 1, 1944~~] (42 U.S.C. 201 et seq.); or

(3) to any drug approved by the *department* [~~commissioner~~] by the authority of any prior law.

SECTION 3.0971. Section 431.115(c), Health and Safety Code, is amended to read as follows:

(c) This section does not apply to any drug:

(1) licensed under the virus-serum-toxin law of March 4, 1913 (21 U.S.C. 151–159);

(2) approved by the United States Department of Agriculture; or

(3) approved by the *department* [~~commissioner~~] by the authority of any prior law.

SECTION 3.0972. Section 431.116(f), Health and Safety Code, is amended to read as follows:

(f) Notwithstanding any other state law, pricing information disclosed by manufacturers or labelers under this section may be provided by the department only to the Medicaid vendor drug [~~purchase~~] program for its sole use. The Medicaid vendor drug [~~purchase~~] program may use the information only as necessary to administer its drug programs, including Medicaid drug programs.

SECTION 3.0973. Section 431.117, Health and Safety Code, is amended to read as follows:

Sec. 431.117. PRIORITY FOR HEALTH CARE PROVIDERS IN DISTRIBUTION OF INFLUENZA VACCINE. The executive commissioner [~~of the Health and Human Services Commission~~] shall study the wholesale distribution of influenza vaccine in this state to determine the feasibility of implementing a system that requires giving a priority in filling orders for influenza vaccine to physicians and other licensed health care providers authorized to administer influenza vaccine over retail establishments. The executive commissioner may implement such a system if it is determined to be feasible.

SECTION 3.0974. Section 431.142, Health and Safety Code, is amended to read as follows:

Sec. 431.142. MISBRANDED COSMETIC. (1) A cosmetic shall be deemed to be misbranded:

(a) if:

(1) its labeling is false or misleading in any particular; and

(2) its labeling or packaging fails to conform with the requirements of Section 431.181;

(b) if in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count, which statement shall be separately and accurately stated in a uniform location on the principal display panel of the label; provided, that under Subdivision (2) reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by *department* rules [~~adopted by the board~~];

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if its container is so made, formed, or filled as to be misleading;

(e) if it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements, applicable to the color additive, prescribed under Section *721* [~~706~~] of the federal Act. This subsection shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes, as defined by Section 431.141(a); or

(f) if its packaging or labeling is in violation of an applicable regulation issued pursuant to Section 3 or 4 of the *federal* [~~Federal~~] Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or 1473).

(2) The *executive commissioner* [~~board~~] shall adopt rules exempting from any labeling requirement of this chapter cosmetics that are in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, on condition that the cosmetics are not adulterated or misbranded under the provisions of this chapter on removal from the processing, labeling, or repacking establishment. Cosmetic labeling exemptions adopted under the federal Act shall apply to cosmetics in this state except insofar as modified or rejected by *department* rules [~~adopted by the board~~].

SECTION 3.0975. Sections 431.161(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~], whenever public health or other considerations in the state so require or on the petition of an interested party, may adopt rules prescribing tolerances for any added, poisonous, or deleterious substances, food additives, pesticide chemicals in or on raw agricultural commodities, or color additives, including zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities. The *rules* [~~rule~~] may prescribe the conditions under which a food additive or a color additive may be safely used and may prescribe exemptions if the food additive or color additive is to be used solely for investigational or experimental purposes. Rules adopted under this section limiting the quantity of poisonous or deleterious substances in food must provide equal or stricter standards than those adopted by the federal Food and Drug Administration or its successor. A person petitioning for the adoption of a rule shall establish by data submitted to the *executive commissioner* [~~board~~] that a necessity exists for the rule and that its effect will not be detrimental to the public health. If the data furnished by the petitioner are not sufficient

to allow the *executive commissioner* [~~board~~] to determine whether the rules should be adopted, the *executive commissioner* [~~board~~] may require additional data to be submitted. The petitioner's failure to comply with the request is sufficient grounds to deny the request. In adopting rules relating to those substances, the *executive commissioner* [~~board~~] shall consider, among other relevant factors, the following information furnished by the petitioner, if any:

(1) the name and all pertinent information concerning the substance, including, if available, its chemical identity and composition, a statement of the conditions of the proposed use, directions, recommendations, and suggestions, specimens of proposed labeling, all relevant data bearing on the physical or other technical effect, and the quantity required to produce that effect;

(2) the probable composition of any substance formed in or on a food, drug, or cosmetic resulting from the use of that substance;

(3) the probable consumption of that substance in the diet of man and animals, taking into account any chemically or pharmacologically related substance in the diet;

(4) safety factors that, in the opinion of experts qualified by scientific training and experience to evaluate the safety of those substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(5) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(A) that substance in or on an article;

(B) any substance formed in or on an article because of the use of that substance; and

(C) the pure substance and all intermediates and impurities; and

(6) facts supporting a contention that the proposed use of that substance will serve a useful purpose.

(c) *The executive* [~~Notwithstanding Sections 11.013 and 12.001, the~~] commissioner may adopt emergency rules under Chapter 2001, Government Code, to establish tolerance levels of poisonous or deleterious substances in food.

SECTION 3.0976. Section 431.181(d), Health and Safety Code, is amended to read as follows:

(d) Whenever the *executive commissioner* [~~board~~] determines that rules containing prohibitions or requirements other than those prescribed by Subsection (a) are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the *executive commissioner* [~~board~~] shall adopt with respect to that commodity rules effective to:

(1) establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this *subdivision* [~~paragraph~~] shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages that may be used to enclose any commodity;

(2) regulate the placement on any package containing any commodity, or on any label affixed to the commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(3) require that the label on each package of a consumer commodity (other than one which is a food within the meaning of Section *431.002* [~~431.002(15)~~]) bear:

(A) the common or usual name of the consumer commodity, if any; and

(B) in case the consumer commodity consists of two or more ingredients, the com-

mon or usual name of each ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or

(4) prevent the nonfunctional slack-fill of packages containing consumer commodities. For the purpose of this subdivision, a package shall be deemed to be nonfunctionally slack-filled if it is filled of substantially less than its capacity for reasons other than:

(A) protection of the contents of the package; or

(B) the requirements of the machine used for enclosing the contents in the package.

SECTION 3.0977. Section 431.183(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~board~~] by rule shall authorize the advertisement of a drug having a curative or therapeutic effect for a disease listed under Subsection (a) if the *executive commissioner* [~~board~~] determines that an advance in medical science has made any type of self-medication safe for the disease. The *executive commissioner* [~~board~~] may impose conditions and restrictions on the advertisement of the drug necessary in the interest of public health.

SECTION 3.0978. Section 431.2031(c), Health and Safety Code, is amended to read as follows:

(c) The department may issue a license to a person who engages in the wholesale distribution of drugs outside this state to engage in the wholesale distribution of drugs in this state, if after an examination of the reports of the person's compliance history and current compliance record, the department determines that the person is in compliance with this subchapter and *department* [~~the board's~~] rules.

SECTION 3.0979. Section 431.204(b), Health and Safety Code, is amended to read as follows:

(b) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall set the fees in amounts that allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing and acting on a license;

(2) amending and renewing a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

SECTION 3.0980. Sections 431.207(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner of state health services~~] may refuse an application for a license or may suspend or revoke a license if the applicant or licensee:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has not complied with this chapter or the rules implementing this chapter;

(6) has violated Section 431.021(l)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated Chapter 481 or 483;

(8) has violated the rules of the *public safety* director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain; or

(9) fails to complete a license application or submits an application that contains false, misleading, or incorrect information or contains information that cannot be verified by the department.

(b) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter.

SECTION 3.0981. Section 431.208(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~department~~] shall adopt rules to implement this section.

SECTION 3.0982. Sections 431.2211(b) and (e), Health and Safety Code, are amended to read as follows:

(b) An exemption from the licensing requirements prescribed by this subchapter does not exempt the person from other provisions prescribed by this subchapter or from rules adopted by the *executive commissioner* [~~board~~] to administer and enforce those provisions.

(e) A food wholesaler that is not required to obtain a license for a place of business under Subsection (d) shall register that place of business with the department. The *executive commissioner* [~~department~~] shall adopt rules for the registration of food wholesalers under this section.

SECTION 3.0983. Section 431.222(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section 431.2211, a food manufacturer, food wholesaler, or warehouse operator in this state must apply for and obtain from the department *every two years* [~~each year~~] a license for each place of business that the food manufacturer, food wholesaler, or warehouse operator operates in this state. The food manufacturer, food wholesaler, or warehouse operator must pay a licensing fee for each establishment.

SECTION 3.0984. Section 431.223(b), Health and Safety Code, is amended to read as follows:

(b) The license application must be signed, verified, and filed on a form furnished by the department according to *department* [~~the~~] rules [~~adopted by the board~~].

SECTION 3.0985. Sections 431.224(a), (b), (c), and (e), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~board~~] shall collect fees for:

(1) a license that is filed or renewed;

(2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.2251; and

(3) an inspection performed to enforce this subchapter and rules adopted under this subchapter.

(b) The *department* [~~board~~] may charge [~~annual~~] fees *every two years*.

(c) The *executive commissioner* [~~board~~] by rule shall set the fees in amounts that allow the department to recover *the biennial* [~~at least 50 percent of the annual~~] expenditures of state funds by the department in:

(1) reviewing and acting on a license;

(2) amending and renewing a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(e) All license fees received by the department under this subchapter shall be deposited in the state treasury to the credit of the food and drug *registration account* [~~license fee fund~~].

SECTION 3.0986. Sections 431.2245(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] shall establish a system for processing licensing fees under this chapter, including vended water facility licensing fees.

(c) The comptroller shall cooperate with the *department* [~~commissioner~~] in developing the fee processing system.

SECTION 3.0987. Section 431.225, Health and Safety Code, is amended to read as follows:

Sec. 431.225. EXPIRATION DATE. (a) The *executive commissioner* [~~board~~] by rule may provide that licenses expire on different dates [~~during the year~~].

(b) *If* [~~For the year in which~~] the license expiration date is changed, license fees [~~payable on or before September 1~~] shall be prorated so that each license holder pays only that portion of the license fee allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

SECTION 3.0988. Section 431.2251, Health and Safety Code, is amended to read as follows:

Sec. 431.2251. CHANGE IN LOCATION OF PLACE OF BUSINESS. Not later than the 31st day before the date of the change, the license holder shall notify in writing the *department* [~~commissioner or the commissioner's designee~~] of the license holder's intent to change the location of a licensed place of business. The notice shall include the address of the new location and the name and residence address of the individual in charge of the place of business. Not later than the 10th day after the completion of the change of location, the license holder shall forward to the *department* [~~commissioner or the commissioner's designee~~] the name and residence address of the individual in charge of the new place of business. Notice is considered adequate if the license holder provides the intent and verification notices to the *department* [~~commissioner or the commissioner's designee~~] by certified mail, return receipt requested, mailed to the central office of the department.

SECTION 3.0989. Section 431.226, Health and Safety Code, is amended to read as follows:

Sec. 431.226. REFUSAL TO GRANT LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The *department* [~~commissioner~~] may refuse an application for a license or may suspend or revoke a license.

(b) The *executive commissioner* [~~board~~] by rule shall establish minimum standards for granting and maintaining a license. In adopting rules under this section, the *executive commissioner* [~~board~~] shall:

(1) ensure that the minimum standards prioritize safe handling of fruits and vegetables based on known safety risks, including any history of outbreaks of foodborne communicable diseases; and

(2) consider acceptable produce safety standards developed by a federal agency, state agency, or university.

(c) The refusal or the suspension or revocation of a license by the *department* [~~commissioner~~] and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

SECTION 3.0990. Section 431.227(d), Health and Safety Code, is amended to read as follows:

(d) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules to implement this section.

SECTION 3.0991. Sections 431.241(a), (b), (c), (d), (e), and (g), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] may adopt rules for the efficient enforcement of this chapter.

(b) The *executive commissioner* [~~board~~] may conform [~~its~~] rules *adopted under this chapter*, if practicable, with regulations adopted under the federal Act.

(c) The enumeration of specific federal laws and regulations in Sections 431.244 and 431.245 does not limit the general authority granted to the *executive commissioner* [~~board~~] in Subsection (b) to conform [~~its~~] rules *adopted under this chapter* to those adopted under the federal Act.

(d) The *executive commissioner* [~~board~~] may adopt the federal regulations issued by the secretary pursuant to the Prescription Drug Marketing Act of 1987 (21 U.S.C. Sections 331, 333, 353, and 381), as necessary or desirable so that the state wholesale drug distributor licensing program in Subchapter *N* [~~I of this chapter~~] may achieve compliance with that Act.

(e) The *executive commissioner* [~~board and the Texas Department of Human Services~~] shall not establish a drug formulary that restricts by any prior or retroactive approval process a physician's ability to treat a patient with a prescription drug that has been approved and designated as safe and effective by the United States Food and Drug Administration, in compliance with federal law and subject to review by the *executive commissioner* [~~Texas Department of Human Services, Vendor Drug Advisory Subcommittee~~].

(g) The department may assess a fee for the issuance of a certificate of free sale and another certification issued under this chapter. The *executive commissioner* [~~board~~] by rule shall set each fee in an amount sufficient to recover the cost to the department of issuing the particular certificate.

SECTION 3.0992. Section 431.244, Health and Safety Code, is amended to read as follows:

Sec. 431.244. FEDERAL REGULATIONS ADOPTED AS STATE RULES. (a) A regulation adopted by the secretary under the federal Act concerning pesticide chemicals, food additives, color additives, special dietary use, processed low acid food, acidified food, infant formula, bottled water, or vended bottled water is a rule for the purposes of this chapter, unless the *executive commissioner* [~~board~~] modifies or rejects the rule.

(b) A regulation adopted under the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) is a rule for the purposes of this chapter, unless the *executive commissioner* [~~board~~] modifies or rejects the rule. The *executive commissioner* [~~board~~] may not adopt a rule that conflicts with the labeling requirements for the net quantity of contents required under Section 4 of the Fair Packaging and Labeling Act (15 U.S.C. 1453) and the regulations adopted under that Act.

(c) A regulation adopted by the secretary under Sections 403(b) through (i) of the federal Act is a rule for the purposes of this chapter unless the *executive commissioner* [~~board~~] modifies or rejects the rule. The *executive commissioner* [~~board~~] may not adopt a rule that conflicts with the limitations provided by Sections 403(q) and (r) of the federal Act.

(d) A federal regulation that this section provides as a rule for the purposes of this chapter is effective:

(1) on the date that the regulation becomes effective as a federal regulation; and

(2) whether or not the *executive commissioner or* department has fulfilled the rulemaking provisions of Chapter 2001, Government Code.

(e) If the *executive commissioner* [~~board~~] modifies or rejects a federal regulation, the *executive commissioner* [~~board~~] shall comply with the rulemaking provisions of Chapter 2001, Government Code.

(f) For any federal regulation adopted as a state rule under this chapter, including a regulation considered to be a rule for purposes of this chapter under Subsection (a), (b), or (c), the *department* [~~Department of State Health Services~~] shall provide on its Internet website:

(1) a link to the text of the federal regulation;

(2) a clear explanation of the substance of and purpose for the regulation; and

(3) information on providing comments in response to any proposed or pending federal regulation, including an address to which and the manner in which comments may be submitted.

SECTION 3.0993. Sections 431.245(a), (b), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) A definition or standard of identity, quality, or fill of container of the federal Act is a definition or standard of identity, quality, or fill of container in this chapter, except as modified by *department* [~~board~~] rules.

(b) The *executive commissioner* [~~board~~] by rule may establish definitions and standards of identity, quality, and fill of container for a food if:

(1) a federal regulation does not apply to the food; and

(2) the *executive commissioner* [~~board~~] determines that adopting the rules will promote honest and fair dealing in the interest of consumers.

(d) The *department* [~~commissioner~~] may issue additional permits if the *department* [~~commissioner~~] determines that:

(1) it is necessary for the completion of an otherwise adequate investigation; and

(2) the interests of consumers are safeguarded.

(e) A permit issued under Subsection (d) is subject to the terms and conditions of *department* [~~board~~] rules.

SECTION 3.0994. Section 431.246, Health and Safety Code, is amended to read as follows:

Sec. 431.246. REMOVAL OF ADULTERATED ITEM FROM STORES. The *executive commissioner* [~~board~~] shall adopt rules that provide a system for removing adulterated items from the shelves of a grocery store or other retail establishment selling those items.

SECTION 3.0995. Section 431.248(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~department~~] and the Department of Agriculture shall adopt the memorandum of understanding as a rule.

SECTION 3.0996. Section 431.249, Health and Safety Code, is amended to read as follows:

Sec. 431.249. DISSEMINATION OF INFORMATION. (a) The *department* [~~commissioner~~] may publish reports summarizing the judgments, decrees, and court orders rendered under this chapter, including the nature and disposition of the charge.

(b) The *department* [~~commissioner~~] may disseminate information regarding a food, drug, device, or cosmetic in a situation that the *department* [~~commissioner~~] determines to involve imminent danger to health or gross deception of consumers.

(c) This section does not prohibit the *department* [~~commissioner~~] from collecting, reporting, and illustrating the results of an investigation by the *department* [~~commissioner~~].

SECTION 3.0997. Section 431.272(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section 431.273, a person may not operate as a distributor or manufacturer of devices in this state unless the person has a license from the *department* [~~commissioner~~] for each place of business.

SECTION 3.0998. Section 431.273(b), Health and Safety Code, is amended to read as follows:

(b) An exemption from the licensing requirements under this section does not constitute an exemption from the other provisions of this chapter or the rules adopted by the *executive commissioner* [~~board~~] to administer and enforce this chapter.

SECTION 3.0999. Sections 431.274(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A person applying for a license under this subchapter shall provide, at a minimum, the following information on a license application form furnished by the *department* [~~commissioner~~]:

(1) the name under which the business is conducted;

(2) the address of each place of business that is licensed;

(3) the name and residence address of:

(A) the proprietor, if the business is a proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) the date and place of incorporation if the business is a corporation;

(5) the names and residence addresses of the individuals in an administrative capacity showing:

(A) the managing proprietor, if the business is a proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association; and

(6) the residence address of an individual in charge of each place of business.

(b) The license application must be signed, verified, and completed in a manner described in *department* [~~the~~] rules [~~adopted by the board~~].

SECTION 3.1000. Sections 431.276(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *department* [~~board~~] may charge [~~annual~~] fees *every two years*.

(c) The *executive commissioner* [~~board~~] by rule shall set the fees in amounts that allow the department to recover *the biennial* [~~at least 50 percent of the annual~~] expenditures of state funds by the department in:

(1) reviewing and acting on a license or renewal license;

(2) amending a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

SECTION 3.1001. Section 431.278, Health and Safety Code, is amended to read as follows:

Sec. 431.278. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Not fewer than 30 days in advance of the change, the licensee shall notify the *department* [~~commissioner or the commissioner's designee~~] in writing of the licensee's intent to change the location of a licensed place of business. The notice shall include the address of the new location and the name and residence address of the individual in charge of the business at the new location.

(b) Not later than the 10th day after the date of completion of the change of location, the licensee shall notify the *department* [~~commissioner or the commissioner's designee~~] in writing to verify the change of location, the address of the new location, and the name and residence address of the individual in charge of the business at the new address.

(c) Notice is adequate if the licensee provides the intent and verification notices to the *department* [~~commissioner or the commissioner's designee~~] by certified mail, return receipt requested, mailed to the central office of the department.

SECTION 3.1002. Section 431.279, Health and Safety Code, is amended to read as follows:

Sec. 431.279. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The *department* [~~commissioner~~] may refuse an application or may suspend or revoke a license if the applicant or licensee:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs; or

(5) has not complied with this chapter or the [~~board's~~] rules implementing this chapter.

(b) The *department* [~~commissioner~~] may refuse an application for a license or may suspend or revoke a license if the *department* [~~commissioner~~] determines from evidence presented during a hearing that the applicant or licensee:

(1) has violated Section 431.021(l)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(2) has violated Chapter 481 (Texas Controlled Substances Act) or 483 (Dangerous Drugs); or

(3) has violated the rules of the *public safety* director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain.

(c) The refusal to license an applicant or the suspension or revocation of a license by the *department* [~~commissioner~~] and the appeal from that action are governed by the *department's* [~~board's~~] formal hearing procedures and the procedures for a contested case hearing under Chapter 2001, Government Code.

SECTION 3.1003. Section 431.322(c), Health and Safety Code, is amended to read as follows:

(c) The charitable drug donor shall use appropriate safeguards established by *department rule* [~~the board~~] to ensure that the drugs are not compromised or illegally diverted while being stored or transported to the charitable medical clinic.

SECTION 3.1004. Section 431.323(e), Health and Safety Code, is amended to read as follows:

(e) The donated drugs may be accepted and dispensed or administered by the charitable medical clinic only in accordance with *department* rules [~~adopted by the department~~].

SECTION 3.1005. Section 431.324, Health and Safety Code, is amended to read as follows:

Sec. 431.324. RULES. The *executive commissioner* [~~department~~] shall adopt rules to implement this subchapter that are designed to protect the public health and safety.

SECTION 3.1006. Section 431.4031(c), Health and Safety Code, is amended to read as follows:

(c) The executive commissioner [~~of the Health and Human Services Commission~~] by rule may exempt specific purchases of prescription drugs by state agencies and political subdivisions of this state if the executive commissioner determines that the requirements of this subchapter would result in a substantial cost to the state or a political subdivision of the state.

SECTION 3.1007. Section 431.404(d), Health and Safety Code, is amended to read as follows:

(d) An applicant or license holder shall submit to the department any change in or correction to the information required under this section in the form and manner prescribed by [~~the~~] department *rule*.

SECTION 3.1008. Section 431.409(b), Health and Safety Code, is amended to read as follows:

(b) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall set the fees in amounts that are reasonable and necessary and allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing and acting on a license;

(2) amending and renewing a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

SECTION 3.1009. Section 431.411(a), Health and Safety Code, is amended to read as follows:

(a) A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or pharmacy warehouse in accordance with the terms and conditions of the agreement between the wholesale distributor and the pharmacy or pharmacy warehouse. An expired, damaged, recalled, or otherwise nonsalable prescription drug that is returned to the wholesale distributor may be distributed by the wholesale distributor only to either the original manufacturer or a third-party returns processor. The returns or exchanges, salable or otherwise, received by the wholesale distributor as provided by this subsection, including any redistribution of returns or exchanges by the wholesale distributor, are not subject to the pedigree requirement under Section 431.412 if the returns or exchanges are exempt from pedigree under:

(1) Section *4* [~~503~~], Prescription Drug Marketing Act of 1987 (21 U.S.C. Section 353(c)(3)(B));

(2) the regulations adopted by the secretary to administer and enforce that Act; or

(3) the interpretations of that Act set out in the compliance policy guide of the United States Food and Drug Administration.

SECTION 3.1010. Section 431.413(d), Health and Safety Code, is amended to read as follows:

(d) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules to implement this section.

SECTION 3.1011. Sections 431.414(a), (a–1), and (b), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner of state health services~~] may refuse an application for a license or may suspend or revoke a license if the applicant or license holder:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has not complied with this subchapter or the rules implementing this subchapter;

(6) has violated Section 431.021(l)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated Chapter 481 or 483; or

(8) has violated the rules of the *public safety* director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or license holder to maintain.

(a–1) The *department* [~~commissioner of state health services~~] may suspend or revoke a license if the license holder no longer meets the qualifications for obtaining a license under Section 431.405.

(b) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter.

SECTION 3.1012. Sections 431.415(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner of state health services~~] shall issue an order requiring a person, including a manufacturer, distributor, or retailer of a prescription drug, to immediately cease distribution of the drug if the *department* [~~commissioner~~] determines there is a reasonable probability that:

(1) a wholesale distributor has:

(A) violated this subchapter;

(B) falsified a pedigree; or

(C) sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use that could cause serious adverse health consequences or death; and

(2) other procedures would result in unreasonable delay.

(c) If, after providing an opportunity for a hearing, the *department* [~~commissioner of state health services~~] determines that inadequate grounds exist to support the actions required by the order, the commissioner shall vacate the order.

SECTION 3.1013. Sections 432.003(6) and (7), Health and Safety Code, are amended to read as follows:

(6) "Distressed merchandise" means any food, drug, device, or cosmetic that is adulterated or misbranded for purposes of Section 431.081 (Adulterated Food), 431.082 (Misbranded Food), 431.111 (Adulterated Drug or Device), 431.112 (Misbranded Drug or Device), 431.141 (Adulterated Cosmetic), or 431.142 (Misbranded Cosmetic), as interpreted by *department* [~~board~~] rule and judicial decision. The term includes a food, drug, device, or cosmetic that:

(A) has lost its label or is otherwise unidentified;

(B) has been subjected to prolonged or improper storage;

(C) has been subjected for any reason to abnormal environmental conditions, including temperature extremes, humidity, smoke, water, fumes, pressure, or radiation;

(D) has been subjected to conditions that result in either its strength, purity, or quality falling below that which it purports or is represented to possess; or

(E) may have been rendered unsafe or unsuitable for human consumption or use for any reason other than those specified by this subdivision.

(7) "Drug" means an article or substance, other than a device, that is:

(A) recognized in *The* [~~the official~~] United States *Pharmacopeia and The National Formulary (USP–NF) or* [~~Pharmacopoeia,~~] the *Homoeopathic* [~~official Homeopathic~~] Pharmacopoeia of the United States *(HPUS)*, [~~the official National Formulary,~~] or a supplement to [~~any of~~] those publications;

(B) designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(C) intended to affect the structure or any function of the body of a human or other animal, excluding food; or

(D) intended for use as a component of an article or substance specified by this subdivision.

SECTION 3.1014. Sections 432.007(a), (b), and (e), Health and Safety Code, are amended to read as follows:

(a) The department shall issue a license to an applicant who complies with Section 432.006 and who meets the minimum qualifications established by *department rule* [~~the board~~].

(b) A license issued under this chapter expires *two years* [~~one year~~] after the date of issuance.

(e) A salvage operator or salvage broker shall display the license in accordance with *department* [~~board~~] rules.

SECTION 3.1015. Section 432.008(b), Health and Safety Code, is amended to read as follows:

(b) After an inspection to determine the license holder's compliance with *department* [~~the~~] rules [~~adopted by the board~~], the department shall renew the license of a license holder who submits a renewal application and pays the renewal fee.

SECTION 3.1016. Sections 432.009(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner by rule* [~~board~~] shall adopt, *and the department shall* [~~charge, and~~] collect, fees for each license application or renewal application submitted under this chapter and for inspections performed to enforce this chapter and the *department* rules adopted under this chapter. [~~The board may charge the fees annually.~~]

(b) The *executive commissioner* [~~board~~] by rule shall set the fees in amounts *that are reasonable and necessary and allow* [~~sufficient for~~] the department to recover *the biennial* [~~not less than half of the actual annual~~] expenditures of state funds by the department to:

(1) review and act on licenses;

(2) amend and renew licenses;

(3) inspect establishments operated by license holders; and

(4) implement and enforce this chapter and rules and orders adopted and licenses issued under this chapter.

SECTION 3.1017. Section 432.010, Health and Safety Code, is amended to read as follows:

Sec. 432.010. *DEPOSIT OF FEES* [~~FUND~~]. A fee collected by the department under this chapter shall be deposited in the state treasury to the credit of the *general revenue* [~~food, drug, device, and cosmetic salvage~~] fund. [~~The fund may be used only to implement this chapter.~~]

SECTION 3.1018. Section 432.011(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt rules prescribing minimum standards or related requirements for:

(1) the operation of salvage establishments and salvage warehouses; and

(2) qualifications for licenses issued under this chapter.

SECTION 3.1019. Sections 432.013(b) and (c), Health and Safety Code, are amended to read as follows:

(b) When there is an imminent threat to the health or safety of the public, the department may suspend a license without notice in accordance with rules adopted by the *executive commissioner* [~~board~~] for the emergency suspension of licenses.

(c) The department's hearing rules and the applicable provisions of Chapter 2001, Government Code, govern a hearing [~~before the department~~] for the denial, suspension, emergency suspension, or revocation of a license and any appeal from that hearing.

SECTION 3.1020. Sections 432.021(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] may assess an administrative penalty against a person who violates a rule adopted under Section 432.011 or an order adopted or license issued under this chapter.

(b) In determining the amount of the penalty, the *department* [~~commissioner~~] shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) other matters as justice may require.

SECTION 3.1021. Sections 432.022(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) If a hearing is held, *an administrative law judge of the State Office of Administrative Hearings* [~~the commissioner~~] shall make findings of fact and shall issue a written *proposal for* decision regarding the occurrence of the violation and the amount of the penalty.

(c) If the person charged with the violation does not request a hearing, the *department* [~~commissioner~~] may assess a penalty after determining that a violation has occurred and the amount of the penalty.

(d) After making a determination under this section that a penalty is to be assessed, the *department* [~~commissioner~~] shall issue an order requiring that the person pay the penalty.

SECTION 3.1022. Section 432.023, Health and Safety Code, is amended to read as follows:

Sec. 432.023. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date of issuance of an order finding that a violation has occurred, the *department* [~~commissioner~~] shall inform the person against whom the order is issued of the amount of the penalty.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) *file a petition for* [~~if the person seeks~~] judicial review of *the department's order contesting* the amount of the penalty, the fact of the violation, or both.

(b–1) Within the period prescribed by Subsection (b), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) *paying* [~~send the amount of~~] the penalty to the *court* [~~commissioner~~] for placement in an escrow account; or

(B) *posting* [~~post~~] with the *court* [~~commissioner~~] a *supersedeas* bond for the amount of the penalty*; or*

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b–2) If the department receives a copy of an affidavit under Subsection (b–1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved by the *court* [~~commissioner~~] and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to, [~~the commissioner or~~] post the bond *with, or file the affidavit with the court* within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

SECTION 3.1023. Section 432.024, Health and Safety Code, is amended to read as follows:

Sec. 432.024. REFUND OF ADMINISTRATIVE PENALTY. *On* [~~Not later than the 30th day after~~] the date *the court's judgment* [~~of a judicial determination~~] that an administrative penalty against a person should be reduced or not assessed *becomes final*, the *court* [~~commissioner~~] shall *order that*:

(1) [~~remit to the person~~] the appropriate amount of any penalty payment plus accrued interest *be remitted to the person not later than the 30th day after that date*; or

(2) [~~execute a release of~~] the bond *be released,* if the person has posted a bond.

SECTION 3.1024. Section 433.002(b), Health and Safety Code, is amended to read as follows:

(b) Regulation by the *department* [~~commissioner~~] and cooperation by this state and the United States as provided by this chapter are appropriate to protect the health and welfare of consumers and otherwise accomplish the purposes of this chapter.

SECTION 3.1025. Sections 433.003(2), (5), (13), (14), (15), (16), (17), (18), and (21), Health and Safety Code, are amended to read as follows:

(2) "Capable of use as human food" means:

(A) not naturally inedible by humans; or

(B) not denatured or otherwise identified as required by *department* rule [~~of the commissioner~~] to deter its use as human food.

(5) "Exotic animal" means a member of a species of game not indigenous to this state, including an axis deer, *nilgai* [~~nilga~~] antelope, red sheep, or other cloven-hooved ruminant animal.

(13) "Meat food product" means a product that is capable of use as human food and that is made in whole or part from meat or other portion of the carcass of livestock, except a product that:

(A) contains meat or other portions of the carcass only in a relatively small proportion or that historically has not been considered by consumers as a product of the meat food industry; and

(B) is exempted from the definition of meat food product by *department rule* [~~the commissioner~~] under conditions *assuring* [~~that the commissioner prescribes to assure~~] that the meat or other portions of the carcass contained in the product are unadulterated and that the product is not represented as a meat food product.

(14) "Official certificate" means a certificate prescribed by *department* rule [~~of the commissioner~~] for issuance by an inspector or other person performing official functions under this chapter.

(15) "Official marking device" means a device prescribed or authorized by *department rule* [~~the commissioner~~] for use in applying an official mark.

(16) "Official establishment" means an establishment designated by the *department* [~~commissioner~~] at which inspection of the slaughter of livestock or the preparation of livestock products is maintained under this chapter.

(17) "Official inspection legend" means a symbol prescribed by *department* rule [~~of the commissioner~~] showing that an article was inspected and passed as provided by this chapter.

(18) "Official mark" means the official inspection legend or other symbol prescribed by *department* rule [~~of the commissioner~~] to identify the status of an article or animal under this chapter.

(21) "Poultry product" means a poultry carcass, part of a poultry carcass, or a product any part of which is made from a poultry carcass or part of a poultry carcass, except a product that:

(A) contains poultry ingredients only in a relatively small proportion or that historically has not been considered by consumers as a product of the poultry food industry; and

(B) is exempted from the definition of poultry product by *department rule* [~~the commissioner~~] under conditions *assuring* [~~that the commissioner prescribes to assure~~] that the poultry ingredients in the product are unadulterated and that the product is not represented as a poultry product.

SECTION 3.1026. Section 433.004, Health and Safety Code, is amended to read as follows:

Sec. 433.004. ADULTERATION. A carcass, part of a carcass, meat, or a meat food product is adulterated if:

(1) it bears or contains a poisonous or deleterious substance that may render it injurious to health unless:

(A) the substance is not an added substance; and

(B) the quantity of the substance in or on the article does not ordinarily render it injurious to health;

(2) it bears or contains, because of administration of a substance to a live animal or otherwise, an added poisonous or deleterious substance that the *department has reason to believe* [~~commissioner believes~~] makes the article unfit for human food, other than a:

(A) pesticide chemical in or on a raw agricultural commodity;

(B) food additive; or

(C) color additive;

(3) any part of it is a raw agricultural commodity that bears or contains a pesticide chemical that is unsafe under Section 408, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 346a);

(4) it bears or contains a food additive that is unsafe under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348) or a color additive that is unsafe for purposes of Section *721* [~~706~~] of that Act (21 U.S.C. Section *379e* [~~376~~]);

(5) it is not adulterated under Subdivision (3) or (4), but use of the pesticide chemical, food additive, or color additive that the article bears or contains is prohibited by *department* rule [~~of the commissioner~~] in establishments at which inspection is maintained under Subchapter B;

(6) any part of it consists of a filthy, putrid, or decomposed substance or is for another reason unsound, unhealthy, unwholesome, or otherwise unfit for human food;

(7) it is prepared, packed, or held under unsanitary conditions that may have caused it to become contaminated with filth or rendered injurious to health;

(8) any part of it is the product of an animal, including an exotic animal, that has died in a manner other than slaughter;

(9) any part of its container is composed of a poisonous or deleterious substance that may render the contents injurious to health;

(10) it is intentionally subjected to radiation, unless the use of the radiation is in conformity with a regulation or exemption under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348);

(11) any part of a valuable constituent is omitted or abstracted from it, or a substance is substituted for all or part of it;

(12) damage or inferiority is concealed;

(13) a substance has been added to or mixed or packed with it in a manner that:

(A) increases its bulk or weight;

(B) reduces its quality or strength; or

(C) makes it appear better or of greater value than it is; or

(14) it is margarine containing animal fat and any part of the raw material used in it consists of a filthy, putrid, or decomposed substance.

SECTION 3.1027. Section 433.005, Health and Safety Code, is amended to read as follows:

Sec. 433.005. MISBRANDING. (a) A livestock or poultry product is misbranded if:

(1) any part of its labeling is false or misleading;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food, unless its label bears, in prominent type of uniform size, the word "imitation" immediately followed by the name of the food imitated;

(4) its container is made, formed, or filled so as to be misleading;

(5) except as provided by Subsection (b), it does not bear a label showing:

(A) the manufacturer's, packer's, or distributor's name and place of business; and

(B) an accurate statement of the quantity of the product by weight, measure, or numerical count;

(6) a word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling in sufficient terms and with sufficient conspicuousness, compared with other words, statements, designs, or devices in the label or labeling, to make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by *department* rule [~~of the commissioner~~] under Section 433.043 unless:

(A) it conforms to the definition and standard; or

(B) its label bears:

(i) the name of the food specified in the definition and standard; and

(ii) to the extent required by *department* rule [~~of the commissioner~~], the common names of optional ingredients present in the food, other than spices, flavoring, and coloring;

(8) it purports to be or is represented as a food for which a standard of fill of container has been prescribed by *department* rule [~~of the commissioner~~] under Section 433.043 and the food does not meet the standard of fill of container, unless its label bears, in the manner and form prescribed by *department* rule [~~of the commissioner~~], a statement that it does not meet the standard;

(9) except as provided by Subsection (c), it does not purport to be or is not represented as a food for which a standard of identity or composition has been prescribed by *department* rule [~~of the commissioner~~] unless its label bears:

(A) any common or usual name of the food; and

(B) if it is fabricated from two or more ingredients, the common or usual name of each ingredient;

(10) it purports to be or is represented for special dietary uses and its label does not bear the information concerning its vitamin, mineral, and other dietary properties that the *department* [~~commissioner~~], after *the executive commissioner or department consults* [~~consultation~~] with the United States Secretary of Agriculture, has determined, and *the executive commissioner has* prescribed by rule, to be necessary to fully inform purchasers of its value for those uses;

(11) it bears or contains artificial flavoring, artificial coloring, or a chemical preservative unless it bears labeling stating that fact, except as otherwise prescribed by *department* rule [~~of the commissioner~~] for situations in which compliance with this subdivision is impracticable; or

(12) it does not bear on itself or its container, as prescribed by *department* rule [~~of the commissioner~~]:

(A) the inspection legend and establishment number of the establishment in which the product was prepared; and

(B) notwithstanding any other provision of this section, other information *required* [~~the commissioner~~] by *department* rule [~~requires~~] to assure that the product will not have false or misleading labeling and that the public will be informed of the manner of handling required to keep the product in wholesome condition.

(b) The *executive* commissioner may adopt rules:

(1) exempting from Subsection (a)(5) livestock products not in containers; and

(2) providing reasonable variations from Subsection (a)(5)(B) and exempting from that subsection small packages of livestock products or poultry products.

(c) For products subject to Subsection (a)(9), the *department* [~~commissioner~~] may authorize the designation of spices, flavorings, and colorings without naming them. The *executive* commissioner may adopt rules establishing exemptions from Subsection (a)(9)(B) to the extent that compliance with that subsection is impracticable or would result in deception or unfair competition.

SECTION 3.1028. Section 433.008, Health and Safety Code, is amended to read as follows:

Sec. 433.008. RULES. (a) The *executive* commissioner shall adopt rules necessary for the efficient execution of this chapter.

(b) The *executive* commissioner shall adopt and use federal rules, regulations, and procedures for meat and poultry inspection, as applicable.

(c) The *executive commissioner* [~~department~~] may adopt rules requiring a processing establishment that processes livestock under Section 433.006(a)(2) to obtain a grant of custom exemption for that activity.

SECTION 3.1029. Section 433.009, Health and Safety Code, is amended to read as follows:

Sec. 433.009. FEES. The *department* [~~Texas Department of Health~~] may collect fees for overtime and special services rendered to establishments, and may collect a fee for services required to be performed under this chapter relating to the inspection of animals, birds, or products that are not regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.). The *executive commissioner* [~~Texas Board of Health~~] by rule shall set the inspection fee in an amount sufficient to recover the department's costs of providing those services.

SECTION 3.1030. Section 433.021, Health and Safety Code, is amended to read as follows:

Sec. 433.021. INSPECTION BEFORE SLAUGHTER. (a) To prevent the use in intrastate commerce of adulterated meat and meat food products, the *department* [~~commissioner, through livestock inspectors,~~] shall examine and inspect each livestock animal before it is allowed to enter a processing establishment in this state in which slaughtering and preparation of meat and meat food products of livestock are conducted solely for intrastate commerce.

(b) Any livestock animal found on inspection to show symptoms of disease shall be set apart and slaughtered separately from other livestock. The carcass of the animal shall be carefully examined and inspected as provided by *department* rule [~~of the commissioner~~].

SECTION 3.1031. Sections 433.022(a), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) To prevent the use in intrastate commerce of adulterated meat and meat food products, the *department* [~~commissioner, through livestock inspectors,~~] shall inspect each livestock carcass or part of a carcass capable of use as human food that is to be prepared at a processing establishment in this state in which those articles are prepared solely for intrastate commerce. If a carcass or part of a carcass is brought into the processing establishment, the inspection shall be made before a carcass or part of a carcass is allowed to enter a department in which it is to be treated and prepared for meat food products. The *department* [~~commissioner~~] shall also inspect products that have left a processing establishment and are returned to a processing establishment in which inspection is maintained.

(d) The processing establishment, in the presence of an inspector, shall destroy for food purposes each condemned carcass or part of a carcass. If the establishment fails to destroy a condemned carcass or part of a carcass, the *department* [~~commissioner~~] may remove the inspectors from the establishment.

(e) The *executive* commissioner may *adopt rules that* limit the entry of carcasses, parts of carcasses, meat, or meat food products into an establishment in which inspection under this chapter is maintained[~~, under conditions the commissioner prescribes~~] to assure that entry of the article into the establishment is consistent with the purposes of this chapter.

SECTION 3.1032. Section 433.023(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~commissioner~~] may investigate a disease finding by a livestock inspector if the *department* [~~commissioner~~] determines that the investigation is in the best interest of public health.

SECTION 3.1033. Section 433.024, Health and Safety Code, is amended to read as follows:

Sec. 433.024. INSPECTION OF PROCESSING AND SLAUGHTERING ESTABLISHMENTS. (a) The *department* [~~commissioner, through sanitation experts and other competent inspectors,~~] shall inspect each processing establishment in which livestock is slaughtered and meat and meat food products of the livestock are prepared solely for intrastate commerce as necessary to obtain information about the establishment's sanitary conditions.

(b) The *department* [~~commissioner, through sanitation experts and other competent inspectors,~~] shall inspect each slaughtering establishment whose primary business is the selling of livestock to be slaughtered by the purchaser on premises owned or operated by the seller. This subsection does not nullify the provisions in Section 433.006 [~~of the Health and Safety Code~~] relating to personal use exemption.

(c) The *executive* commissioner shall adopt rules governing sanitation maintenance in processing and slaughtering establishments as defined by this section.

(d) If sanitary conditions of a processing establishment render meat or meat food

products adulterated, the *department* [~~commissioner~~] shall prohibit the meat or meat food products from being labeled, marked, stamped, or tagged as "Texas inspected and passed."

SECTION 3.1034. Sections 433.0245(b) and (d), Health and Safety Code, are amended to read as follows:

(b) A low-volume livestock processing establishment that is exempt from federal inspection shall register with the *department* [~~Texas Department of Health~~] in accordance with rules adopted by the *executive* commissioner for registration.

(d) If contaminated livestock can be reasonably traced to a low-volume livestock processing establishment that is exempt from federal inspection, the *department* [~~commissioner~~] may request the attorney general or the district or county attorney in the jurisdiction where the facility is located to institute a civil suit to enjoin the operation of the establishment until the *department* [~~commissioner~~] determines that the establishment has been sanitized and is operating safely.

SECTION 3.1035. Sections 433.025(a) and (c), Health and Safety Code, are amended to read as follows:

(a) To prevent the use in intrastate commerce of adulterated meat food products, the *department* [~~commissioner, through inspectors,~~] shall examine and inspect all meat food products prepared in a processing establishment solely for intrastate commerce. To make the examination and inspection, an inspector shall be given access at all times to each part of the establishment, regardless of whether the establishment is being operated.

(c) The establishment shall, in the manner provided for condemned livestock or carcasses, destroy for food purposes each condemned meat food product. If the establishment does not destroy a condemned meat food product, the *department* [~~commissioner~~] may remove inspectors from the establishment.

SECTION 3.1036. Section 433.026, Health and Safety Code, is amended to read as follows:

Sec. 433.026. NIGHT INSPECTION; HOURS OF OPERATION. (a) The *department* [~~commissioner~~] shall provide for inspection at night of livestock slaughtered at night and food products prepared at night for the purposes of intrastate commerce.

(b) If the *department* [~~commissioner~~] determines that a person's operating hours are capricious or unnecessarily difficult, the *department* [~~commissioner~~] may set the person's time and duration of operation.

SECTION 3.1037. Sections 433.027(a), (b), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] shall *hire* [~~appoint the~~] inspectors of livestock that is subject to inspection under this chapter, and of carcasses, parts of carcasses, meat, meat food products, and sanitary conditions of establishments in which meat and meat food products are prepared. An inspector is an employee of the *department* [~~Texas Department of Health~~] and is under supervision of the chief officer in charge of inspection.

(b) The *department* [~~commissioner~~] shall designate at least one state inspector for each state representative district.

(c) The chief officer in charge of inspection is [~~a person designated by the commissioner as~~] responsible for animal health as it relates to public health. The chief officer in charge of inspection must be licensed to practice veterinary medicine in this state or must be eligible for such a license when employed and must obtain the license not later than two years after the date of employment. [~~The chief officer in charge of inspection is directly responsible to the commissioner.~~]

(d) An inspector shall perform the duties provided by this chapter and *department* rules [~~of the commissioner~~]. An inspection or examination must be performed as provided by *department* rules [~~of the commissioner~~].

SECTION 3.1038. Sections 433.028(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] may withdraw or refuse to provide inspection service under this subchapter from an establishment for the period the *department* [~~commissioner~~] determines necessary to carry out the purposes of this chapter if the *department* [~~commissioner~~] determines after opportunity for hearing that the applicant for or recipient of the service is unfit to engage in a business requiring inspection under this subchapter because the applicant or recipient, or a person responsibly connected with the applicant or recipient, has been convicted in a federal or state court of a felony or more than one violation of another law based on:

(1) acquiring, handling, or distributing unwholesome, mislabeled, or deceptively packaged food; or

(2) fraud in connection with a transaction in food.

(b) The *department's* [~~commissioner's~~] determination and order under this section is final unless, not later than the 30th day after the effective date of the order, the affected applicant or recipient files an application for judicial review in the appropriate court as provided by Section 433.082. Judicial review of the order is on the record from which the determination and order was made.

SECTION 3.1039. Section 433.029, Health and Safety Code, is amended to read as follows:

Sec. 433.029. ARTICLES NOT INTENDED FOR HUMAN CONSUMPTION. (a) Under this subchapter, the *department* [~~commissioner~~] may not inspect an establishment for the slaughter of livestock or the preparation of carcasses, parts of carcasses, or products of livestock if the articles are not intended for use as human food. Before offered for sale or transportation in intrastate commerce, those articles, unless naturally inedible by humans, shall be denatured or identified as provided by *department* rule [~~of the commissioner~~] to deter their use for human food.

(b) A person may not buy, sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce a carcass, part of a carcass, meat, or a meat food product that is not intended for use as human food unless the article is naturally inedible by humans, denatured, or identified as required by *department* rule [~~of the commissioner~~].

SECTION 3.1040. Sections 433.030(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) *The department* [~~A representative of the commissioner~~] may detain a carcass, part of a carcass, meat, a meat food product of livestock, a product exempted from the definition of meat food product, or a dead, dying, disabled, or diseased livestock animal if the *department* [~~representative~~] finds the article on premises where it is held for purposes of intrastate commerce, or during or after distribution in intrastate commerce, and there is reason to believe that the article:

(1) is adulterated or misbranded and is capable of use as human food; or

(2) has not been inspected as required by, or has been or is intended to be distributed in violation of:

(A) this subchapter;

(B) the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.);

(C) the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.); or

(D) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(c) A person may not move a detained article from the place where it is detained until the article is released by the *department* [~~commissioner's representative~~].

(d) The *department* [~~commissioner's representative~~] may require that each official mark be removed from the article before it is released, unless the *department* [~~commissioner~~] determines that the article is eligible to bear the official mark.

SECTION 3.1041. Section 433.031(c), Health and Safety Code, is amended to read as follows:

(c) After entry of the decree, a condemned article shall be destroyed or sold as the court directs. If the article is sold, the proceeds, minus court costs, court fees, and storage and other proper expenses, shall be deposited in the state treasury. An article may not be sold in violation of this chapter, the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.), the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.), or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.). On execution and delivery of a good and sufficient bond conditioned that the article will not be disposed of in violation of this chapter or federal law, the court may direct the article to be delivered to its owner by the *department* [~~commissioner's representative~~] subject to supervision as necessary to ensure compliance with applicable laws.

SECTION 3.1042. Section 433.032(a), Health and Safety Code, is amended to read as follows:

(a) The *executive* commissioner may adopt rules prescribing conditions under which carcasses, parts of carcasses, meat, and meat food products of livestock must be stored and handled by a person in the business of buying, selling, freezing, storing, or transporting those articles in or for intrastate commerce if the *executive* commissioner considers the rules necessary to prevent adulterated or misbranded articles from being delivered to a consumer.

SECTION 3.1043. Section 433.033, Health and Safety Code, is amended to read as follows:

Sec. 433.033. EQUINE PRODUCTS. A person may not sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, a carcass, part of a carcass, meat, or a meat food product of a horse, mule, or other equine unless the article is plainly and conspicuously marked or labeled or otherwise identified, as required by *department* rule [~~of the commissioner~~], to show the kind of animal from which the article was derived. The *department* [~~commissioner~~] may require an establishment at which inspection is maintained under this chapter to prepare those articles in an establishment separate from one in which livestock other than equines is slaughtered or carcasses, parts of carcasses, meat, or meat food products of livestock other than equines are prepared.

SECTION 3.1044. Sections 433.034(b) and (c), Health and Safety Code, are amended to read as follows:

(b) On notice by the *department* [~~commissioner's representative~~], a person required to keep records shall at all reasonable times give the *department* [~~commissioner's representative~~] and any representative of the United States Secretary of Agriculture accompanying the *department staff* [~~commissioner's representative~~]:

(1) access to the person's place of business; and

(2) an opportunity to:

(A) examine the facilities, inventory, and records;

(B) copy the records required by this section; and

(C) take a reasonable sample of the inventory, on payment of the fair market value of the sample.

(c) The person shall maintain a record required by this section for the period *prescribed* [~~the commissioner~~] by *department* rule [~~prescribes~~].

SECTION 3.1045. Sections 433.035(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] has the same rights of examination, inspection, condemnation, and detention of live exotic animals and carcasses, parts of carcasses, meat, and meat food products of exotic animals slaughtered and prepared for shipment in interstate commerce as the *department* [~~commissioner~~] has with respect to exotic animals slaughtered and prepared for shipment in intrastate commerce.

(b) The *department* [~~commissioner~~] has the same rights of inspection of establishments handling exotic animals slaughtered and prepared for shipment in interstate

commerce as the *department* [~~commissioner~~] has with respect to establishments handling exotic animals slaughtered and prepared for intrastate commerce.

(d) A rulemaking power of the *executive* commissioner relating to animals in intrastate commerce applies to exotic animals in interstate commerce.

SECTION 3.1046. Section 433.041(b), Health and Safety Code, is amended to read as follows:

(b) When an inspected carcass, part of a carcass, meat, or a meat food product is found to be unadulterated and leaves the establishment, it must bear legible information on itself or its container, as *required by department rule,* [~~the commissioner requires, that is necessary~~] to prevent it from being misbranded.

SECTION 3.1047. Section 433.042, Health and Safety Code, is amended to read as follows:

Sec. 433.042. SALE OF MISLABELED ARTICLES PROHIBITED. A person may not sell an article subject to this chapter or offer the article for sale, in intrastate commerce, under a false or misleading name or other marking or in a container of a misleading form or size. An established trade name, other marking and labeling, or a container that is not false or misleading and that is approved by the *department* [~~commissioner~~] is permitted.

SECTION 3.1048. Section 433.043, Health and Safety Code, is amended to read as follows:

Sec. 433.043. STANDARDS OF LABELING, COMPOSITION, AND FILL. (a) If the *executive* commissioner determines that standards are necessary to protect the public, the *executive* commissioner may *adopt rules prescribing* [~~prescribe~~]:

(1) the style and type size that must be used for material required to be incorporated in labeling to avoid false or misleading labeling of an article subject to this subchapter or Subchapter B; and

(2) subject to Subsection (b), a definition or standard of identity or composition or a standard of fill of container for an article subject to this subchapter.

(b) A standard prescribed under Subsection (a)(2) must be consistent with standards established under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.), the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.), and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.). To avoid inconsistency, the *department* [~~commissioner~~] shall consult with the United States Secretary of Agriculture before [~~prescribing~~] the standard *is prescribed.*

SECTION 3.1049. Section 433.044, Health and Safety Code, is amended to read as follows:

Sec. 433.044. ORDER TO CEASE FALSE OR MISLEADING PRACTICE. (a) If the *department* [~~commissioner~~] has reason to believe that a marking or labeling or the size or form of a container in use or proposed for use in relation to an article subject to this subchapter is false or misleading, the *department* [~~commissioner~~] may prohibit the use until the marking, labeling, or container is modified in the manner the *department* [~~commissioner~~] prescribes to prevent it from being false or misleading.

(b) The person using or proposing to use the marking, labeling, or container may request a hearing [~~by the commissioner~~]. The *department* [~~commissioner~~] may prohibit the use pending a final determination by the *department* [~~commissioner~~].

(c) A hearing and any appeal under this section are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

SECTION 3.1050. Section 433.045, Health and Safety Code, is amended to read as follows:

Sec. 433.045. PROTECTION OF OFFICIAL DEVICE, MARK, AND CERTIFICATE. A person may not:

(1) cast, print, lithograph, or make in any other manner, except as authorized by the *department in accordance with department rules* [~~commissioner~~]:

(A) a device containing or label bearing an official mark or a simulation of an official mark; or

(B) a form of official certificate or simulation of an official certificate;

(2) forge an official device, mark, or certificate;

(3) without the *department's* [~~commissioner's~~] authorization, use, alter, detach, deface, or destroy an official device, mark, or certificate or use a simulation of an official device, mark, or certificate;

(4) detach, deface, destroy, or fail to use an official device, mark, or certificate, in violation of a *department* rule [~~of the commissioner~~];

(5) knowingly possess, without promptly notifying the *department* [~~commissioner or the commissioner's representative~~]:

(A) an official device;

(B) a counterfeit, simulated, forged, or improperly altered official certificate; or

(C) a device, label, animal carcass, or part or product of an animal carcass, bearing a counterfeit, simulated, forged, or improperly altered official mark;

(6) knowingly make a false statement in a shipper's certificate or other certificate provided for by *department* rule [~~of the commissioner~~]; or

(7) knowingly represent that an article has been inspected and passed, when it has not, or is exempted, when it is not.

SECTION 3.1051. Section 433.053, Health and Safety Code, is amended to read as follows:

Sec. 433.053. SALE, RECEIPT, OR TRANSPORTATION OF POULTRY. A person may not sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from an official establishment, slaughtered poultry from which blood, feathers, feet, head, or viscera have not been removed as provided by *department* rule [~~of the commissioner~~], except as authorized by *department* rule [~~of the commissioner~~].

SECTION 3.1052. Sections 433.054(a) and (c), Health and Safety Code, are amended to read as follows:

(a) If registration is required by *department* rule [~~of the commissioner~~], a person may not engage in any of the following businesses, in or for intrastate commerce, unless the person has registered with the *department* [~~commissioner~~]:

(1) meat brokering or rendering;

(2) manufacturing animal food;

(3) wholesaling or warehousing for the public livestock or any part of a carcass of livestock, regardless of whether it is intended for human food; or

(4) buying, selling, or transporting dead, dying, disabled, or diseased livestock or part of a carcass of livestock.

(c) A person may not engage in the business of selling, buying, or transporting in intrastate commerce dead, dying, disabled, or diseased livestock or part of the carcass of livestock that died otherwise than by slaughter unless the transaction or transportation complies with *department* rules adopted [~~by the commissioner~~] to assure that the animals or unwholesome parts or products of the animals are not used for human food.

SECTION 3.1053. Section 433.071, Health and Safety Code, is amended to read as follows:

Sec. 433.071. RESPONSIBLE AGENCY. (a) The *department* [~~Texas Department of Health~~] is the state agency responsible for cooperating with the United States Secretary of Agriculture under Section 301, Federal Meat Inspection Act (21 U.S.C. Section 661), and Section 5, Federal Poultry Products Inspection Act (21 U.S.C. Section 454).

(b) The department shall cooperate with the secretary of agriculture in developing and administering the meat and poultry inspection program of this state under this

chapter in a manner that will achieve the purposes of this chapter and federal law and that will ensure that the requirements will be at least equal to those imposed under Titles I and IV, Federal Meat Inspection Act (21 U.S.C. Sections 601 et seq. and 671 et seq.), and Sections 1–4, 6–10, and 12–22, Federal Poultry Products Inspection Act (21 U.S.C. Sections 451–453, 455–459, and *461–467d* [~~461–467b~~]), not later than the dates prescribed by federal law.

SECTION 3.1054. Section 433.073, Health and Safety Code, is amended to read as follows:

Sec. 433.073. TECHNICAL AND LABORATORY ASSISTANCE AND TRAINING PROGRAM. The *department* [~~commissioner~~] may accept from the United States Secretary of Agriculture:

(1) advisory assistance in planning and otherwise developing the state program;

(2) technical and laboratory assistance;

(3) training, including necessary curricular and instructional materials and equipment; and

(4) financial and other aid for administration of the program.

SECTION 3.1055. Section 433.074, Health and Safety Code, is amended to read as follows:

Sec. 433.074. FINANCING. The *department* [~~commissioner~~] may spend state funds appropriated for administration of this chapter to pay 50 percent of the estimated total cost of cooperation with the federal government under this subchapter, and all of the costs of performing services in relation to the inspection of animals or products not regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.).

SECTION 3.1056. Sections 433.081(d) and (e), Health and Safety Code, are amended to read as follows:

(d) A person does not commit an offense under this section by receiving for transportation an article in violation of this chapter if the receipt is in good faith and if the person furnishes, on request of [~~a representative of~~] the *department* [~~commission~~]:

(1) the name and address of the person from whom the article is received; and

(2) any document pertaining to the delivery of the article.

(e) This chapter does not require the *department* [~~commissioner~~] to report for prosecution, or for institution of complaint or injunction proceedings, a minor violation of this chapter if the *department* [~~commissioner~~] believes that the public interest will be adequately served by a suitable written warning notice.

SECTION 3.1057. Section 433.083, Health and Safety Code, is amended to read as follows:

Sec. 433.083. INVESTIGATION BY *DEPARTMENT* [~~COMMISSIONER~~]. The *department* [~~commissioner~~] may investigate and gather and compile information concerning the organization, business, conduct, practices, and management of a person engaged in intrastate commerce and the person's relation to other persons.

SECTION 3.1058. Section 433.084, Health and Safety Code, is amended to read as follows:

Sec. 433.084. EVIDENCE AND TESTIMONY. (a) For the purposes of this chapter, the *department* [~~commissioner~~] at all reasonable times shall be given access to documentary evidence of a person being investigated or proceeded against to examine or copy the evidence. The *department* [~~commissioner~~] by subpoena may require the attendance and testimony of a witness and the production of documentary evidence relating to a matter under investigation, at a designated place of hearing in a county in which the witness resides, is employed, or has a place of business.

(b) The commissioner *or the commissioner's designee* may sign subpoenas, administer oaths and affirmations, examine witnesses, and receive evidence. On disobedience of a

subpoena, the *department* [~~commissioner~~] may request the district court to require attendance and testimony of a witness and the production of documentary evidence, and the district court having jurisdiction over the inquiry may order the compliance. Failure to obey the court's order is punishable as contempt.

SECTION 3.1059. Section 433.085, Health and Safety Code, is amended to read as follows:

Sec. 433.085. REPORT TO *DEPARTMENT* [~~COMMISSIONER~~]. The *department* [~~commissioner~~], by general or special order, may require a person engaged in intrastate commerce to file with the *department* [~~commissioner~~] an annual report, special report, or both, or answers in writing to specific questions furnishing the *department* [~~commissioner~~] information that the *department* [~~commissioner~~] requires concerning the person's organization, business, conduct, practices, management, and relation to other persons filing written answers and reports. The *department* [~~commissioner~~] may prescribe the form of the report or answers, require the report or answers to be given under oath, and prescribe a reasonable deadline for filing the report or answers, subject to the granting of additional time by the *department* [~~commissioner~~].

SECTION 3.1060. Section 433.086, Health and Safety Code, is amended to read as follows:

Sec. 433.086. MANDAMUS TO COMPEL COMPLIANCE. On application of the attorney general at the request of the *department* [~~commissioner~~], the district court may issue a writ of mandamus ordering a person to comply with this chapter or an order [~~of the commissioner~~] under this chapter.

SECTION 3.1061. Section 433.087(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~commissioner~~] may order testimony to be taken before a person designated by the *department* [~~commissioner~~] and having power to administer oaths at any stage of a proceeding or investigation under this chapter. A person may be compelled to appear and depose or produce documentary evidence at a deposition in the same manner as a witness may be compelled to appear and testify and produce documentary evidence before the *department* [~~commissioner~~] under this chapter.

SECTION 3.1062. Section 433.088, Health and Safety Code, is amended to read as follows:

Sec. 433.088. COMPENSATION OF WITNESS OR REPORTER. A witness summoned before the *department* [~~commissioner~~] is entitled to the same fees and mileage paid a witness in a state court. A witness whose deposition is taken and the person taking the deposition are each entitled to the same fees paid for similar services in a state court.

SECTION 3.1063. Section 433.089(a), Health and Safety Code, is amended to read as follows:

(a) A person is not excused from attending and testifying or producing documentary evidence before the *department* [~~commissioner~~] or in obedience to the *department's* [~~commissioner's~~] subpoena, whether signed by the commissioner or the commissioner's *designee* [~~delegate~~], or in a cause or proceeding based on or growing out of an alleged violation of this chapter, on the ground that the required testimony or evidence may tend to incriminate the person or subject the person to penalty or forfeiture.

SECTION 3.1064. Section 433.090(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person neglects or refuses to attend and testify or answer a lawful inquiry or to produce documentary evidence, if the person has the power to do so, in obedience to a subpoena or lawful requirement of the *department* [~~commissioner~~].

SECTION 3.1065. Section 433.091(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person intentionally:

(1) makes or causes to be made a false entry in an account, record, or memorandum kept by a person subject to this chapter;

(2) neglects or fails to make or cause to be made full entries in an account, record, or memorandum kept by a person subject to this chapter of all facts and transactions pertaining to the person's business;

(3) removes from the jurisdiction of this state or mutilates, alters, or otherwise falsifies documentary evidence of a person subject to this chapter; or

(4) refuses to submit to the *department* [~~commissioner or to the commissioner's authorized agent~~], for inspection and copying, documentary evidence in the person's possession or control of a person subject to this chapter.

SECTION 3.1066. Section 433.092(a), Health and Safety Code, is amended to read as follows:

(a) If a person required by this chapter to file an annual or special report does not file the report before the deadline for filing set by the *department* [~~commissioner~~] and the failure continues for 30 days after notice of the default, the person forfeits to the state $100 for each day the failure continues.

SECTION 3.1067. Section 433.093(a), Health and Safety Code, is amended to read as follows:

(a) A state officer or employee commits an offense if the officer or employee, *without the approval of the commissioner,* makes public information obtained by the *department* [~~commissioner without the approval of the commissioner~~].

SECTION 3.1068. Sections 433.094(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] may assess an administrative penalty against a person who violates this chapter, a rule adopted [~~by the board~~] under the authority of this chapter, or an order or license issued under this chapter.

(b) In determining the amount of the penalty, the *department* [~~commissioner~~] shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

SECTION 3.1069. Sections 433.095(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) If a hearing is held, the *administrative law judge* [~~commissioner~~] shall make findings of fact and shall issue *to the department* a written *proposal for* decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the *department* [~~commissioner~~] may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the *department* [~~commissioner~~] shall issue an order requiring that the person pay the penalty.

SECTION 3.1070. Section 433.096, Health and Safety Code, is amended to read as follows:

Sec. 433.096. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the *department* [~~commissioner~~] shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) *file a petition for* [~~if the person seeks~~] judicial review of *the department's order contesting* the amount of the penalty, the fact of the violation, or both.

(b–1) Within the period prescribed by Subsection (b), a person who files a petition for judicial review may:

(1) stay the enforcement of the penalty by:

(A) *paying* [~~send the amount of~~] the penalty to the *court* [~~commissioner~~] for placement in an escrow account; or

(B) *posting* [~~post~~] with the *court* [~~commissioner~~] a *supersedeas* bond for the amount of the penalty*; or*

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b–2) If the department receives a copy of an affidavit under Subsection (b–1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved by the *court* [~~commissioner~~] and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to*,* [~~the commissioner or~~] post the bond *with, or file the affidavit with the court* within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

SECTION 3.1071. Section 433.097, Health and Safety Code, is amended to read as follows:

Sec. 433.097. REFUND OF ADMINISTRATIVE PENALTY. *On* [~~Not later than the 30th day after~~] the date *the court's judgment* [~~of a judicial determination~~] that an administrative penalty against a person should be reduced or not assessed *becomes final*, the *court* [~~commissioner~~] shall *order that*:

(1) [~~remit to the person~~] the appropriate amount of any penalty payment plus accrued interest *be remitted to the person not later than the 30th day after that date*; or

(2) [~~execute a release of~~] the bond *be released* if the person has posted a bond.

SECTION 3.1072. Section 433.098, Health and Safety Code, is amended to read as follows:

Sec. 433.098. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the *department* [~~commissioner~~] may bring a civil action to recover an administrative penalty under this subchapter.

SECTION 3.1073. Sections 433.099(a) and (c), Health and Safety Code, are amended to read as follows:

(a) If it appears that a person has violated or is violating this chapter or a rule adopted under this chapter, the *department* [~~commissioner~~] may request the attorney general or the district attorney or county attorney in the jurisdiction where the violation is alleged to have occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the violation; or

(2) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy, if the *department* [~~commissioner~~] shows that the person has engaged in or is engaging in a violation.

(c) The *department* [~~commissioner~~] or the attorney general may recover reasonable ex-

penses incurred in obtaining injunctive relief under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the *department* [~~commissioner~~] under this section may be used for the administration and enforcement of this chapter. The expenses recovered by the attorney general may be used by the attorney general for any purpose.

SECTION 3.1074. Section 433.100, Health and Safety Code, is amended to read as follows:

Sec. 433.100. EMERGENCY WITHDRAWAL OF MARK OR SUSPENSION OF INSPECTION SERVICES. (a) The *department* [~~commissioner or the commissioner's designee~~] may immediately withhold the mark of inspection or suspend or withdraw inspection services if:

(1) the *department* [~~commissioner or the commissioner's designee~~] determines that a violation of this chapter presents an imminent threat to public health and safety; or

(2) a person affiliated with the processing establishment impedes an inspection under this chapter.

(b) An affected person is entitled to a review of an action of the *department* [~~commissioner or the commissioner's designee~~] under Subsection (a) in the same manner that a refusal or withdrawal of inspection services may be reviewed under Section 433.028.

SECTION 3.1075. Sections 435.001(1) and (2), Health and Safety Code, are amended to read as follows:

(1) [~~"Board" means the Texas Board of Health.~~

[~~(2)~~] "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1076. Section 435.002, Health and Safety Code, is amended to read as follows:

Sec. 435.002. GRADING OF MILK AND MILK PRODUCTS. [~~(a)~~] The *executive commissioner* [~~board~~] may [~~supervise and~~] regulate the grading and labeling of milk and milk products. *The department shall supervise the grading and labeling of milk and milk products* according to the standards, specifications, and requirements *adopted by the executive commissioner* [~~it adopts~~] for each grade and in conformity with this subchapter.

SECTION 3.1077. Section 435.003(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule may:

(1) define what constitutes Grade "A" raw milk, Grade "A" raw milk products, Grade "A" pasteurized milk, Grade "A" pasteurized milk products, milk for manufacturing purposes, and dairy products; and

(2) provide specifications for the production and handling of milk and milk products listed in Subdivision (1) according to the safety and food value of the milk or milk products and the sanitary conditions under which they are produced and handled.

SECTION 3.1078. The heading to Section 435.004, Health and Safety Code, is amended to read as follows:

Sec. 435.004. INSPECTION OF MILK AND MILK PRODUCTS BY *DEPARTMENT* [~~BOARD~~].

SECTION 3.1079. Section 435.004(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~board or its representative~~] shall sample, test, or inspect Grade "A" pasteurized milk and milk products, Grade "A" raw milk and milk products for pasteurization, milk for manufacturing purposes, and dairy products that are offered for sale.

SECTION 3.1080. Section 435.005(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~board~~] may contract with a county or municipality to act as the agent of the *department* [~~board~~] to inspect milk and milk products and to perform other regulatory functions necessary to enforce this subchapter.

SECTION 3.1081. Section 435.006, Health and Safety Code, is amended to read as follows:

Sec. 435.006. PERMIT TO SELL MILK. (a) A person who offers milk or milk products for sale or to be sold in this state must hold a permit issued by the *department* [~~board~~]. The person must apply to the *department* [~~board or the board's representative~~] for a permit.

(b) After receiving the application, the *department* [~~board or the board's representative~~] may determine and award the grade of milk or milk products offered for sale by each applicant according to the specifications for grades established under this chapter.

(c) The *department* [~~board~~] shall maintain a list of the names of all applicants to whom the *department* [~~board~~] has awarded permission to use a Grade "A" label and remove from the list the name of a person whose permit is revoked.

(d) The *department* [~~board~~] may not issue a permit to a person for a producer dairy located in an area infected with or at a high risk for bovine tuberculosis, as determined epidemiologically and defined by rule of the Texas Animal Health Commission.

SECTION 3.1082. Section 435.007(b), Health and Safety Code, is amended to read as follows:

(b) A person may not represent, publish, label, or advertise milk or milk products as being Grade "A" unless the milk or milk products are:

(1) produced or processed by a person having a permit to use a Grade "A" label as provided by this subchapter; and

(2) produced, treated, and handled in accordance with the specifications and requirements adopted by the *executive commissioner* [~~board~~] for Grade "A" milk and milk products.

SECTION 3.1083. Section 435.009(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~board~~] shall adopt rules *for the department* to assess and collect the fees imposed by Subsections (b)(5) and (6) monthly, quarterly, semiannually, or annually according to amounts due by the plant. Monthly fees shall be assessed and collected in accordance with *department* [~~board~~] rules.

SECTION 3.1084. Section 435.010, Health and Safety Code, is amended to read as follows:

Sec. 435.010. RECORDS. The *executive commissioner* [~~board~~] by rule shall establish minimum standards for recordkeeping by persons required to pay a fee under this subchapter. Those persons shall make the records available to the department on request.

SECTION 3.1085. Section 435.011(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall establish a procedure by which a person aggrieved by the application of a *department* [~~board~~] rule may receive a hearing under Chapter 2001, Government Code.

SECTION 3.1086. Sections 435.012(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *department* [~~board and its representative~~] may revoke and regrade permits if on inspection the *department* [~~board or its representative~~] finds that the use of the grade label does not conform to the specifications or requirements adopted by the *executive commissioner* [~~board~~] under this chapter.

(c) The *executive commissioner* [~~board~~] by rule shall:

(1) provide for the denial, suspension, or revocation of a permit; and

(2) establish reasonable minimum standards for granting and maintaining a permit issued under this chapter.

SECTION 3.1087. Sections 436.002(2), (22), (24), and (27), Health and Safety Code, are amended to read as follows:

(2) "Approved source" means a source of molluscan shellfish acceptable to the *department* [~~director~~].

(22) "National Shellfish Sanitation Program" means the cooperative program by the states, the United States Food and Drug Administration, and the shellfish industry that classifies molluscan shellfish growing areas and certifies interstate molluscan shellfish shippers according to the National Shellfish Sanitation Program *Guide for the Control of Molluscan Shellfish* [~~Manual of Operations~~] or its successor program and documents.

(24) "Pasteurization plant" means a place where crabmeat is heat-treated in compliance with *department* rules [~~adopted by the board~~], without complete sterilization, to improve the keeping qualities of the meat.

(27) "Prohibited area" means an area where the *department* [~~director~~] finds, according to a sanitary, chemical, or bacteriological survey, that the area contains aquatic life that is unfit for human consumption. A prohibited area for molluscan shellfish means a molluscan shellfish growing area determined to be unacceptable for transplanting, gathering for depuration, or harvesting of molluscan shellfish. The only molluscan shellfish removal permitted from a prohibited area is for the purpose of depletion.

SECTION 3.1088. Section 436.003, Health and Safety Code, is amended to read as follows:

Sec. 436.003. *HEALTH* AUTHORITY *POWER* TO DELEGATE [~~POWERS AND DUTIES~~]. [~~(a) The board by rule may delegate a power or duty imposed on the director in this chapter, including the power or duty to issue emergency rules or orders or to render a final administrative decision.~~

[~~(b)~~] A health authority may delegate any power or duty imposed on the health authority in this chapter to an employee of the local health department, the local health unit, or the public health district in which the health authority serves, unless otherwise restricted by law.

SECTION 3.1089. Section 436.011, Health and Safety Code, is amended to read as follows:

Sec. 436.011. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(1) taking, selling, offering for sale, or holding for sale molluscan shellfish from a closed area;

(2) taking, selling, offering for sale, or holding for sale molluscan shellfish from a restricted or conditionally restricted area without complying with a *department* rule [~~adopted by the board~~] to ensure that the molluscan shellfish have been purified, unless:

(A) permission is first obtained from the Parks and Wildlife Department and the transplanting is supervised by that department; and

(B) the Parks and Wildlife Department furnishes a copy of the transplant permit to the *department* [~~director~~] before transplanting activities begin;

(3) possessing a species of aquatic life taken from a prohibited area while the area was prohibited for that species;

(4) operating as a molluscan shellfish processor without a shellfish certificate for each plant or place of business;

(5) operating as a crabmeat processor without a crabmeat processing license for each plant;

(6) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat that has not been picked, handled, packaged, or pasteurized in accordance with *department* [~~the~~] rules [~~adopted by the board~~];

(7) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat from facilities for the handling and packaging of molluscan shellfish or crabmeat that do not comply with *department* [~~the~~] rules [~~adopted by the board~~];

(8) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat that is not labeled in accordance with *department* [~~the~~] rules [~~adopted by the board~~];

(9) selling, offering for sale, or holding for sale molluscan shellfish that is not in a container bearing a valid certificate number from a state or nation whose molluscan shellfish certification program conforms to the current *National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish* [~~Manual of Operations for Sanitary Control of the Shellfish Industry~~] issued by the Food and Drug Administration or its successor, except selling molluscan shellfish removed from a container bearing a valid certificate number for on-premises consumption; in the event the Texas Molluscan Shellfish Program is found to be out of conformity with the current *guide* [~~Manual of Operations~~], selling, offering for sale, or holding for sale molluscan shellfish in a container bearing a valid Texas certificate number shall not be considered a violation of this chapter provided all other requirements of this chapter are complied with and the shellfish have come from an approved source;

(10) processing, transporting, storing for sale, possessing with intent to sell, offering for sale, or selling molluscan shellfish or crabmeat for human consumption that is adulterated or misbranded;

(11) removing or disposing of a detained or embargoed article in violation of Section 436.028;

(12) altering, mutilating, destroying, obliterating, or removing all or part of the labeling of a container;

(13) adulterating or misbranding molluscan shellfish or crabmeat in commerce;

(14) refusing to permit entry or inspection, to permit the taking of a sample, or to permit access to or copying by *the department as* [~~an authorized agent of a record~~] required by this chapter;

(15) failing to establish or maintain a record or report required by this chapter or by a *department* rule [~~adopted by the board~~]; or

(16) violating a *department* rule [~~adopted by the board~~] or [~~an emergency rule or~~] order [~~adopted by the director~~].

SECTION 3.1090. Section 436.022, Health and Safety Code, is amended to read as follows:

Sec. 436.022. INSPECTION. (a) The *department* [~~director, an authorized agent,~~] or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge:

(1) enter at reasonable times, including when processing is conducted, an establishment or location in which molluscan shellfish or crabmeat is processed, packed, pasteurized, or held for introduction into commerce or held after introduction into commerce;

(2) enter a vehicle being used to transport or hold the molluscan shellfish or crabmeat in commerce; or

(3) inspect the establishment, location, or vehicle, including equipment, records, files, papers, materials, containers, labels, or other items, and obtain samples necessary for enforcement of this chapter.

(b) The inspection of an establishment or location is to determine whether the molluscan shellfish or crabmeat:

(1) is adulterated or misbranded;

(2) may not be processed, introduced into commerce, sold, or offered for sale under this chapter or *department* [~~the~~] rules [~~adopted by the board~~]; or

(3) is otherwise in violation of this chapter.

(c) The *department* [~~director, an authorized agent,~~] or a health authority may not inspect:

(1) financial data;

(2) sales data, other than shipment data;

(3) pricing data;

(4) personnel data, other than personnel data relating to the qualifications of technical and professional personnel; or

(5) research data.

SECTION 3.1091. Section 436.023, Health and Safety Code, is amended to read as follows:

Sec. 436.023. ACCESS TO RECORDS. A person who is required to maintain records under this chapter or a *department* rule [~~adopted by the board~~] or a person who is in charge or custody of those records on request shall permit the *department* [~~director, authorized agent,~~] or health authority at all reasonable times to have access to and to copy the records.

SECTION 3.1092. Section 436.024(a), Health and Safety Code, is amended to read as follows:

(a) A commercial carrier or other person receiving or holding molluscan shellfish or crabmeat in commerce on request shall permit the *department* [~~director, authorized agent,~~] or health authority at all reasonable times to have access to and to copy all records showing:

(1) the movement in commerce of the molluscan shellfish or crabmeat;

(2) the holding after movement in commerce of the molluscan shellfish or crabmeat; or

(3) the quantity, shipper, and consignee of the molluscan shellfish or crabmeat.

SECTION 3.1093. Section 436.025, Health and Safety Code, is amended to read as follows:

Sec. 436.025. EMERGENCY ORDER. (a) The *department* [~~director~~] may issue an emergency order that mandates or prohibits the taking, processing, or sale of molluscan shellfish or crabmeat in the department's jurisdiction if:

(1) the processing or sale of the molluscan shellfish or crabmeat creates or poses an immediate threat to human life or health; and

(2) other procedures available to the department to remedy or prevent the threat will result in unreasonable delay.

(b) The *department* [~~director~~] may issue the emergency order without notice and hearing if the *department* [~~director~~] or a person designated by the *department* [~~director~~] determines that issuing the emergency order without notice and hearing is necessary under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine the earliest time and place for a hearing at which the emergency order shall be affirmed, modified, or set aside. The hearing shall be held under *department* [~~board~~] rules.

(d) This section prevails over *Section* [~~Sections 11.013 and~~] 12.001.

SECTION 3.1094. Section 436.026(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~director, an authorized agent,~~] or a health authority may petition the district court for a temporary restraining order to restrain a continuing violation or a threat of a continuing violation of Section 436.011 if the *department* [~~director, authorized agent,~~] or health authority believes that:

(1) a person has violated, is violating, or is threatening to violate a provision of Section 436.011; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

SECTION 3.1095. Section 436.027(a), Health and Safety Code, is amended to read as follows:

(a) At the request of the *department* [~~director~~], the attorney general or a district, county, or municipal attorney shall institute an action in district or county court to collect a civil penalty from a person who has violated Section 436.011.

SECTION 3.1096. Section 436.028, Health and Safety Code, is amended to read as follows:

Sec. 436.028. DETAINED OR EMBARGOED ARTICLE. (a) The *department* [~~director or an authorized agent~~] may detain or embargo molluscan shellfish or crabmeat if the *department* [~~director or authorized agent~~] believes or has probable cause to believe that the molluscan shellfish or crabmeat:

(1) is adulterated; or

(2) is misbranded so that the molluscan shellfish or crabmeat is dangerous or fraudulent under this chapter.

(b) The *department* [~~director or an authorized agent~~] shall affix to any molluscan shellfish or crabmeat a tag or other appropriate marking that gives notice that the molluscan shellfish or crabmeat is, or is suspected of being, adulterated or misbranded and that the molluscan shellfish or crabmeat has been detained or embargoed.

(c) The tag or marking on a detained or embargoed article must prohibit the removal or disposal of the article unless permission is given by the *department* [~~director, the authorized agent,~~] or a court.

(d) A person may not remove a detained or embargoed article from the premises or dispose of it without permission of the *department* [~~director, the authorized agent,~~] or a court. The *department* [~~director or the authorized agent~~] may permit perishable goods to be moved to a place suitable for proper storage.

(e) The *department* [~~director or an authorized agent~~] shall remove the tag or other marking from a detained or embargoed article if the *department* [~~director or an authorized agent~~] believes that the article is not adulterated or misbranded.

(f) The claimant of a detained or embargoed article may move the article to a secure storage area with the permission of the *department* [~~director or an authorized agent~~].

SECTION 3.1097. Section 436.029, Health and Safety Code, is amended to read as follows:

Sec. 436.029. REMOVAL ORDER FOR DETAINED OR EMBARGOED ARTICLE. (a) The *department* [~~director or authorized agent~~] may order the claimant or the claimant's agent to move a detained or embargoed article to a secure place to prevent the unauthorized disposal or removal of the article.

(b) If the claimant fails to carry out the order, the *department* [~~director or the authorized agent~~] may move the article.

(c) If the *department* [~~director or the authorized agent~~] moves the article, the *department* [~~director~~] shall assess the cost of removal against the claimant.

(d) The *department* [~~director~~] may request the attorney general to bring an action in the district court in Travis County to recover the costs of removal. In a judgment in favor of the state, the court may award costs, attorney fees, and interest from the date the expense was incurred until the date the department is reimbursed.

SECTION 3.1098. Section 436.030, Health and Safety Code, is amended to read as follows:

Sec. 436.030. RECALL FROM COMMERCE. (a) The *department* [~~director~~] may order a recall of molluscan shellfish or crabmeat with:

(1) the detention or embargo of molluscan shellfish or crabmeat;

(2) the issuance of an emergency order under Section 436.025; or

(3) both.

(b) The [~~director's~~] recall order may require that the molluscan shellfish or crabmeat be removed to one or more secure areas approved by the *department* [~~director or authorized agent~~].

(c) The recall order must be in writing and be signed by the *commissioner* [~~director~~] and may be issued:

(1) before or in conjunction with a tag or other marking as provided by Section 436.028;

(2) with an emergency order authorized by Section 436.025; or

(3) both.

(d) The recall order is effective until it expires by its own terms, is withdrawn by the *department* [~~director~~], is reversed by a court in an order denying condemnation, or is set aside at a hearing authorized by Section 436.025.

(e) The claimant shall pay the costs of the removal and storage of a recalled product. If the claimant or the claimant's agent fails to carry out the recall order, the *department* [~~director~~] may recall the product. The *department* [~~director~~] shall assess the costs of the recall against the claimant.

(f) The *department* [~~director~~] may request the attorney general to bring an action in a district court in Travis County to recover the costs of recall. In a judgment in favor of the state, the court may award costs, attorney fees, and interest from the date the expense was incurred until the date the department is reimbursed.

SECTION 3.1099. Section 436.032(b), Health and Safety Code, is amended to read as follows:

(b) After entry of the court's order, *the department* [~~an authorized agent~~] shall supervise the destruction of the article.

SECTION 3.1100. Sections 436.033(a) and (c), Health and Safety Code, are amended to read as follows:

(a) A court may order the delivery of sampled, detained, or embargoed molluscan shellfish or crabmeat that is misbranded to the claimant for relabeling under the supervision of the *department* [~~director or an authorized agent~~] if:

(1) the court costs and other expenses have been paid;

(2) proper labeling can correct the misbranding; and

(3) the claimant executes a bond, conditioned on the correction of the misbranding by proper labeling.

(c) The court shall order the return of the molluscan shellfish or crabmeat to the claimant if the *department* [~~director or an authorized agent~~] represents to the court that the molluscan shellfish or crabmeat no longer violates this chapter and that the expenses of supervision are paid.

SECTION 3.1101. Sections 436.034(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~director~~] may assess an administrative penalty against a person who violates Section 436.011 or an order issued under this chapter.

(b) In determining the amount of the penalty, the *department* [~~director~~] shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) the hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) other matters as justice may require.

SECTION 3.1102. Section 436.035, Health and Safety Code, is amended to read as follows:

Sec. 436.035. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) The *department* [~~director~~] may assess an administrative penalty only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is *to be* held, the *department shall refer the matter to the State Office of Administrative Hearings, and an administrative law judge of that office* [~~director~~] shall make findings of fact and shall issue a written *proposal for* decision regarding the violation and the amount of the penalty.

(c) If the person charged with the violation does not request a hearing, the *department* [~~director~~] may assess a penalty after determining that a violation has occurred and the amount of the penalty.

(d) The *department* [~~director~~] shall issue an order requiring a person to pay a penalty assessed under this section.

[~~(e) The director may consolidate a hearing held under this section with another proceeding.~~]

SECTION 3.1103. Section 436.036, Health and Safety Code, is amended to read as follows:

Sec. 436.036. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order is issued under Section 436.035(d), the *department* [~~director~~] shall notify the person against whom the penalty is assessed of the order and the amount of the penalty.

(b) Not later than the 30th day after the date notice of the order is given to the person, the person shall:

(1) pay the penalty in full; or

(2) *file a petition for* [~~seek~~] judicial review of *the department's order contesting* the amount of the penalty, the findings of the *department* [~~director~~], or both.

(c) If the person seeks judicial review *within the period prescribed by Subsection (b)*, the person *may* [~~shall~~]:

(1) *stay enforcement of the penalty by:*

(A) paying [~~send the amount of~~] the penalty to the *court* [~~director~~] for placement in an escrow account; or

(B) posting [~~(2) post~~] with the *court* [~~director~~] a *supersedeas* bond for the amount of the penalty*; or*

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(c-1) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) A bond posted under this section must be in a form approved by the *court* [~~director~~] and must be effective until judicial review of the order or decision is final.

(e) A person who does not send the money to, [~~the director or~~] post the bond *with, or file the affidavit with the court* within the period described by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

(f) The attorney general, at the request of the *department* [~~director~~], may bring a civil action to recover an administrative penalty assessed under this subchapter.

SECTION 3.1104. Section 436.037, Health and Safety Code, is amended to read as follows:

Sec. 436.037. REFUND OF ADMINISTRATIVE PENALTY. *On* [~~Not later than the 30th day after~~] the date *the court's judgment* [~~of a judicial determination~~] that an administrative penalty against a person should be reduced or not assessed *becomes final*, the *court* [~~director~~] shall *order that*:

(1) [~~remit to the person~~] the appropriate amount of any penalty payment plus accrued interest *be remitted to the person not later than the 30th day after that date*; or

(2) [~~execute a release of~~] the bond *be released,* if the person has posted a bond.

SECTION 3.1105. Sections 436.038(f) and (g), Health and Safety Code, are amended to read as follows:

(f) A person is not subject to the penalties of Subsection (e) if the person received molluscan shellfish or crabmeat in commerce and delivered or offered to deliver the molluscan shellfish or crabmeat in good faith, unless the person refuses to furnish on request of the *department* [~~director, an authorized agent,~~] or a health authority the name and address of the person from whom the product was received and copies of any documents relating to the receipt of the product.

(g) A publisher, radiobroadcast licensee, or agency or medium for the publication or broadcast of an advertisement, except the harvester, processor, distributor, or seller of molluscan shellfish or crabmeat to which a false advertisement relates, is not liable under this section for the publication or broadcast of the false advertisement unless the person has refused to furnish, on the request of the *department* [~~director~~], the name and address of the harvester, processor, distributor, seller, or advertising agency residing in this state who caused the person to publish or broadcast the advertisement.

SECTION 3.1106. Section 436.039, Health and Safety Code, is amended to read as follows:

Sec. 436.039. INITIATION OF PROCEEDINGS. The attorney general or a district, county, or municipal attorney to whom the *department* [~~director, an authorized agent,~~] or a health authority reports a violation of this chapter shall prosecute without delay.

SECTION 3.1107. Section 436.040, Health and Safety Code, is amended to read as follows:

Sec. 436.040. MINOR VIOLATION. This chapter does not require the *department* [~~director, an authorized agent,~~] or a health authority to report for prosecution a minor violation of this chapter if the *department* [~~director, authorized agent,~~] or health authority believes that the public interest is adequately served by a written warning.

SECTION 3.1108. Section 436.061, Health and Safety Code, is amended to read as follows:

Sec. 436.061. ADULTERATED AQUATIC LIFE. (a) A species of aquatic life is adulterated if it has been taken from an area declared prohibited for that species by the *department* [~~director~~].

(b) Molluscan shellfish or crabmeat is adulterated if:

(1) it bears or contains a poisonous or deleterious substance that may render it injurious to health unless the substance is a naturally occurring substance and the quantity of the substance in the molluscan shellfish or crabmeat does not ordinarily render the substance injurious to health;

(2) it consists in whole or in part of a diseased, contaminated, filthy, or putrid substance or if it is otherwise unfit for human consumption;

(3) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or may have been rendered diseased, unwholesome, or injurious to health;

(4) it is in whole or in part the product of diseased aquatic life or has died otherwise than by taking;

(5) its container is made in whole or in part of a poisonous or deleterious substance that may render the contents injurious to health;

(6) it has been intentionally exposed to radiation, unless the use of the radiation complied with a regulation or an exemption under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348);

(7) a substance has been substituted in whole or in part for it;

(8) damage to or inferiority of the product has been concealed;

(9) a substance has been added, mixed, or packed to increase its bulk or weight, to reduce its quality or strength, or to make it appear better or of greater value than it is;

(10) it contains a chemical substance containing sulphites, sulphur dioxide, or any other chemical preservative that is not approved by the Animal *and* Plant Health Inspection Service or by *department* rules [~~of the board~~];

(11) the molluscan shellfish have been taken from a closed area;

(12) the molluscan shellfish have been taken from a restricted or conditionally restricted area and have not been purified under *department* [~~the~~] rules [~~adopted by the board~~];

(13) the molluscan shellfish have been processed by a person without a shellfish certificate;

(14) the molluscan shellfish have not been handled and packaged in accordance with *department* [~~the~~] rules [~~adopted by the board~~];

(15) the crabmeat has been processed by a person without a crabmeat processing license; or

(16) the crabmeat was not picked, packed, or pasteurized in accordance with *department* [~~the~~] rules [~~adopted by the board~~].

SECTION 3.1109. Section 436.071, Health and Safety Code, is amended to read as follows:

Sec. 436.071. MISBRANDED MOLLUSCAN SHELLFISH AND CRABMEAT. Molluscan shellfish or crabmeat is misbranded if:

(1) its labeling is false, misleading, or fails to conform with the requirements of Section 436.081;

(2) it is offered for sale under the name of another food;

(3) its container is made, formed, or filled so as to be misleading;

(4) a word, statement, or other information required by this chapter or a rule adopted under this chapter to appear on a label is not prominently and conspicuously placed on the label and is not likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(5) it does not have a label containing:

(A) the name, address, and certification or license number of the processor;

(B) an accurate statement in a uniform location on the principal display panel of the quantity of the contents in terms of weight, measure, or numerical count; and

(C) a date as provided by *department* rules [~~adopted by the board~~].

SECTION 3.1110. Section 436.091, Health and Safety Code, is amended to read as follows:

Sec. 436.091. DECLARATION OF PROHIBITED AREAS. (a) The *department* [~~director~~] by order shall declare a body of public water to be a prohibited area if:

(1) the *department* [~~director~~] finds, according to a sanitary, chemical, or bacteriological survey, that the area contains aquatic life that is unfit for human consumption; or

(2) aquatic life from a prohibited area may have been transferred to that body of public water.

(b) The *department* [~~director~~] shall modify or revoke an order according to the results of a sanitary, chemical, or bacteriological survey conducted by the department. The *department* [~~director~~] shall file the order in the department's office and shall furnish without charge a copy of the order describing prohibited areas on request.

(c) The *department* [~~director~~] shall conspicuously outline prohibited areas on maps and shall furnish the maps without charge on request. The failure of a person to obtain that information does not relieve that person from liability under this chapter.

SECTION 3.1111. Section 436.101, Health and Safety Code, is amended to read as follows:

Sec. 436.101. CLASSIFICATION OF GROWING AREAS. (a) The *department* [~~director~~] by order shall designate an area that is coastal water according to the rules of the Parks and Wildlife Commission as an approved area, a conditionally approved area, a restricted area, a conditionally restricted area, or a prohibited area, according to the classification categories in the current National Shellfish Sanitation Program *Guide for the Control of Molluscan Shellfish* [~~Manual of Operations~~] or its successor. Coastal water is a prohibited area for the taking of molluscan shellfish unless designated otherwise by the *department* [~~director~~].

(b) The *department* [~~director~~] shall prohibit the taking of molluscan shellfish for a specified period from water to which molluscan shellfish may have been transferred from a restricted or conditionally restricted area.

(c) The *department* [~~director~~] by order shall designate growing areas as closed areas or open areas. The *department* [~~director~~] shall modify or revoke an order according to the results of sanitary and bacteriological surveys conducted by the department. The *department* [~~director~~] shall file the order in the department's office and shall furnish without charge a copy of the order describing the open or closed area on request.

(d) The *department* [~~director~~] shall conspicuously outline the classifications of areas for the taking of molluscan shellfish on maps and shall furnish the maps without charge on request. The failure of a person to obtain that information does not relieve that person from liability under this chapter.

SECTION 3.1112. Section 436.102, Health and Safety Code, is amended to read as follows:

Sec. 436.102. DEPURATION. (a) The *department* [~~director~~] may allow depuration by artificial means of molluscan shellfish taken from a restricted or conditionally restricted area, subject to *department* [~~the~~] rules [~~adopted by the board~~] and under the supervision the *department* [~~director~~] considers necessary to protect public health.

(b) A molluscan shellfish plant operator may employ an off-duty peace officer to monitor the gathering of shellfish for depuration from a restricted or conditionally restricted area as provided by the rules adopted [~~by the board~~] under Subsection (a). In this subsection, "peace officer" includes those persons listed in Article 2.12, Code of Criminal Procedure.

SECTION 3.1113. Section 436.107(b), Health and Safety Code, is amended to read as follows:

(b) The council is composed of:

(1) two members appointed by the *executive commissioner* [~~board~~] as nominated by the Texas Oyster Growers and Dealers Association *or a successor organization*;

(2) one member appointed by the *executive commissioner* [~~board~~] as nominated by the Coastal Oyster Leaseholder's Association;

(3) two members appointed by the *executive commissioner* [~~board~~] from a list of oyster dealers who have held a shellfish certificate in this state for not less than six months of each of the three years preceding the nomination and who are certified at the time of appointment;

(4) one representative appointed by the chairman of the Interstate Shellfish Sanitation Conference; and

(5) three consumer members, including one person professionally licensed or with work experience in the field of environmental survey, environmental sanitation, environmental engineering, or a similar field related to environmental or pollution conditions and their effect on molluscan shellfish harvest areas, appointed by the speaker of the house of representatives.

SECTION 3.1114. Section 436.108(a), Health and Safety Code, is amended to read as follows:

(a) The Texas Oyster Council shall:

(1) advise the *department* [~~board~~] on the criteria used by the *department* [~~director~~] under Section 436.101 to designate growing areas as open or closed areas;

(2) advise the *department* [~~board~~] on the development of standards and procedures relating to the licensing of molluscan shellfish processors under this chapter;

(3) advise the *department* [~~board~~] on the content of the rules adopted *by the executive commissioner* to implement the provisions of this chapter relating to molluscan shellfish;

(4) perform any other functions requested by the *department* [~~board~~] in implementing and administering the provisions of this chapter relating to molluscan shellfish; and

(5) review information brought before the council relating to molluscan shellfish.

SECTION 3.1115. Section 436.112, Health and Safety Code, is amended to read as follows:

Sec. 436.112. RULEMAKING AUTHORITY. The *executive commissioner* [~~board~~] may adopt rules for the enforcement of this chapter. The *executive commissioner* [~~board~~] shall adopt rules establishing specifications for molluscan shellfish processing and crabmeat processing, and *the department* shall furnish without charge printed copies of the rules on request.

SECTION 3.1116. Sections 436.113(a), (b), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) A person may not operate as a molluscan shellfish or crabmeat processor unless the person submits an application for a certificate or a license to the department according to *department* rules [~~adopted by the board~~] and receives a certificate or license for each plant or place of business.

(b) When an application has been properly filed with the department, the *department* [~~director or an authorized agent~~] shall inspect the property identified in the application, including buildings and equipment, and the operating procedures under which the product is processed.

(c) The *department* [~~director~~] shall issue a certificate or license to a person who operates a plant or place of business that conforms to the requirements of this chapter and *department* rules [~~adopted by the board~~].

(d) A certificate is nontransferrable and expires at 11:59 p.m. on August 31 of *the second* [~~each~~] year *of issuance*.

(e) A license is nontransferrable and expires at 11:59 p.m. on the last day of February *of the second* [~~each~~] year *of issuance*.

SECTION 3.1117. Section 436.114(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall establish minimum standards for a certificate or license and criteria for the refusal to issue a certificate or license and the suspension or revocation of a certificate or license.

SECTION 3.1118. Section 436.115(a), Health and Safety Code, is amended to read as follows:

(a) A hearing under this chapter is governed by the procedures for a contested case hearing under Chapter 2001, Government Code, and the *department's* [~~board's~~] formal hearing rules.

SECTION 3.1119. Section 437.001(4), Health and Safety Code, is amended to read as follows:

(4) "Food," "food service establishment," "retail food store," "mobile food unit," *"roadside food vendor,"* [~~"roadside food vendor",~~] and "temporary food service establishment" have the meanings assigned to those terms by rules adopted [~~by the board~~] under this chapter.

SECTION 3.1120. Section 437.0055(b), Health and Safety Code, is amended to read as follows:

(b) A person required to obtain a permit under Subsection (a) must apply *every two years* [~~annually~~] for the permit and must pay any fees required by the department.

SECTION 3.1121. Section 437.0056, Health and Safety Code, is amended to read as follows:

Sec. 437.0056. RULEMAKING AUTHORITY. The *executive commissioner* [~~board~~] may adopt rules for the efficient enforcement of this chapter by the department in an area not regulated under this chapter by a county or public health district. The *executive commissioner* [~~board~~] by rule shall establish minimum standards for granting and maintaining a permit in an area not regulated under this chapter by a county or public health district. The commissioner may refuse an application for *a* permit or suspend or revoke a permit in an area not regulated under this chapter by a county or public health district.

SECTION 3.1122. Section 437.0057(e), Health and Safety Code, is amended to read as follows:

(e) A county, a public health district, or the department may require a food service establishment to:

(1) post a sign in a place conspicuous to employees, in a form adopted by the executive commissioner [~~of the Health and Human Services Commission~~], describing a food service employee's responsibilities to report certain health conditions to the permit holder under rules adopted by the executive commissioner; or

(2) require that each food service employee sign a written agreement in a form adopted by the executive commissioner to report those health conditions.

SECTION 3.1123. Sections 437.0076(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] may require each fixed or mobile location retail establishment in which food is prepared on-site for sale to the public that is required to be operated under a permit under Section 437.0055 to employ a food manager certified under Subchapter G, Chapter 438.

(d) The *executive commissioner* [~~board~~] by rule may exempt establishments other than the establishments described by Subsection (c) from the requirement imposed under this section if the *executive commissioner* [~~board~~] determines that the application of the requirement to those establishments is not necessary to protect public health and safety.

SECTION 3.1124. Section 437.0123(a), Health and Safety Code, is amended to read as follows:

(a) A county that has a population of at least 2.8 million or a public health district at least part of which is in a county that has a population of at least 2.8 million may require the payment of a fee for issuing or renewing a permit or for performing an inspection to enforce this chapter or a rule adopted under this chapter. A county with a population of at least 2.8 million may require a trained food manager to be on duty during each day of operation of a food service establishment. The training required of food managers can be no more extensive than *the training offered by an education or training program accredited* [~~that specified~~] under Subchapter D, Chapter 438. A food service

establishment that handles only prepackaged food and does not prepare or package food may not be required to have a certified food manager under this section.

SECTION 3.1125. Sections 437.0125(b), (c), and (e), Health and Safety Code, are amended to read as follows:

(b) The department may charge [~~annual~~] fees *every two years*.

(c) The *executive commissioner* [~~board~~] by rule shall set the fees *for issuing and renewing permits* in amounts *as prescribed by Section 12.0111 and other fees in amounts* that allow the department to recover at least 50 percent of the [~~annual~~] expenditures by the department for:

(1) reviewing and acting on a permit;

(2) amending [~~and renewing~~] a permit;

(3) inspecting a facility as provided by this chapter and rules adopted under this chapter; and

(4) implementing and enforcing this chapter, including a *department* rule or *an* order adopted or a license issued by the department.

(e) All permit fees collected by the department under this chapter shall be deposited in the state treasury to the credit of the food and drug retail fee *account* [~~fund~~].

SECTION 3.1126. Section 437.013(a), Health and Safety Code, is amended to read as follows:

(a) A county or public health district shall file an audited statement with the *department* [~~Texas Department of Health~~] on or before January 15 of each year.

SECTION 3.1127. Section 437.017, Health and Safety Code, is amended to read as follows:

Sec. 437.017. CONFLICT WITH ALCOHOLIC BEVERAGE CODE. The Alcoholic Beverage Code and rules adopted by the *Texas* Alcoholic Beverage Commission control to the extent of a conflict between this chapter or an order adopted under this chapter.

SECTION 3.1128. Sections 437.018(a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] may impose an administrative penalty against a person who holds a permit or who is regulated under this chapter and who violates this chapter or a rule or order adopted under this chapter.

(d) If the *department* [~~commissioner~~] determines that a violation has occurred, the *department* [~~commissioner~~] shall issue an order that states the facts on which the determination is based, including an assessment of the penalty.

(e) Within 14 days after the date the order is issued, the *department* [~~commissioner~~] shall give written notice of the order to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the *department* [~~commissioner~~] or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty [~~of the commissioner~~], the *department* [~~commissioner~~] by order shall [~~approve the determination and~~] impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the *department* [~~commissioner~~] shall *refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall hold the hearing. The*

department shall [~~set a hearing and~~] give *written* notice of the hearing to the person. *The* [~~An~~] administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~commissioner~~] a *written* proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~commissioner~~] by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the *department's* [~~commissioner's~~] order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the *department's* [~~board's~~] order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30–day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the *department's* [~~board's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner~~] by certified mail.

(l) The *department* [~~commissioner~~] on receipt of a copy of an affidavit under Subsection (k)(2) [~~of this section~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the *department* [~~commissioner~~] may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the *department* [~~commissioner~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.1129. Section 437.019(b), Health and Safety Code, is amended to read as follows:

(b) Except as provided by Subsection (c), a bed and breakfast establishment that has more than seven rooms for rent, or that provides food service other than breakfast to its

overnight guests, is a food service establishment for purposes of this chapter but may not be required to meet all criteria applicable to a larger food service establishment such as a restaurant. The *executive commissioner* [~~board~~], commissioners court, governing body, or administrative board, as applicable, shall adopt minimum standards for a bed and breakfast establishment covered by this subsection.

SECTION 3.1130. Section 438.004(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~Texas Board of Health~~] by rule may establish requirements stricter than the requirements prescribed by Section 438.003 for the display and sale of unpackaged foods if the transmission of a disease infestation or contamination is directly related to a method of displaying and selling unpackaged food authorized by this subchapter.

SECTION 3.1131. Section 438.014(a), Health and Safety Code, is amended to read as follows:

(a) After cleaning dishes, receptacles, utensils, food-grinding machines, and implements as required by Section 438.012 or 438.013, the items shall be:

(1) placed in a wire cage and immersed in a still bath of clear water for at least:

(A) three minutes in water heated to a minimum temperature of 170 degrees Fahrenheit; or

(B) two minutes in water heated to a minimum temperature of 180 degrees Fahrenheit;

(2) immersed for at least two minutes in a lukewarm chlorine bath made up at a strength of 100 parts per milliliter or more of hypochlorites and not reduced to less than 50 parts per milliliter available chlorine, or a concentration of equal bacteriacidal strength if chloramines are used; or

(3) sterilized by any other chemical method approved by the *department* [~~Texas Board of Health~~].

SECTION 3.1132. Section 438.033(a), Health and Safety Code, is amended to read as follows:

(a) On the request of an employer, the *department* [~~Texas Board of Health~~] or the *department's* [~~board's~~] representative, or the local health authority or the local health authority's representative, a person employed or seeking employment in an activity regulated under Section 438.032:

(1) shall be examined by a licensed physician; and

(2) must receive a certificate signed by the physician stating that the examination has been performed and that to the best of the physician's knowledge the person examined did not have on the date of the examination a transmissible condition of a communicable disease or a local infection commonly transmitted through the handling of food.

SECTION 3.1133. The heading to Section 438.042, Health and Safety Code, is amended to read as follows:

Sec. 438.042. DUTIES OF *EXECUTIVE COMMISSIONER* [~~BOARD~~].

SECTION 3.1134. Section 438.042(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~Texas Board of Health~~] shall adopt standards and procedures for the accreditation of education and training programs for persons employed in the food service industry.

SECTION 3.1135. Section 438.042(b), Health and Safety Code, as added by Chapter 539 (S.B. 873), Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(b) The *executive commissioner* [~~Texas Board of Health~~] shall adopt standards and

procedures for the accreditation of education and training programs for recertification of persons employed in the food service industry who have previously completed a program accredited in accordance with this subchapter or have been certified by a local health jurisdiction and have completed training and testing requirements substantially similar to those required by this subchapter for program accreditation. The requirements for accreditation in Section 438.043 need not be met by an education or training program for recertification.

SECTION 3.1136. Section 438.0431(b), Health and Safety Code, is amended to read as follows:

(b) The executive commissioner [~~of the Health and Human Services Commission~~] shall by rule define the basic food safety training or education required to be included in a course curriculum. The course length may not exceed two hours.

SECTION 3.1137. Section 438.047, Health and Safety Code, is amended to read as follows:

Sec. 438.047. FEES. The department *in accordance with department rules* shall charge an application fee and an audit fee sufficient to cover the entire cost of accreditation, audit, and maintenance of the registry.

SECTION 3.1138. Section 438.102, Health and Safety Code, is amended to read as follows:

Sec. 438.102. CERTIFICATION PROGRAM. (a) The *executive commissioner* [~~board~~] shall establish a certification program for food managers in accordance with this subchapter.

(b) The *executive commissioner* [~~board~~] by rule shall prescribe the requirements for issuance and renewal of a food manager certificate under this subchapter.

SECTION 3.1139. Section 438.104, Health and Safety Code, is amended to read as follows:

Sec. 438.104. APPROVAL OF EXAMINATIONS; SELECTION OF EXAMINATION SITES. (a) The *executive commissioner* [~~board~~] shall adopt criteria to approve examinations.

(b) In administering this subchapter, the *department* [~~board~~] shall consider the impact of the traveling distance and time required for a food manager to obtain certification. The *department* [~~board~~] shall give particular consideration to mitigating the impact of this subchapter on food managers in rural areas. The *department* [~~board~~] shall use the Internet to implement the certification and may develop a system to permit administration of the examination using the Internet.

SECTION 3.1140. Section 438.106, Health and Safety Code, is amended to read as follows:

Sec. 438.106. POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER* [~~BOARD~~]; FEES. (a) The *executive commissioner* [~~board~~] by rule may adopt a fee for issuance or renewal of a food manager certificate under this subchapter in amounts reasonable and necessary to administer this subchapter, but not to exceed $35.

(b) The *executive commissioner* [~~board~~] by rule may adopt a fee, in an amount not to exceed $10, for an examination administered by the department under this subchapter.

(c) The *executive commissioner* [~~board~~] may adopt rules for the denial, suspension, and revocation of a food manager certificate issued under this subchapter.

(d) The *executive commissioner* [~~board~~] by rule may prescribe standards for:

(1) examination sites;

(2) expenses of administration of examinations under this subchapter; and

(3) site audits for administration of this subchapter.

SECTION 3.1141. Section 439.002, Health and Safety Code, is amended to read as follows:

Sec. 439.002. MANUFACTURE AND SALE. *Unless prohibited by federal law, laetrile* [~~Laetrile~~] may be manufactured in this state in accordance with Chapter 431 (Texas Food, Drug, and Cosmetic Act) and may be sold in this state for distribution by licensed physicians.

SECTION 3.1142. Sections 439.003(a) and (b), Health and Safety Code, are amended to read as follows:

(a) *Unless prohibited by federal law, a* [~~A~~] licensed physician may prescribe or administer laetrile in the treatment of cancer.

(b) A physician *acting in accordance with federal and state law* is not subject to disciplinary action by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] for prescribing or administering laetrile to a patient under the physician's care who has requested the substance unless that board makes a formal finding that the substance is harmful.

SECTION 3.1143. Sections 439.005(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] may suspend, cancel, or revoke the license of any physician who:

(1) fails to keep complete and accurate records of purchases and disposals of laetrile;

(2) prescribes or dispenses laetrile to a person known to be a habitual user of narcotic or dangerous drugs or to a person who the physician should have known was a habitual user of narcotic or dangerous drugs;

(3) uses any advertising that tends to mislead or deceive the public; or

(4) is unable to practice medicine with reasonable skill and safety to patients because of any mental or physical condition, including age, illness, or drunkenness, or because of excessive use of drugs, narcotics, chemicals, or any other type of material.

(c) Subsection (b)(2) does not apply to a person being treated by the physician for narcotic use after the physician notifies the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] in writing of the name and address of the patient being treated.

SECTION 3.1144. Sections 439.015(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] may suspend, cancel, or revoke the license of any physician who:

(1) fails to keep complete and accurate records of purchases and disposals of DMSO in a formulation not approved for human use; or

(2) prescribes or administers DMSO in a manner that has been proven, in a formal hearing held by the board, to be harmful to the patient.

(c) The Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] may temporarily suspend the license of a physician who prescribes or administers DMSO in a manner that, in the board's opinion, creates an immediate danger to the public. The board must conduct a hearing on the temporary suspension as soon as practicable after the suspension.

SECTION 3.1145. Section 439.021(d), Health and Safety Code, is amended to read as follows:

(d) The consulting pharmacist shall account to the *department* [~~Texas Department of Health~~] for all drugs selected for shipment under this subchapter.

SECTION 3.1146. Section 439.022, Health and Safety Code, is amended to read as follows:

Sec. 439.022. ADMINISTRATION. (a) The *executive commissioner* [~~Texas Board of Health~~] shall adopt rules consistent with federal and state law to implement this subchapter, including rules relating to:

(1) the packaging and inventory of drugs for shipment;

(2) the manner of shipment of the drugs from original shipment under this subchapter until the final destination; and

(3) safeguards to ensure the proper handling of and accounting for all drugs shipped.

(b) The *executive commissioner* [~~Texas Board of Health~~] by rule shall determine, in consultation with the United States Department of State and other appropriate federal agencies, the foreign countries to receive the drugs.

(c) The salvaging of drugs under this subchapter is not subject to Chapter 431 (Texas Food, Drug, and Cosmetic Act).

SECTION 3.1147. Section 439.023(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~Texas Department of Health~~] may contract with other entities, including local governments and civic organizations, to implement this subchapter.

SECTION 3.1148. Section 440.003(9), Health and Safety Code, is amended to read as follows:

(9) "Health authority" means *the department,* the municipal *or*[,] county[~~, or state~~] health officer or the officer's representative, or any other agency having jurisdiction or control over the matters embraced within the specifications and requirements of this chapter.

SECTION 3.1149. Section 440.005, Health and Safety Code, is amended to read as follows:

Sec. 440.005. HEARINGS. [~~(a)~~] A hearing conducted [~~by the board~~] in the administration of this chapter is governed by Chapter 2001, Government Code.

[~~(b) Based on the record of a hearing conducted under this chapter, the department shall make a finding and shall sustain, change, or rescind an official notice or order considered in the hearing.~~]

SECTION 3.1150. Section 440.006, Health and Safety Code, is amended to read as follows:

Sec. 440.006. POWERS [~~AND DUTIES~~] OF *EXECUTIVE COMMISSIONER* [~~BOARD~~]. The *executive commissioner* [~~board~~] may:

(1) adopt rules prescribing standards or related requirements for the operation of establishments for the manufacture of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products, including standards or requirements for the:

(A) health, cleanliness, education, and training of personnel who are employed in the establishments;

(B) protection of raw materials, manufactured merchandise, and merchandise held for sale;

(C) design, construction, installation, and cleanliness of equipment and utensils;

(D) sanitary facilities and controls of the establishments;

(E) establishment construction and maintenance, including vehicles;

(F) production processes and controls; and

(G) institution and content of a system of records to be maintained by the establishment; and

(2) adopt rules prescribing procedures for the enforcement of the standards or related requirements prescribed under Subdivision (1), including procedures for the:

(A) requirement of a valid license to operate an establishment;

(B) issuance, suspension, revocation, and reinstatement of licenses;

(C) administrative hearings *held under this chapter* [~~before the board or its designee~~];

(D) institution of certain court proceedings by the *department* [~~board~~] or its designee;

(E) inspection of establishments and securing of samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products;

(F) access to the establishments and to the vehicles used in operations;

(G) compliance by manufacturers outside the jurisdiction of the state; and

(H) review of plans for future construction.

SECTION 3.1151. Sections 440.012(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) A person desiring to operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products may apply to the department for a license. A license shall be granted under the *department's* procedural rules [~~adopted by the board~~] and shall be issued only for the purpose and use as stated on the application for a license.

(c) A license may not be issued to a person who does not comply with the standards prescribed by *department rule* [~~the board~~] under this chapter.

(d) A license issued under this chapter must be renewed *every two years* [~~on or before September 1 of each year~~] in accordance with *department* rules [~~adopted by the board~~].

SECTION 3.1152. Sections 440.013(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) A [~~$200~~] nonrefundable fee for each establishment *in an amount set by the executive commissioner by rule as prescribed by Section 12.0111* must accompany each application for a license.

(b) The department also shall assess the following fees *in the amounts set by the executive commissioner by rule as prescribed by Section 12.0111*:

(1) a fee for a frozen dessert manufacturer located in this state in *an* [~~the~~] amount [~~of one cent~~] per 100 pounds of manufactured or processed frozen dessert manufactured or processed and distributed in this state by that manufacturer;

(2) a fee for a frozen dessert manufacturer not located in this state in *an* [~~the~~] amount [~~of one cent~~] per 100 pounds of frozen desserts manufactured or processed by the manufacturer in another state and imported for sale in this state; and

(3) a fee for the actual cost of analyzing samples of frozen desserts for a frozen dessert manufacturer not located in this state.

(c) The *executive commissioner* [~~board~~] shall adopt rules to collect fees imposed under this section monthly[~~, quarterly, semiannually, or annually~~] based on amounts due by the frozen dessert manufacturer.

SECTION 3.1153. Section 440.014, Health and Safety Code, is amended to read as follows:

Sec. 440.014. *RECORDKEEPING* [~~RECORD KEEPING~~]. The *executive commissioner* [~~board~~] shall adopt rules establishing minimum standards for *recordkeeping* [~~record keeping~~] by persons required to pay fees under this chapter and the records shall be made available to the department on request.

SECTION 3.1154. Section 440.017, Health and Safety Code, is amended to read as follows:

Sec. 440.017. REFUSAL TO GRANT LICENSE; SUSPENSION OR REVOCATION OF LICENSE. In accordance with rules adopted under Section 440.006, the *department* [~~commissioner~~] may refuse an application for a license under this chapter or may suspend or revoke a license issued under this chapter.

SECTION 3.1155. Section 440.031(a), Health and Safety Code, is amended to read as follows:

(a) Under rules adopted by the *executive commissioner* [~~board~~], the department's authorized representatives have free access at all reasonable hours to any establishment

for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products or to any vehicle being used to transport in commerce a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products for the purpose of:

(1) inspecting the establishment or vehicle to determine compliance with the standards or related requirements prescribed [~~by the board~~] under this chapter; or

(2) securing samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or a mix for one of those products for the purpose of making or causing to be made an examination of the samples to determine compliance with the standards or related requirements prescribed [~~by the board~~] under this chapter.

SECTION 3.1156. Section 440.032(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly or intentionally violates Section 440.011 or a rule adopted [~~by the board~~] under this chapter.

SECTION 3.1157. Section 441.003, Health and Safety Code, is amended to read as follows:

Sec. 441.003. RULES. The *executive commissioner* [~~department~~] may adopt rules that are necessary to implement this chapter that promote the public health and safety. The rules may include rules relating to certificate suspension, revocation, or other disciplinary action and relating to certificate renewal.

SECTION 3.1158. Subtitle B, Title 6, Health and Safety Code, is amended to conform to Chapter 461, Health and Safety Code, as it existed on August 31, 2009, and to Section 1.19(a)(3), Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, by adding Chapter 461A to read as follows:

CHAPTER 461A. DEPARTMENT OF STATE HEALTH SERVICES: CHEMICAL DEPENDENCY SERVICES AND RELATED PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 461A.001. POLICY. Chemical dependency is a preventable and treatable illness and public health problem affecting the general welfare and the economy of this state. The legislature recognizes the need for proper and sufficient facilities, programs, and procedures for prevention, intervention, treatment, and rehabilitation. It is the policy of this state that a person with a chemical dependency shall be offered a continuum of services that will enable the person to lead a normal life as a productive member of society.

Sec. 461A.002. DEFINITIONS. In this chapter:

(1) "Chemical dependency" means:

(A) abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

(2) "Commission" means the Health and Human Services Commission.

(3) "Commissioner" means the commissioner of state health services.

(4) "Controlled substance" means a:

(A) toxic inhalant; or

(B) substance designated as a controlled substance by Chapter 481.

(5) "Department" means the Department of State Health Services.

(6) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(7) "Intervention" means the interruption of the onset or progression of chemical dependency in the early stages.

(8) "Prevention" means the reduction of a person's risk of abusing alcohol or a controlled substance or becoming chemically dependent.

(9) "Rehabilitation" means the reestablishment of the social and vocational life of a person after treatment.

(10) "Toxic inhalant" means a gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the person.

(11) "Treatment" means the initiation and promotion, in a planned, structured, and organized manner, of a person's chemical-free status or the maintenance of a person free of illegal drugs.

(12) "Treatment facility" means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed and approved by the department under Chapter 464, or a facility licensed or operated under Title 7 that provides treatment services. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office.

Sec. 461A.003. IMPLEMENTATION BY DEPARTMENT. The department shall implement this chapter for the purpose of preventing broken homes and the loss of lives.

Sec. 461A.004. COOPERATION WITH DEPARTMENT. (a) Each department, agency, officer, and employee of the state, when requested by the department, shall cooperate with the department in appropriate activities to implement this chapter.

(b) This section does not give the department control over existing facilities, institutions, or agencies or require the facilities, institutions, or agencies to serve the department in a manner that is inconsistent with the functions, the authority, or the laws and rules governing the activities of the facilities, institutions, or agencies.

(c) This section does not authorize the department to use a private institution or agency without its consent or to pay a private institution or agency for services that a public institution or agency is willing and able to provide.

Sec. 461A.005. CONFLICT WITH OTHER LAW. To the extent a power or duty given to the department or commissioner by this chapter conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT, COMMISSIONER, AND EXECUTIVE COMMISSIONER

Sec. 461A.051. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER. The executive commissioner shall:

(1) adopt rules governing the functions of the department in relation to chemical dependency services and related programs, including rules that prescribe the policies and procedures followed by the department in administering chemical dependency services and related programs; and

(2) by rule and based on criteria proposed by the department, establish minimum criteria that peer assistance programs must meet to be governed by and entitled to the benefits of a law that authorizes licensing and disciplinary authorities to establish or approve peer assistance programs for impaired professionals.

Sec. 461A.052. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall:

(1) provide for research and study of the problems of chemical dependency in this state and seek to focus public attention on those problems through public information and education programs;

(2) plan, develop, coordinate, evaluate, and implement constructive methods and programs for the prevention, intervention, treatment, and rehabilitation of chemical dependency in cooperation with federal and state agencies, local governments, organizations, and persons, and provide technical assistance, funds, and consultation services for statewide and community-based services;

(3) cooperate with and enlist the assistance of:

(A) other state, federal, and local agencies;

(B) hospitals and clinics;

(C) public health, welfare, and criminal justice system authorities;

(D) educational and medical agencies and organizations; and

(E) other related public and private groups and persons;

(4) expand chemical dependency services for children when funds are available because of the long-term benefits of those services to this state and its citizens;

(5) sponsor, promote, and conduct educational programs on the prevention and treatment of chemical dependency, and maintain a public information clearinghouse to purchase and provide books, literature, audiovisuals, and other educational material for the programs;

(6) sponsor, promote, and conduct training programs for persons delivering prevention, intervention, treatment, and rehabilitation services and for persons in the criminal justice system or otherwise in a position to identify the service needs of persons with a chemical dependency and their families;

(7) require programs rendering services to persons with a chemical dependency to safeguard those persons' legal rights of citizenship and maintain the confidentiality of client records as required by state and federal law;

(8) maximize the use of available funds for direct services rather than administrative services;

(9) consistently monitor the expenditure of funds and the provision of services by all grant and contract recipients to assure that the services are effective and properly staffed and meet the standards adopted under this chapter;

(10) make the monitoring reports prepared under Subdivision (9) a matter of public record;

(11) license treatment facilities under Chapter 464;

(12) use funds appropriated to the department for purposes of providing chemical dependency services and related programs to carry out those purposes and maximize the overall state allotment of federal funds;

(13) plan, develop, coordinate, evaluate, and implement constructive methods and programs to provide healthy alternatives for youth at risk of selling controlled substances;

(14) submit to the federal government reports and strategies necessary to comply with Section 1926 of the federal Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, Pub. L. No. 102–321 (42 U.S.C. Section 300x–26), and coordinate the reports and strategies with appropriate state governmental entities; and

(15) regulate, coordinate, and provide training for alcohol awareness courses required under Section 106.115, Alcoholic Beverage Code, and may charge a fee for an activity performed by the department under this subdivision.

(b) The department may establish regional alcohol advisory committees consistent with the regions established under Section 531.024, Government Code.

(c) The department may appoint advisory committees to assist the department in performing its duties under this chapter. A member of an advisory committee appointed under this subsection may receive reimbursement for travel expenses as provided by Section 2110.004, Government Code.

(d) The department shall comply with federal and state laws related to program and facility accessibility.

(e) The commissioner shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the department's programs and services under this chapter.

(f) Subsection (a)(15) does not apply to a 12–step or similar self-help alcohol dependency recovery program:

(1) that does not offer or purport to offer an alcohol dependency treatment program;

(2) that does not charge program participants; and

(3) in which program participants may maintain anonymity.

Sec. 461A.053. EMERGENCY TREATMENT RESOURCES. The commissioner may develop emergency treatment resources for persons who appear to be:

(1) chemically dependent;

(2) under the influence of alcohol or a controlled substance and in need of medical attention; or

(3) undergoing withdrawal or experiencing medical complications related to a chemical dependency.

Sec. 461A.054. REFERRAL SERVICES FOR PERSONS FROM CRIMINAL JUSTICE SYSTEM. (a) The commissioner may establish programs for the referral, treatment, or rehabilitation of persons from the criminal justice system within the terms of bail, probation, conditional discharge, parole, or other conditional release.

(b) A referral may not be inconsistent with medical or clinical judgment or conflict with this chapter or Chapter 462 or applicable federal regulations.

Sec. 461A.055. REPORTING OF CHILDREN INVOLVED IN SUBSTANCE ABUSE OR FROM FAMILY INVOLVED IN SUBSTANCE ABUSE. (a) The department in the context of mental health services, the commission, the Department of Aging and Disability Services, and the Texas Juvenile Justice Department shall:

(1) attempt to determine whether a child under the agency's jurisdiction is involved in substance abuse or is from a substance-abusing family;

(2) record its determination in the case record of the child; and

(3) record the information for statistical reporting purposes.

(b) The agencies shall revise their assessment forms, as needed, to include a determination under this section.

(c) The department shall coordinate the efforts of the agencies described by Subsection (a) in complying with this section.

Sec. 461A.056. STATEWIDE SERVICE DELIVERY PLAN. (a) The department shall develop and adopt a statewide service delivery plan. The department shall update the plan not later than February 1 of each even-numbered year. The plan must include:

(1) a statement of the department's mission, goals, and objectives regarding chemical dependency prevention, intervention, and treatment;

(2) a statement of how chemical dependency services and chemical dependency case management services should be organized, managed, and delivered;

(3) a comprehensive assessment of:

(A) chemical dependency services available in this state at the time the plan is prepared; and

(B) future chemical dependency services needs;

(4) a service funding process that ensures equity in the availability of chemical dependency services across this state and within each service region established under Section 531.024, Government Code;

(5) a provider selection and monitoring process that emphasizes quality in the provision of services;

(6) a description of minimum service levels for each region;

(7) a mechanism for the department to obtain and consider local public participation in identifying and assessing regional needs for chemical dependency services;

(8) a process for coordinating and assisting administration and delivery of services among federal, state, and local public and private chemical dependency programs that provide similar services; and

(9) a process for coordinating the department's activities with those of other state health and human services agencies and criminal justice agencies to avoid duplications and inconsistencies in the efforts of the agencies in chemical dependency prevention, intervention, treatment, rehabilitation, research, education, and training.

(b) The department shall gather information needed for the development of the plan through systematic methods designed to include local, regional, and statewide perspectives.

(c) In developing the plan, the department shall analyze the costs of implementation of proposed features of the plan by both the department and service providers. The department shall use the analysis to maximize the efficiency of service delivery under the final plan.

(d) The plan must provide a priority for obtaining treatment services for individuals in need of treatment who are parents of a child in foster care.

Sec. 461A.057. STATE AGENCY SERVICES STANDARDS. (a) The executive commissioner by rule shall develop model program standards for substance abuse services for use by each state agency that provides or pays for substance abuse services. The department shall provide the model standards to each agency that provides substance abuse services as identified by the commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of substance abuse services provided by or through a state agency.

(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

SUBCHAPTER C. SERVICES AND PROGRAMS

Sec. 461A.101. LOCAL BEHAVIORAL HEALTH AUTHORITIES. The department may designate and provide services through local behavioral health authorities as provided by Section 533.0356 and rules adopted by the executive commissioner.

Sec. 461A.102. EDUCATION AND RESEARCH PROGRAMS CONCERNING CONTROLLED SUBSTANCES. (a) In this section, "controlled substances" means those substances designated as controlled substances by Chapter 481.

(b) The department, in cooperation with other appropriate state agencies, shall carry out educational programs designed to prevent or deter misuse and abuse of controlled substances. In connection with those programs the department may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid those groups in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances

to promote a better public understanding of problems that exist and ways to combat those problems; and

(6) assist in educating and training state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(c) The department shall encourage research on misuse and abuse of controlled substances. In connection with research, and in furtherance of the enforcement of Chapter 481, the commissioner may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of Chapter 481;

(B) determine patterns and social effects of misuse and abuse of controlled substances; and

(C) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and

(3) contract with public agencies, institutions of higher education, and private organizations or individuals to conduct research, demonstrations, or special projects that directly pertain to the misuse and abuse of controlled substances.

Sec. 461A.103. OUTREACH PROGRAMS FOR INTRAVENOUS DRUG USERS. (a) In this section, "HIV" means human immunodeficiency virus.

(b) The department may fund community outreach programs that have direct contact with intravenous drug users.

(c) An outreach program funded by the department must:

(1) provide education on HIV infection based on the model education program developed by the department;

(2) encourage behavior changes to reduce the possibility of HIV transmission;

(3) promote other HIV risk reduction activities; and

(4) encourage behavior consistent with state criminal laws.

Sec. 461A.104. MINIMUM PROGRAM REQUIREMENTS. (a) In this section, "coping skills training" means instruction in the elements and practice of and reasons for the skills of communication, stress management, problem solving, daily living, and decision making.

(b) A chemical dependency intensive intervention, outpatient, residential treatment, or rehabilitation program that is provided by the department or that is funded wholly or partly by funds allocated through the department must include:

(1) coping skills training;

(2) education regarding the manifestations and dynamics of dysfunctional relationships within the family; and

(3) support group opportunities for children and adults.

(c) This section does not apply to:

(1) a detoxification program or that part of a program that provides detoxification; or

(2) a program provided by the Texas Juvenile Justice Department.

Sec. 461A.105. RELAPSE RATE REPORTING. (a) A treatment program provided or funded by the department shall report to the department on the effectiveness of the chemical dependency treatment program.

(b) The report must show to the extent possible, without violating the confidentiality of information received by the program, the rate of relapse of persons who have received treatment services.

(c) The executive commissioner by rule may provide for the content of a report and the procedure for reporting under this section. Reports must be uniform in classifications of persons receiving treatment according to the severity of addiction, substance abused, age of person treated, and modality of treatment. A report may not reveal the name of an individual subject to treatment or of a family member or acquaintance of an individual treated and may not describe circumstances from which any of those individuals may be identified.

Sec. 461A.106. COMPULSIVE GAMBLING PROGRAM. (a) The department shall establish a program for:

(1) public education, research, and training regarding problem or compulsive gambling; and

(2) the treatment and prevention of problem or compulsive gambling.

(b) The department's program under Subsection (a) must include:

(1) establishing and maintaining a list of Internet sites and toll-free "800" telephone numbers of nonprofit entities that provide crisis counseling and referral services to families experiencing difficulty as a result of problem or compulsive gambling;

(2) promoting public awareness regarding the recognition and prevention of problem or compulsive gambling;

(3) facilitating, through in-service training and other means, the availability of effective assistance programs for problem or compulsive gamblers; and

(4) conducting studies to identify adults and juveniles in this state who are, or who are at risk of becoming, problem or compulsive gamblers.

SUBCHAPTER D. SERVICE CONTRACTS

Sec. 461A.151. CLIENT SERVICE CONTRACT STANDARDS. (a) In each contract for the purchase of chemical dependency program-related client services, the department shall include:

(1) clearly defined contract goals, outputs, and measurable outcomes that relate directly to program objectives;

(2) clearly defined sanctions or penalties for failure to comply with or perform contract terms or conditions; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(b) Contract goals must include a standard developed by the department that is based on a percentage of program clients who maintain long-term recovery for an extended period as defined by the department.

Sec. 461A.152. CONTRACT MONITORING. The department shall establish a formal program to monitor program-related client services contracts made by the department. The department must:

(1) monitor compliance with financial and performance requirements using a risk assessment methodology; and

(2) obtain and evaluate program cost information to ensure that each cost, including an administrative cost, is reasonable and necessary to achieve program objectives.

Sec. 461A.153. TECHNICAL ASSISTANCE PROGRAM. The department shall adopt technical assistance policies and procedures for a technical assistance program that:

(1) is clearly separate from the department's contract monitoring activities;

(2) has a single office for technical assistance requests; and

(3) includes explicit response time frames.

SUBCHAPTER E. FUNDING

Sec. 461A.201. FINANCES. (a) The department may accept gifts and grants for the purposes of providing chemical dependency services and related programs.

(b) The department is the state agency that receives and administers federal funds for alcohol and drug abuse, including applying for, administering, and disbursing funds under the federal Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. Section 1101 et seq.). The executive commissioner prescribes all necessary department policies relating to alcohol and drug abuse.

(c) An organization or other entity is not eligible for a grant of state funds from the department under this chapter unless the organization or entity provides matching funds in either cash or in-kind contributions equal to at least five percent of the total grant of state funds from the department. The department may waive that requirement if the department determines that the requirement may jeopardize the provision of needed services.

(d) In allocating grant funds, the department shall consider the state facility hospitalization rate of substance abusers who are from the service area of the entity requesting the grant. An organization or other entity is not eligible for a grant of state funds for a treatment or rehabilitation program unless the program will, at a minimum, reduce state facility hospitalization of substance abusers by a percentage established by the department.

(e) As a condition to receiving contract or grant funds under this chapter, a public or private organization or entity must provide to the department information relating to:

(1) the number of persons with a chemical dependency the organization or entity served, if any, during the preceding year, the municipalities and counties of residence of those persons, and the number of persons served from each municipality and county; and

(2) the number of persons with a chemical dependency the organization or entity expects to serve during the term of the requested grant or contract, the expected municipalities and counties of residence for those persons, and the expected number of persons served from each municipality and county.

Sec. 461A.202. SERVICES FUNDING. (a) The executive commissioner by rule shall adopt a system of funding the provision of chemical dependency services that includes competitive and noncompetitive procedures to:

(1) maximize the range of treatment services available in each service region;

(2) provide reasonable access in each region to available services; and

(3) include local public participation in making regional funding decisions and formal funding recommendations.

(b) The system must require that the department award each proposed chemical dependency services contract to the applicant that the department determines has made the bid that provides the best value.

(c) In determining the best value bid for a contract under this section, the department shall consider:

(1) the quality of the proposed service;

(2) cost;

(3) the applicant's ability to:

(A) perform the contract;

(B) provide the required services; and

(C) provide continuity of service;

(4) whether the applicant can perform the contract or provide the services within the period required, without delay or interference;

(5) the applicant's history of:

(A) contract performance; and

(B) compliance with the laws relating to the applicant's business operations and the affected services;

(6) whether the applicant's financial resources are sufficient to perform the contract and to provide the services;

(7) whether necessary or desirable support and ancillary services are available to the applicant;

(8) the degree of community support for the applicant;

(9) the quality of the facilities and equipment available to or proposed by the applicant;

(10) the ability of the applicant to meet all applicable written department policies, principles, and rules;

(11) state investment in the applicant; and

(12) other factors the department determines relevant.

(d) Rules adopted under this section must set out the department's provider selection processes, including:

(1) service purchase methods;

(2) eligibility criteria;

(3) provider selection criteria; and

(4) selection determination procedures.

Sec. 461A.203. FUNDING POLICY MANUAL. (a) The department shall publish a funding policy manual that explains:

(1) the department's funding priorities and provider selection criteria; and

(2) the methods the department used to develop funding policies.

(b) The department shall update the manual annually.

Sec. 461A.204. UNIT RATE REIMBURSEMENT. (a) In this section, "unit rate reimbursement" means reimbursement for a service paid at a specified rate for a unit of the service provided to a client multiplied by the number of units provided.

(b) The department shall study the procurement of and payment for chemical dependency treatment services on a unit rate reimbursement basis.

(c) If the department determines, after consideration of the study, that procurement of and payment for chemical dependency treatment services on a unit rate reimbursement basis in appropriate areas of the state would result in obtaining the highest quality treatment services at the best price and the lowest administrative cost to the department, the department shall adopt a unit rate reimbursement system for those services. The system must:

(1) include competitive procurement;

(2) monitor provider performance;

(3) monitor the reasonableness of provider costs and expenditures;

(4) verify provider costs before and after a contract term to ensure rates are set appropriately;

(5) ensure accountability of providers; and

(6) contain costs.

(d) The department may procure and pay for chemical dependency prevention and intervention services under a unit rate reimbursement system when the department determines it is appropriate.

SUBCHAPTER F. ADVISORY COMMITTEE ON REDUCING DRUG DEMAND

Sec. 461A.251. ADVISORY COMMITTEE. (a) The Drug Demand Reduction Advisory Committee is composed of the following members:

(1) five representatives of the public from different geographic regions of the state who have knowledge and expertise in issues relating to reducing drug demand and who are appointed by the commissioner; and

(2) one representative of each of the following agencies or offices who is appointed by the commissioner, executive commissioner, or executive director of the agency or office and who is directly involved in the agency's or office's policies, programs, or funding activities relating to reducing drug demand:

(A) the department;

(B) the commission;

(C) the criminal justice division of the governor's office;

(D) the Department of Family and Protective Services;

(E) the Department of Public Safety of the State of Texas;

(F) the Texas Alcoholic Beverage Commission;

(G) the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(H) the Texas Department of Criminal Justice;

(I) the Department of Aging and Disability Services;

(J) the Texas Education Agency;

(K) the Texas Juvenile Justice Department;

(L) the Department of Assistive and Rehabilitative Services;

(M) the Texas Workforce Commission;

(N) the Texas Department of Motor Vehicles;

(O) the comptroller of public accounts; and

(P) the adjutant general's department.

(b) The representative of the department shall serve as the presiding officer of the Drug Demand Reduction Advisory Committee. The department may provide administrative support to the committee.

Sec. 461A.252. MEETINGS. The Drug Demand Reduction Advisory Committee shall meet at least once in each quarter of each calendar year on dates determined by the committee.

Sec. 461A.253. DUTIES OF ADVISORY COMMITTEE. (a) The Drug Demand Reduction Advisory Committee shall serve as a single source of information for the governor, the legislature, and the public about issues relating to reducing drug demand, including available prevention programs and services.

(b) The Drug Demand Reduction Advisory Committee shall develop a statewide strategy to reduce drug demand. The strategy must:

(1) incorporate multidisciplinary approaches using current empirical research;

(2) include performance-based measurement and accountability standards, short-term objectives, and 10-year targets for reducing drug demand;

(3) coordinate, to the extent possible, the efforts of private sector entities and local, state, and federal agencies, including the Office of National Drug Control Policy and the United States Drug Enforcement Administration, to reduce drug demand; and

(4) provide opportunities for representatives from the public and private sectors to comment on the committee's activities and make recommendations related to the strategy.

(c) The Drug Demand Reduction Advisory Committee shall identify lead or contributing agencies or offices that shall implement the strategy described in Subsection (b). The

committee shall coordinate the implementation of the strategy by those agencies or offices.

Sec. 461A.254. ADDITIONAL ADVISORY COMMITTEES. The Drug Demand Reduction Advisory Committee may establish additional advisory committees composed of representatives from governmental entities and the private sector to assist the committee in carrying out its duties.

Sec. 461A.255. REPORT. Not later than January 15 of each odd-numbered year, the Drug Demand Reduction Advisory Committee shall present to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1) the committee's progress in developing and coordinating the strategy described in Section 461A.253(b);

(2) the status and funding of state programs relating to reducing drug demand; and

(3) recommendations for legislation to address issues involved in reducing drug demand.

SECTION 3.1159. The heading to Chapter 462, Health and Safety Code, is amended to read as follows:

CHAPTER 462. TREATMENT OF [~~CHEMICALLY DEPENDENT~~] PERSONS *WITH CHEMICAL DEPENDENCIES*

SECTION 3.1160. Section 462.001, Health and Safety Code, is amended by amending Subdivisions (1) and (10) and adding Subdivisions (5–a) and (5–b) to read as follows:

(1) "Applicant" means a person who files an application for emergency detention, protective custody, or commitment of a [~~chemically dependent~~] person *with a chemical dependency*.

(5–a) "Department" means the Department of State Health Services.

(5–b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(10) "Treatment facility" means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed [~~and approved~~] by the *department under Chapter 464* [~~commission~~], a facility licensed by the *department under Title 7* [~~Texas Department of Mental Health and Mental Retardation~~], or a facility operated by the *department under Title 7 that* [~~Texas Department of Mental Health and Mental Retardation which~~] has been designated by the *department* [~~commission~~] to provide chemical dependency treatment. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office.

SECTION 3.1161. Section 462.005(f), Health and Safety Code, is amended to read as follows:

(f) The state or the county may not pay any costs for a patient committed to a private hospital unless no public facilities are available and unless authorized by the *department* [~~commission~~] or the commissioners court of the county, as appropriate.

SECTION 3.1162. Section 462.009(e), Health and Safety Code, is amended to read as follows:

(e) Consent given by a patient or by a person authorized by law to consent to treatment on the patient's behalf for the administration of a medication, therapy, or treatment is valid only if:

(1) for consent to therapy or treatment:

(A) the consent is given voluntarily and without coercive or undue influence; and

(B) before administration of the therapy or treatment, the treating physician or

the psychologist, social worker, professional counselor, or chemical dependency counselor explains to the patient and to the person giving consent, in simple, nontechnical language:

(i) the specific condition to be treated;

(ii) the beneficial effects on that condition expected from the therapy or treatment;

(iii) the probable health and mental health consequences of not consenting to the therapy or treatment;

(iv) the side effects and risks associated with the therapy or treatment;

(v) the generally accepted alternatives to the therapy or treatment, if any, and whether an alternative might be appropriate for the patient; and

(vi) the proposed course of the therapy or treatment;

(2) for consent to the administration of medication:

(A) the consent is given voluntarily and without coercive or undue influence; and

(B) the treating physician provides each explanation required by Subdivision (1)(B) to the patient and to the person giving consent in simple, nontechnical language; and

(3) for consent to medication, therapy, or treatment, the informed consent is evidenced in the patient's clinical record by a signed form prescribed by the *department* [~~commission~~] for this purpose or by a statement of the treating physician or the psychologist, social worker, professional counselor, or chemical dependency counselor who obtained the consent that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

SECTION 3.1163. Section 462.021, Health and Safety Code, is amended to read as follows:

Sec. 462.021. VOLUNTARY ADMISSION OF ADULT. A facility may admit an adult who requests admission for emergency or nonemergency treatment or rehabilitation if:

(1) the facility is:

(A) a treatment facility licensed by the *department* [~~commission~~] to provide the necessary services;

(B) a facility licensed by the *department under Title 7* [~~Texas Department of Mental Health and Mental Retardation~~]; or

(C) a facility operated by the *department under Title 7 that* [~~Texas Department of Mental Health and Mental Retardation which~~] has been designated by the *department* [~~commission~~] to provide chemical dependency treatment; and

(2) the admission is appropriate under the facility's admission policies.

SECTION 3.1164. Section 462.022(a), Health and Safety Code, is amended to read as follows:

(a) A facility may admit a minor for treatment and rehabilitation if:

(1) the facility is:

(A) a treatment facility licensed by the *department* [~~commission~~] to provide the necessary services to minors;

(B) a facility licensed by the *department under Title 7* [~~Texas Department of Mental Health and Mental Retardation~~]; or

(C) a facility operated by the *department under Title 7 that* [~~Texas Department of Mental Health and Mental Retardation which~~] has been designated by the *department* [~~commission~~] to provide chemical dependency treatment;

(2) the admission is appropriate under the facility's admission policies; and

(3) the admission is requested by:

(A) a parent, managing conservator, or guardian of the minor; or

(B) the minor, without parental consent, if the minor is 16 years of age or older.

SECTION 3.1165. Section 462.0235(c), Health and Safety Code, is amended to read as follows:

(c) The certificate of medical examination placed in a minor's medical record under Subsection (b)(2)(B) must include:

(1) the name and address of the examining physician;

(2) the name and address of the examined minor;

(3) the date and place of the examination;

(4) a brief diagnosis of the examined minor's physical and mental condition;

(5) the period, if any, during which the examined minor has been under the care of the examining physician;

(6) an accurate description of the chemical dependency treatment, if any, administered to the examined minor by or under the direction of the examining physician; and

(7) the examining physician's opinion that:

(A) the examined minor is *a person with a chemical dependency* [~~chemically dependent~~];

(B) there is no reasonable alternative to the treatment the physician recommends for the examined minor; and

(C) as a result of the examined minor's chemical dependency, the minor, if released, is likely to cause serious harm to the minor or others or:

(i) would suffer severe and abnormal mental, emotional, or physical distress;

(ii) would experience a substantial mental or physical deterioration of the minor's ability to function independently that would be manifested by the minor's inability, for reasons other than indigence, to provide for the minor's basic needs, including food, clothing, health, and safety; and

(iii) would not be able to make a rational and informed decision as to whether to submit to treatment.

SECTION 3.1166. Sections 462.025(a), (c), and (e), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~commission~~] shall adopt rules governing the voluntary admission of a patient to a treatment facility, including rules governing the intake, screening, and assessment procedures of the admission process.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by *department* [~~commission~~] rules.

(e) In accordance with *department* [~~commission~~] rule, a treatment facility shall provide annually a minimum of two hours of inservice training regarding intake and screening for persons who will be conducting an intake or screening for the facility. A person may not conduct intake or screenings without having completed the initial and applicable annual inservice training.

SECTION 3.1167. Section 462.042(b), Health and Safety Code, is amended to read as follows:

(b) The application must state:

(1) that the applicant has reason to believe and does believe that the person who is the subject of the application is a [~~chemically dependent~~] person *with a chemical dependency*;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to *the person* [~~himself~~] or others;

(3) a specific description of the risk of harm;

(4) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) the relationship, if any, of the applicant to the person.

SECTION 3.1168. Section 462.043(b), Health and Safety Code, is amended to read as follows:

(b) The judge or magistrate shall deny the application unless the judge or magistrate finds that there is reasonable cause to believe that:

(1) the person who is the subject of the application is a [~~chemically dependent~~] person *with a chemical dependency*;

(2) the person evidences a substantial risk of serious harm to *the person* [~~himself~~] or others;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) the necessary restraint cannot be accomplished without emergency detention.

SECTION 3.1169. Section 462.062(e), Health and Safety Code, is amended to read as follows:

(e) The application must contain the following information according to the applicant's information and belief:

(1) the proposed patient's name and address, including the county in which the proposed patient resides, if known;

(2) a statement that the proposed patient is a [~~chemically dependent~~] person *with a chemical dependency* who:

(A) is likely to cause serious harm to *the person* [~~himself~~] or others; or

(B) will continue to suffer abnormal mental, emotional, or physical distress, will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether to submit to treatment; and

(3) a statement that the proposed patient is not charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

SECTION 3.1170. Section 462.064(c), Health and Safety Code, is amended to read as follows:

(c) A certificate must be dated and signed by the examining physician. The certificate must include:

(1) the name and address of the examining physician;

(2) the name and address of the proposed patient;

(3) the date and place of the examination;

(4) the period, if any, during which the proposed patient has been under the care of the examining physician;

(5) an accurate description of the treatment, if any, given by or administered under the direction of the examining physician; and

(6) the examining physician's opinions whether the proposed patient is a [~~chemically dependent~~] person *with a chemical dependency* and:

(A) is likely to cause serious harm to *the person* [~~himself~~];

(B) is likely to cause serious harm to others; or

(C) will continue to suffer abnormal mental, emotional, or physical distress and to

deteriorate in ability to function independently if not treated and is unable to make a rational and informed choice as to whether or not to submit to treatment.

SECTION 3.1171. Section 462.065(e), Health and Safety Code, is amended to read as follows:

(e) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines *that*:

(1) [~~that~~] a physician has stated *the physician's* [~~his~~] opinion and the detailed basis for *the physician's* [~~his~~] opinion that the proposed patient is a [~~chemically dependent~~] person *with a chemical dependency*; and

(2) the proposed patient presents a substantial risk of serious harm to *the person* [~~himself~~] or others if not immediately restrained pending the hearing.

SECTION 3.1172. Section 462.066(g), Health and Safety Code, is amended to read as follows:

(g) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, *20*[~~19~~]_____, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that *the proposed patient* [~~(s)he~~] presents a substantial risk of serious harm to self or others.

The proposed patient and the proposed patient's attorney _____ have been given
(attorney)
written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on _____.
(date of notice)

I have examined the certificate of medical examination for chemical dependency and _____. Based on
(other evidence considered)
this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to self (yes _____ or no _____) or others (yes _____ or no _____) such that *the proposed patient* [~~(s)he~~] cannot be at liberty pending final hearing because

_____
(reasons for finding; type of risk found)

SECTION 3.1173. Section 462.068(a), Health and Safety Code, is amended to read as follows:

(a) The court shall enter an order denying an application for court-ordered treatment if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a [~~chemically dependent~~] person *with a chemical dependency* and meets the criteria for court-ordered treatment.

SECTION 3.1174. Section 462.069(a), Health and Safety Code, is amended to read as follows:

(a) The court shall commit the proposed patient to a treatment facility approved by the *department* [~~commission~~] to accept court commitments for not more than 90 days if:

(1) the proposed patient admits the allegations of the application; or

(2) at the hearing on the merits, the court or jury finds that the material allegations in the application have been proved by clear and convincing evidence.

SECTION 3.1175. Section 462.0731(b), Health and Safety Code, is amended to read as follows:

(b) The *department* [~~commission~~] shall arrange and furnish alternative settings for outpatient care, treatment, and supervision in the patient's county of residence. The services must be provided as close as possible to the patient's residence.

SECTION 3.1176. Sections 462.075(e) and (f), Health and Safety Code, are amended to read as follows:

(e) The court shall enter an order denying an application for court-ordered treatment if the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a [~~chemically dependent~~] person *with a chemical dependency* and meets the criteria for court-ordered treatment. If the court denies the application, the court shall order the discharge of a proposed patient who is not at liberty.

(f) The court shall commit the proposed patient to a treatment facility approved by the *department* [~~commission~~] to accept commitments for not more than 90 days if:

(1) the proposed patient admits the allegations of the application; or

(2) at the hearing on the merits, the court or jury finds that the material allegations in the application have been proved by clear and convincing evidence.

SECTION 3.1177. Section 462.079(a), Health and Safety Code, is amended to read as follows:

(a) A furlough may be revoked only after an administrative hearing held in accordance with *department* [~~commission~~] rules. The hearing must be held within 72 hours after the patient is returned to the facility.

SECTION 3.1178. Sections 462.081(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The judge of a court with jurisdiction of misdemeanor cases may remand the defendant to a treatment facility approved by the *department* [~~commission~~] to accept court commitments for care and treatment for not more than 90 days, instead of incarceration or fine, if:

(1) the court or a jury has found the defendant guilty of an offense classified as a Class A or B misdemeanor;

(2) the court finds that the offense resulted from or was related to the defendant's chemical dependency;

(3) a treatment facility approved by the *department* [~~commission~~] is available to treat the defendant; and

(4) the treatment facility agrees in writing to admit the defendant under this section.

(b) A defendant who, in the opinion of the court, is *a person with mental illness* [~~mentally ill~~] is not eligible for sentencing under this section.

(d) A juvenile court may remand a child to a treatment facility for care and treatment for not more than 90 days after the date on which the child is remanded if:

(1) the court finds that the child has engaged in delinquent conduct or conduct indicating a need for supervision and that the conduct resulted from or was related to the child's chemical dependency;

(2) a treatment facility approved by the *department* [~~commission~~] to accept court commitments is available to treat the child; and

(3) the facility agrees in writing to receive the child under this section.

SECTION 3.1179. The heading to Chapter 464, Health and Safety Code, is amended to read as follows:

CHAPTER 464. FACILITIES TREATING [~~ALCOHOLICS AND DRUG-DEPENDENT~~] PERSONS *WITH A CHEMICAL DEPENDENCY*

SECTION 3.1180. Section 464.001, Health and Safety Code, is amended by adding Subdivisions (3–a) and (3–b) to read as follows:

(3–a) "Department" means the Department of State Health Services.

(3–b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1181. Section 464.003, Health and Safety Code, is amended to read as follows:

Sec. 464.003. EXEMPTIONS. This subchapter does not apply to:

(1) a facility maintained or operated by the federal government;

(2) a facility directly operated by the state;

(3) a facility licensed by the *department under Chapter 241, 243, 248, 466, or 577* [~~Texas Department of Health~~];

(4) an educational program for intoxicated drivers;

(5) the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office;

(6) an individual who personally provides counseling or support services to a [~~chemically dependent~~] person *with a chemical dependency* but does not offer or purport to offer a chemical dependency treatment program; or

(7) a 12–step or similar self-help chemical dependency recovery program:

(A) that does not offer or purport to offer a chemical dependency treatment program;

(B) that does not charge program participants; and

(C) in which program participants may maintain anonymity.

SECTION 3.1182. Sections 464.004(a), (b), and (e), Health and Safety Code, are amended to read as follows:

(a) To receive a license to operate a treatment facility to treat [~~chemically dependent~~] persons *with a chemical dependency*, a person must:

(1) file a written application on a form prescribed by the *department* [~~commission~~];

(2) cooperate with the review of the facility; and

(3) comply with the licensing standards.

(b) The *department* [~~commission~~] shall issue a license to an applicant:

(1) whose application meets the content requirements *prescribed by* [~~of~~] the *department and by department rules* [~~commission~~]; [~~and~~]

(2) who receives approval of the facility after the *department's* [~~commission's~~] review; and

(3) who timely complies with the licensing standards.

(e) A license may be issued without prior notice and an opportunity for a hearing. A person other than the applicant *or the department* [~~and commission~~] may not contest the issuance of a license.

SECTION 3.1183. Section 464.005, Health and Safety Code, is amended to read as follows:

Sec. 464.005. LICENSE RENEWAL. (a) The *department* [~~commission~~] shall provide renewal application forms and information relating to renewal procedures to each license holder.

(b) The *department* [~~Department of State Health Services~~] may require an inspection

before renewing a license, unless the applicant submits an accreditation review from the Commission on Accreditation of Rehabilitation Facilities, *The* [~~the~~] Joint Commission, or another national accreditation organization recognized by the department in accordance with Section 464.0055.

(c) The *executive commissioner* [~~commission~~] may establish deadlines for receiving and acting on renewal applications.

(d) A license may be renewed without prior notice and an opportunity for a hearing. A person other than the applicant *or the department* [~~and commission~~] may not contest the renewal of a license.

SECTION 3.1184. Sections 464.0055(a) and (b), Health and Safety Code, are amended to read as follows:

(a) In this section, *"accreditation*[~~:~~

[~~(1) "Accreditation~~] commission" means the Commission on Accreditation of Rehabilitation Facilities, *The* [~~the~~] Joint Commission, or another national accreditation organization recognized by the *department* [~~Department of State Health Services~~].

[~~(2) "Department" means the Department of State Health Services.~~]

(b) The department shall accept an accreditation review from an accreditation commission for a treatment facility instead of an inspection by the department for renewal of a license under Section 464.005, but only if:

(1) the treatment facility is accredited by *that accreditation commission* [~~the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accreditation organization recognized by the department~~];

(2) the accreditation commission maintains and updates an inspection or review program that, for each treatment facility, meets the department's applicable minimum standards;

(3) the accreditation commission conducts a regular on-site inspection or review of the treatment facility according to the accreditation commission's guidelines; and

(4) the treatment facility submits to the department a copy of its most recent accreditation review from the accreditation commission in addition to the application, fee, and any report or other document required for renewal of a license.

SECTION 3.1185. Section 464.006, Health and Safety Code, is amended to read as follows:

Sec. 464.006. INSPECTIONS. The *department* [~~commission~~] or its representative may without notice enter the premises of a treatment facility at reasonable times, including any time treatment services are provided, to conduct an inspection or investigation the *department* [~~commission~~] considers necessary.

SECTION 3.1186. Section 464.007, Health and Safety Code, is amended to read as follows:

Sec. 464.007. APPLICATION AND INSPECTION FEES. (a) The *department* [~~commission~~] shall *collect* [~~charge~~] nonrefundable application and review fees for a license or renewal license. The *department* [~~commission~~] may *collect* [~~charge~~] a fee for approving a facility to treat court committed clients.

(b) If the General Appropriations Act does not specify the amount of the fee, the *executive commissioner by rule* [~~commission~~] shall establish reasonable fees to administer this subchapter in amounts necessary for the fees to cover at least 50 percent of the costs of the licensing program.

(c) The *department* [~~commission~~] may not maintain unnecessary fund balances *under this chapter*.

SECTION 3.1187. Section 464.008, Health and Safety Code, is amended to read as follows:

Sec. 464.008. *APPLICABILITY OF OTHER LAW TO APPLICATION AND INSPEC-*

TION FEES [~~ALCOHOL AND DRUG ABUSE TREATMENT LICENSURE FUND~~]. All application and inspection fees collected by the *department* [~~commission~~] under this subchapter are subject to Subchapter F, Chapter 404, Government Code.

SECTION 3.1188. Section 464.009, Health and Safety Code, is amended to read as follows:

Sec. 464.009. RULES AND STANDARDS. (a) The *department* [~~commission~~] shall license treatment facilities in a manner consistent with state and federal law and rules, including *department* [~~commission~~] licensing standards.

(b) The *executive commissioner* [~~commission~~] shall adopt rules for:

(1) a treatment facility's organization and structure, policies and procedures, and minimum staffing requirements;

(2) the services to be provided by a facility, including:

(A) the categories of services the facility may provide;

(B) the client living environment the facility requires; and

(C) the requirement that a facility provide discharge planning and client follow-up contact;

(3) client rights and standards for medication, nutrition, and emergency situations;

(4) the client records kept by a facility;

(5) the general physical plant requirements for a facility, including environmental considerations, fire protection, safety, and other conditions to ensure the health and comfort of the clients;

(6) standards necessary to protect the client, including standards required or authorized by federal or other state law; and

(7) the approval of a facility to treat adult or minor clients who are referred by the criminal justice system or by a court order for involuntary civil or criminal commitment or detention.

(c) The *executive commissioner* [~~commission~~] shall adopt rules to protect the rights of individuals receiving services from a treatment facility and to maintain the confidentiality of client records as required by state and federal law.

(d) The *executive commissioner* [~~commission~~] by rule may not restrict competitive bidding or advertising by a facility regulated by the *department under this chapter* [~~commission~~] except to prohibit false, misleading, or deceptive practices by the facility. However, those rules may not:

(1) restrict the facility's use of any medium for advertising;

(2) restrict in an advertisement the personal appearance of a person representing the facility or the use of that person's voice;

(3) regulate the size or duration of an advertisement by the facility; or

(4) restrict the facility's advertisement under a trade name.

SECTION 3.1189. Section 464.010, Health and Safety Code, is amended to read as follows:

Sec. 464.010. REPORTS OF ABUSE OR NEGLECT. (a) A person, including treatment facility personnel, who believes that a client's physical or mental health or welfare has been, is, or will be adversely affected by abuse or neglect caused by any person shall report the facts underlying that belief to the *department* [~~commission~~]. This requirement is in addition to the requirements prescribed by Chapter 261, Family Code, and Chapter 48, Human Resources Code.

(b) The *executive commissioner* [~~commission~~] shall prescribe procedures for the investigation of reports under Subsection (a) and for coordination with law enforcement agencies or other agencies.

(c) An individual who in good faith reports to the *department* [~~commission~~] under this

section is immune from civil or criminal liability based on the report. That immunity extends to participation in a judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect.

(d) The *department* [~~commission~~] may request the attorney general's office to file a petition for temporary care and protection of a client of a residential treatment facility if it appears that immediate removal of the client is necessary to prevent further abuse.

(e) All records made by the *department* [~~commission~~] during its investigation of alleged abuse or neglect are confidential and may not be released except that the release may be made:

(1) on court order;

(2) on written request and consent of the person under investigation or that person's authorized attorney; or

(3) as provided by Section 464.011.

SECTION 3.1190. Section 464.011, Health and Safety Code, is amended to read as follows:

Sec. 464.011. DISCLOSURE OF *DEPARTMENT* [~~COMMISSION~~] RECORDS. Unless prohibited or limited by federal or other state law, the *department* [~~commission~~] may make its licensing and investigatory records that identify a client available to a state or federal agency or law enforcement authority on request and for official purposes.

SECTION 3.1191. Sections 464.012(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A treatment facility licensed under this chapter shall provide to employees of the facility education regarding methods of transmitting and preventing human immunodeficiency virus infection based on the model education program developed by the *department* [~~Texas Department of Health~~] and shall make the education available to facility clients.

(b) Employees of the facility who counsel clients shall provide counseling in accordance with the model protocol for counseling related to HIV infection developed by the *department* [~~Texas Department of Health~~].

SECTION 3.1192. Section 464.014, Health and Safety Code, is amended to read as follows:

Sec. 464.014. DENIAL, REVOCATION, SUSPENSION, OR NONRENEWAL OF LICENSE. (a) The *department* [~~commission~~] shall deny, revoke, suspend, or refuse to renew a license, place on probation a person whose license has been suspended, or reprimand a license holder if the applicant or license holder or the owner, director, administrator, or a clinical staff member of the facility:

(1) has a documented history of client abuse or neglect; or

(2) violates this subchapter or a *department* rule [~~of the commission~~].

(b) If a license suspension is probated, the *department* [~~commission~~] may establish the conditions for completion or violation of the probation.

(c) The denial, revocation, suspension, probation, or nonrenewal takes effect on the 30th day after the date on which the notice was mailed unless:

(1) the *department* [~~commission~~] secures an injunction under Section 464.015; or

(2) an administrative appeal is requested.

(d) The *department* [~~commission~~] may restrict attendance at an appeals hearing to the parties and their agents. A license holder whose license is suspended or revoked may not admit new clients until the license is reissued.

SECTION 3.1193. Sections 464.0145(a) and (c), Health and Safety Code, are amended to read as follows:

(a) If the *department* [~~commission~~] proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(c) Rules of practice adopted by the *executive commissioner* [~~commission~~] under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

SECTION 3.1194. Sections 464.015(a), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commission~~] may petition a district court to restrain a person or facility that violates the rules, standards, or licensing requirements provided under this subchapter in a manner that causes immediate threat to the health and safety of individual clients.

(c) A district court, on petition of the *department* [~~commission~~], the attorney general, or a district or county attorney, and on a finding by the court that a person or facility is violating or has violated this subchapter or a standard adopted under this subchapter, shall grant any prohibitory or mandatory injunctive relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(d) The court granting injunctive relief shall order the person or facility to reimburse the *department* [~~commission~~] and the party bringing the suit for all costs of investigation and litigation, including reasonable attorney's fees, reasonable investigative expenses, court costs, witness fees, deposition expenses, and civil administrative costs.

(e) At the request of the *department* [~~commission~~], the attorney general or the appropriate district or county attorney shall institute and conduct a suit authorized by Subsection (a) in the name of this state.

SECTION 3.1195. Section 464.016(c), Health and Safety Code, is amended to read as follows:

(c) A person commits an offense if the person has reasonable grounds to suspect that abuse or neglect of a client may have occurred and does not report the suspected or possible abuse or neglect *to the department as required by Section 464.010*.

SECTION 3.1196. Sections 464.017(b), (c), (f), and (g), Health and Safety Code, are amended to read as follows:

(b) The *department* [~~commission~~] may:

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 464.015; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(c) At the request of the *department* [~~commission~~], the attorney general or the appropriate district or county attorney shall institute and conduct the suit authorized by Subsection (b) in the name of this state. The *department* [~~commission~~] and the party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(f) Penalties collected under this section by the attorney general shall be deposited to the credit of the *general revenue fund* [~~alcohol and drug abuse treatment licensure fund account~~]. Penalties collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

(g) The *department* [~~commission~~] and the party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

SECTION 3.1197. Section 464.018, Health and Safety Code, is amended to read as follows:

Sec. 464.018. NOTICE OF SUIT. Not later than the seventh day before the date on which the attorney general intends to bring suit on *the attorney general's* [~~his~~] own initiative under Section 464.015 or 464.017, the attorney general shall provide to the *department* [~~commission~~] notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit

until the notice is provided will create an immediate threat to the health and safety of a client. This section does not create a requirement that the attorney general obtain the permission of or a referral from the *department* [~~commission~~] before filing suit.

SECTION 3.1198. Sections 464.019(a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commission~~] may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

(d) If the *department* [~~executive director~~] determines that a violation has occurred, the *department* [~~director~~] may issue [~~to the commission~~] a report that states the facts on which the determination is based and the *department's* [~~director's~~] recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the *department* [~~executive director~~] shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the *department* [~~commissioner~~] or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the *department* [~~commissioner~~], the *department* [~~board~~] by order shall [~~approve the determination and~~] impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, *an administrative law judge* [~~the commissioner~~] shall set a hearing and *the department shall* give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~board~~] a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~board~~] by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the *department's* [~~board's~~] order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the *department's* [~~board's~~] order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30–day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the *department's* [~~board's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner~~] by certified mail.

(l) The *department* [~~commissioner~~] on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the *department* [~~commissioner~~] may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the *department* [~~board~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.1199. Section 464.020(c), Health and Safety Code, is amended to read as follows:

(c) The *department* [~~commission~~] may not issue a license that authorizes a disciplinary alternative education program to provide detoxification or residential services.

SECTION 3.1200. Section 464.031(2), Health and Safety Code, is amended to read as follows:

(2) *"Department" means the Department of State Health Services* [~~"Commission" means the Texas Commission on Alcohol and Drug Abuse~~].

SECTION 3.1201. Sections 464.033(a) and (b), Health and Safety Code, are amended to read as follows:

(a) To be eligible to contract with a county, an alcoholism program or center providing prevention or intervention services must submit an application to the regional alcoholism advisory committee established by the *department* [~~commission~~] to serve the area in which the program or center is located or in which the program or center will provide services.

(b) To be eligible to contract with a county, an alcoholism program or center providing treatment or rehabilitation services must:

(1) submit an application as provided by Subsection (a); and

(2) be licensed by the *department* [~~commission~~].

SECTION 3.1202. Section 464.034(a), Health and Safety Code, is amended to read as follows:

(a) A regional alcoholism advisory committee shall:

(1) review each application received; and

(2) rank the applications using guidelines *for reviewing funding applications* established by the *department in accordance with department rules* [~~commission for reviewing funding applications~~].

SECTION 3.1203. Section 464.051, Health and Safety Code, is amended by amending Subdivision (2) and adding Subdivision (2–a) to read as follows:

(2) *"Department"* [~~"Commission"~~] has the meaning assigned by Section 464.001.

(2–a) "Executive commissioner" has the meaning assigned by Section 464.001.

SECTION 3.1204. Section 464.052(b), Health and Safety Code, is amended to read as follows:

(b) The *department* [~~commission~~] may not prohibit the use, by a program exempted under this subchapter, of the term "counseling," "treatment," or "rehabilitation."

SECTION 3.1205. Section 464.053, Health and Safety Code, is amended to read as follows:

Sec. 464.053. EXEMPT PROGRAM REGISTRATION. The *executive commissioner* [~~commission~~] by rule shall establish a simple procedure for a faith-based chemical dependency treatment program to register the program's exemption under Section 464.052.

SECTION 3.1206. Section 464.055, Health and Safety Code, is amended to read as follows:

Sec. 464.055. REPRESENTATIONS IN PROGRAM ADVERTISING OR LITERATURE. A program exempted under this subchapter shall conspicuously include in any advertisement or literature that promotes or describes the program or the program's chemical dependency treatment services the following statement:

"The treatment and recovery services at (name of program) are exclusively religious in nature and are not subject to licensure or regulation by the *Department of State Health Services* [~~Texas Commission on Alcohol and Drug Abuse~~]. This program offers only nonmedical treatment and recovery methods such as prayer, moral guidance, spiritual counseling, and scriptural study."

SECTION 3.1207. Section 464.056(a), Health and Safety Code, is amended to read as follows:

(a) A program exempted under this subchapter may not admit a person unless the person signs the following statement on admission:

"DECLARATION:

"I understand that:

(1) the treatment and recovery services at (name of program) are exclusively religious in nature and are not subject to licensure or regulation by the *Department of State Health Services* [~~Texas Commission on Alcohol and Drug Abuse~~]; and

(2) (name of program) offers only nonmedical treatment and recovery methods, such as prayer, moral guidance, spiritual counseling, and scriptural study."

signed _____ date _____

SECTION 3.1208. Section 464.057, Health and Safety Code, is amended to read as follows:

Sec. 464.057. REVOCATION OF EXEMPTION. The *department* [~~commission~~] may revoke the exemption after notice and hearing if:

(1) the organization conducting the program fails to timely inform the *department* [~~commission~~] of any material change in the program's registration information;

(2) any program advertisement or literature fails to include the statements required by Section 464.055; or

(3) the organization violates this subchapter or a *department* [~~commission~~] rule adopted under this subchapter.

SECTION 3.1209. Section 464.059, Health and Safety Code, is amended to read as follows:

Sec. 464.059. RELIGION NOT ENDORSED. This subchapter is not intended to aid religion. This subchapter is intended to aid [~~chemically dependent~~] persons *with a chemical dependency* by supporting programs that serve the valid public purpose of combating chemical dependency, regardless of whether the programs are religious, spir-

itual, or ecclesiastical in nature. The exemption of faith-based chemical dependency treatment programs from licensure and regulation is not an endorsement or sponsorship by the state of the religious character, expression, beliefs, doctrines, or practices of the treatment programs.

SECTION 3.1210. Sections 466.001(a) and (c), Health and Safety Code, are amended to read as follows:

(a) It is the intent of the legislature that the department exercise its administrative powers and regulatory authority to ensure the proper use of approved narcotic drugs in the treatment of *persons with a* narcotic *dependency* [~~dependent persons~~].

(c) Short-term goals should have an emphasis of personal and public health, crime prevention, reintegration of *persons with a* narcotic *addiction* [~~addicted persons~~] into the public work force, and social and medical stabilization. Narcotic treatment programs are an important component of the state's effort to prevent the further proliferation of the AIDS virus. Total drug abstinence is recognized as a long-term goal of treatment, subject to medical determination of the medical appropriateness and prognosis of the *person with a* narcotic *addiction* [~~addicted person~~].

SECTION 3.1211. Section 466.002, Health and Safety Code, is amended by amending Subdivisions (4) and (5) and adding Subdivision (5–a) to read as follows:

(4) "Commissioner" means the commissioner of *state* [~~public~~] health *services*.

(5) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(5–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1212. Section 466.004, Health and Safety Code, is amended to read as follows:

Sec. 466.004. POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER* [~~BOARD~~] AND DEPARTMENT. (a) The *executive commissioner* [~~board~~] shall adopt and the department shall administer and enforce rules to ensure the proper use of approved narcotic drugs in the treatment of *persons with a* narcotic *drug dependency* [~~drug-dependent persons~~], including rules that:

(1) require an applicant or a permit holder to make annual, periodic, and special reports that the department determines are necessary;

(2) require an applicant or permit holder to keep records that the department determines are necessary;

(3) provide for investigations that the department determines are necessary; and

(4) provide for the coordination of the approval of narcotic drug treatment programs by the United States Food and Drug Administration and the United States Drug Enforcement Administration.

(b) The *executive commissioner* [~~board~~] shall adopt rules for the issuance of permits to operate narcotic drug treatment programs including rules:

(1) governing the submission and review of applications;

(2) establishing the criteria for the issuance and renewal of permits; and

(3) establishing the criteria for the suspension and revocation of permits.

SECTION 3.1213. Section 466.022, Health and Safety Code, is amended to read as follows:

Sec. 466.022. LIMITATION ON PRESCRIPTION, ORDER, OR ADMINISTRATION OF NARCOTIC DRUG. A physician may not prescribe, order, or administer a narcotic drug for the purpose of treating drug dependency unless the physician prescribes, orders, or administers an approved narcotic drug for the maintenance or detoxification of *persons with a drug dependency* [~~drug-dependent persons~~] as part of a program permitted by the department.

SECTION 3.1214. Sections 466.023(a), (b), (e), and (f), Health and Safety Code, are amended to read as follows:

(a) The department shall issue a permit to an applicant who qualifies under rules and standards adopted by the *executive commissioner* [~~board~~].

(b) A permit issued under this section is valid until suspended or revoked by the department or surrendered by the permit holder in accordance with *department* [~~board~~] rules.

(e) The *executive commissioner* [~~board~~] by rule shall establish and *the department shall* collect a nonrefundable application fee to defray the cost to the department of processing each application for a permit. The application fee must be submitted with the application. An application may not be considered unless the application is accompanied by the application fee.

(f) The *executive commissioner* [~~board~~] shall adopt rules that set permit fees in amounts sufficient for the department to recover not less than half of the actual annual expenditures of state funds by the department to:

(1) amend permits;

(2) inspect facilities operated by permit holders; and

(3) implement and enforce this chapter.

SECTION 3.1215. Section 466.024(b), Health and Safety Code, is amended to read as follows:

(b) The department may issue a permit to a person other than a physician only if the person provides health care services under the supervision of one or more physicians licensed by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~].

SECTION 3.1216. Sections 466.025(a) and (c), Health and Safety Code, are amended to read as follows:

(a) *The department* [~~An authorized agent~~] may enter the facility of a person who is an applicant for a permit or who is a permit holder during any hours in which the facility is in operation for the purpose of inspecting the facility to determine:

(1) if the person meets the standards set in *department* [~~the~~] rules [~~of the board~~] for the issuance of a permit; or

(2) if a person who holds a permit is in compliance with this chapter, the standards set in *department* [~~the~~] rules [~~of the board~~] for the operation of a facility, any special provisions contained in the permit, or an order of the commissioner or the department.

(c) The *department* [~~authorized agent~~] shall provide the applicant or permit holder with a copy of the inspection report. An inspection report shall be made a part of the applicant's submission file or the permit holder's compliance record.

SECTION 3.1217. Section 466.026, Health and Safety Code, is amended to read as follows:

Sec. 466.026. MULTIPLE ENROLLMENT PREVENTION. The department shall work with representatives from permitted narcotic treatment programs in this state to develop recommendations for a plan to prevent the simultaneous multiple enrollment of persons in narcotic treatment programs. The *executive commissioner* [~~board~~] may adopt rules to implement these recommendations.

SECTION 3.1218. Sections 466.027(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] may adopt rules that establish the criteria for the denial, suspension, or revocation of a permit.

(c) Hearings, appeals from, and judicial review of final administrative decisions under this section shall be conducted according to the contested case provisions of Chapter 2001, Government Code, and the *department's* [~~board's~~] formal hearing rules.

SECTION 3.1219. Sections 466.041(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner or the commissioner's designee~~] may issue an

emergency order, either mandatory or prohibitory in nature, in relation to the operation of a permitted facility or the treatment of patients by the facility staff, in the department's jurisdiction. The order may be issued if the *department* [~~commissioner or the commissioner's designee~~] determines that the treatment of patients by the staff of the permit holder creates or poses an immediate and serious threat to human life or health and other procedures available to the department to remedy or prevent the occurrence of the situation will result in an unreasonable delay.

(b) The *department* [~~commissioner or the commissioner's designee~~] may issue the emergency order, including an emergency order suspending or revoking a permit issued by the department, without notice and hearing, if the *department* [~~commissioner or the commissioner's designee~~] determines that action to be practicable under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine a time and place for a hearing at which the emergency order is affirmed, modified, or set aside. The hearing shall be held under the contested case provisions of Chapter 2001, Government Code, and the *department's* [~~board's~~] formal hearing rules.

SECTION 3.1220. Sections 466.042(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner, the commissioner's designee, or an authorized agent~~] may request the attorney general or a district, county, or municipal attorney to petition the district court for a temporary restraining order to restrain:

(1) a continuing violation of this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter; or

(2) a threat of a continuing violation of this chapter, a rule, or an order or permit.

(b) To request a temporary restraining order, the *department* [~~commissioner, commissioner's designee, or an authorized agent~~] must find that a person has violated, is violating, or is threatening to violate this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter and:

(1) the violation or threatened violation creates an immediate threat to the health and safety of the public; or

(2) there is reasonable cause to believe that the permit holder or the staff of the permit holder is party to the diversion of a narcotic drug or drugs in violation of Chapter 481 (Texas Controlled Substances Act).

SECTION 3.1221. Section 466.043, Health and Safety Code, is amended to read as follows:

Sec. 466.043. ADMINISTRATIVE PENALTY. If a person violates this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the *department* [~~commissioner~~] may assess an administrative penalty against the person as provided by Chapter 431 (Texas Food, Drug, and Cosmetic Act).

SECTION 3.1222. Section 466.045(a), Health and Safety Code, is amended to read as follows:

(a) If it appears that a person has violated this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the *department* [~~commissioner~~] may request the attorney general or the district, county, or municipal attorney of the municipality or county in which the violation occurred to institute a civil suit for the assessment and recovery of a civil penalty.

SECTION 3.1223. Section 467.001, Health and Safety Code, is amended by amending Subdivisions (1) and (5) and adding Subdivision (2–a) to read as follows:

(1) "Approved peer assistance program" means a program that is designed to help an impaired professional and that is:

(A) established by a licensing or disciplinary authority; or

(B) approved by a licensing or disciplinary authority as meeting the criteria

established by the *executive commissioner* [~~department~~] and any additional criteria established by that licensing or disciplinary authority.

(2-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Professional" means an individual who:

(A) may incorporate under The Texas Professional Corporation *Law as described by Section 1.008(m), Business Organizations Code* [~~Act (Article 1528e, Vernon's Texas Civil Statutes)~~]; or

(B) is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, social worker, chemical dependency counselor, occupational therapist, speech-language pathologist, audiologist, licensed dietitian, or dental or dental hygiene school faculty member.

SECTION 3.1224. Section 467.003, Health and Safety Code, is amended to read as follows:

Sec. 467.003. PROGRAMS. (a) A professional association or licensing or disciplinary authority may establish a peer assistance program to identify and assist impaired professionals in accordance with the minimum criteria established by the *executive commissioner* [~~department~~] and any additional criteria established by the appropriate licensing or disciplinary authority.

(b) A peer assistance program established by a professional association is not governed by or entitled to the benefits of this chapter unless the association submits evidence to the appropriate licensing or disciplinary authority showing that the association's program meets the minimum criteria established by the *executive commissioner* [~~department~~] and any additional criteria established by that authority.

(c) If a licensing or disciplinary authority receives evidence showing that a peer assistance program established by a professional association meets the minimum criteria established by the *executive commissioner* [~~department~~] and any additional criteria established by that authority, the authority shall approve the program.

(d) A licensing or disciplinary authority may revoke its approval of a program established by a professional association under this chapter if the authority determines that:

(1) the program does not comply with the criteria established by the *executive commissioner* [~~department~~] or by that authority; and

(2) the professional association does not bring the program into compliance within a reasonable time, as determined by that authority.

SECTION 3.1225. The heading to Section 467.0041, Health and Safety Code, is amended to read as follows:

Sec. 467.0041. FUNDING FOR [~~TEXAS~~] STATE BOARD OF DENTAL EXAMINERS.

SECTION 3.1226. Sections 467.0041(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a) Except as provided by this section, the [~~Texas~~] State Board of Dental Examiners is subject to Section 467.004.

(c) The board may collect a fee of not more than $50 each month from a participant in an approved peer assistance program. [~~Fees collected under this subsection shall be remitted to the comptroller for deposit to the credit of the dental registration account.~~]

(d) Subject to the General Appropriations Act, the board may use the fees and surcharges collected under this section and fines collected in the enforcement of *Subtitle D, Title 3, Occupations Code* [~~Chapter 9, Title 71, Revised Statutes, and that are deposited in the dental registration account~~], to fund an approved program and to pay the administrative costs incurred by the board that are related to the program.

SECTION 3.1227. Section 481.002, Health and Safety Code, is amended by amending Subdivision (3) and adding Subdivision (55) to read as follows:

(3) "Commissioner" means the commissioner of *state* [~~public~~] health *services* or the commissioner's designee.

(55) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1228. Sections 481.034(a), (b), and (e), Health and Safety Code, are amended to read as follows:

(a) The commissioner shall annually establish the schedules of controlled substances. These annual schedules shall include the complete list of all controlled substances from the previous schedules and modifications in the federal schedules of controlled substances as required by Subsection (g). Any further additions to and deletions from these schedules, any rescheduling of substances and any other modifications made by the commissioner to these schedules of controlled substances shall be made:

(1) in accordance with Section 481.035;

(2) in a manner consistent with this subchapter; and

(3) with approval of the *executive commissioner* [~~Texas Board of Health~~].

(b) Except for alterations in schedules required by Subsection (g), the commissioner may not make an alteration in a schedule unless the commissioner holds a public hearing on the matter in Austin and obtains approval from the *executive commissioner* [~~Texas Board of Health~~].

(e) After considering the factors listed in Subsection (d), the commissioner shall make findings with respect to those factors. *If* [~~and adopt a rule controlling the substance if~~] the commissioner finds the substance has a potential for abuse, *the executive commissioner shall adopt a rule controlling the substance.*

SECTION 3.1229. Section 481.062(a), Health and Safety Code, is amended to read as follows:

(a) The following persons are not required to register and may possess a controlled substance under this chapter:

(1) an agent or employee of a registered manufacturer, distributor, analyzer, or dispenser of the controlled substance acting in the usual course of business or employment;

(2) a common or contract carrier, a warehouseman, or an employee of a carrier or warehouseman whose possession of the controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of the controlled substance under a lawful order of a practitioner or in lawful possession of the controlled substance if it is listed in Schedule V;

(4) an officer or employee of this state, another state, a political subdivision of this state or another state, or the United States who is lawfully engaged in the enforcement of a law relating to a controlled substance or drug or to a customs law and authorized to possess the controlled substance in the discharge of the person's official duties; or

(5) if the substance is tetrahydrocannabinol or one of its derivatives:

(A) a [~~Texas~~] Department of *State* Health *Services* official, a medical school researcher, or a research program participant possessing the substance as authorized under Subchapter G; or

(B) a practitioner or an ultimate user possessing the substance as a participant in a federally approved therapeutic research program that the commissioner has reviewed and found, in writing, to contain a medically responsible research protocol.

SECTION 3.1230. Section 481.068(b), Health and Safety Code, is amended to read as follows:

(b) Except as provided by Sections 481.074 and 481.075, a practitioner engaged in au-

thorized medical practice or research may not be required to furnish the name or identity of a patient or research subject to the department, the *Department of State Health Services* [~~director of the Texas Commission on Alcohol and Drug Abuse~~], or any other agency, public official, or law enforcement officer. A practitioner may not be compelled in a state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

SECTION 3.1231. Section 481.073(a), Health and Safety Code, is amended to read as follows:

(a) Only a practitioner defined by Section 481.002(39)(A) and an agent designated in writing by the practitioner in accordance with rules adopted by the department may communicate a prescription by telephone. A pharmacy that receives a telephonically communicated prescription shall promptly write the prescription and file and retain the prescription in the manner required by this subchapter. A practitioner who designates an agent to communicate prescriptions shall maintain the written designation of the agent in the practitioner's usual place of business and shall make the designation available for inspection by investigators for the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~], the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, and the department. A practitioner who designates a different agent shall designate that agent in writing and maintain the designation in the same manner in which the practitioner initially designated an agent under this section.

SECTION 3.1232. Sections 481.201(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~Texas Board of Health~~] may establish a controlled substance therapeutic research program for the supervised use of tetrahydrocannabinols for medical and research purposes to be conducted in accordance with this chapter.

(b) If the *executive commissioner* [~~Texas Board of Health~~] establishes the program, the *executive commissioner* [~~board~~] shall create a research program review board. The review board members are appointed by the *executive commissioner* [~~Texas Board of Health~~] and serve at the will of the *executive commissioner* [~~board~~].

SECTION 3.1233. Sections 481.202(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The review board, after approval of the *executive commissioner* [~~Texas Board of Health~~], may seek authorization to expand the research program to include diseases not covered by this subchapter.

(d) The *executive commissioner* [~~Texas Board of Health~~] may terminate the distribution of tetrahydrocannabinols and their derivatives to a research program as *the executive commissioner* [~~it~~] determines necessary.

SECTION 3.1234. Section 481.203(a), Health and Safety Code, is amended to read as follows:

(a) A person may not be considered for participation as a recipient of tetrahydrocannabinols and their derivatives through a research program unless the person is recommended to a person in charge of an approved research program and the review board by a physician who is licensed by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~] and is attending the person.

SECTION 3.1235. Section 481.204, Health and Safety Code, is amended to read as follows:

Sec. 481.204. ACQUISITION AND DISTRIBUTION OF CONTROLLED SUBSTANCES. (a) The *executive commissioner* [~~Texas Board of Health~~] shall acquire the tetrahydrocannabinols and their derivatives for use in the research program by contracting with the National Institute on Drug Abuse to receive tetrahydrocannabinols and their derivatives that are safe for human consumption according to the regulations adopted by the institute, the *United States* Food and Drug Administration, and the Federal Drug Enforcement Administration.

(b) The *executive commissioner* [~~Texas Board of Health~~] shall supervise the distribution of the tetrahydrocannabinols and their derivatives to program participants. The tetrahydrocannabinols and derivatives of tetrahydrocannabinols may be distributed only by the person in charge of the research program to physicians caring for program participant patients, under rules adopted by the *executive commissioner* [~~Texas Board of Health~~] in such a manner as to prevent unauthorized diversion of the substances and in compliance with all requirements of the Federal Drug Enforcement Administration. The physician is responsible for dispensing the substances to patients.

SECTION 3.1236. Section 481.205, Health and Safety Code, is amended to read as follows:

Sec. 481.205. RULES; REPORTS. (a) The *executive commissioner* [~~Texas Board of Health~~] shall adopt rules necessary for implementing the research program.

(b) If the *executive commissioner* [~~Texas Board of Health~~] establishes a program under this subchapter, the commissioner shall publish a report not later than January 1 of each odd-numbered year on the medical effectiveness of the use of tetrahydrocannabinols and their derivatives and any other medical findings of the research program.

SECTION 3.1237. Section 483.003, Health and Safety Code, is amended to read as follows:

Sec. 483.003. *DEPARTMENT* [~~BOARD~~] OF *STATE* HEALTH *SERVICES* HEARINGS REGARDING CERTAIN DANGEROUS DRUGS. (a) The *Department* [~~Texas Board~~] of *State* Health *Services* may hold public hearings in accordance with Chapter 2001, Government Code, to determine whether there is compelling evidence that a dangerous drug has been abused, either by being prescribed for nontherapeutic purposes or by the ultimate user.

(b) On [~~making that~~] finding *that a dangerous drug has been abused*, the *Department* [~~Texas Board~~] of *State* Health *Services* may limit the availability of the abused drug by permitting its dispensing only on the prescription of a practitioner described by Section 483.001(12)(A), (B), or (D).

SECTION 3.1238. Section 483.004, Health and Safety Code, is amended to read as follows:

Sec. 483.004. COMMISSIONER OF *STATE* HEALTH *SERVICES* EMERGENCY AUTHORITY RELATING TO DANGEROUS DRUGS. If the commissioner of *state* health *services* has compelling evidence that an immediate danger to the public health exists as a result of the prescription of a dangerous drug by practitioners described by Section 483.001(12)(C), the commissioner may use the commissioner's existing emergency authority to limit the availability of the drug by permitting its prescription only by practitioners described by Section 483.001(12)(A), (B), or (D).

SECTION 3.1239. Section 483.024, Health and Safety Code, is amended to read as follows:

Sec. 483.024. RECORDS OF ACQUISITION OR DISPOSAL. The following persons shall maintain a record of each acquisition and each disposal of a dangerous drug for two years after the date of the acquisition or disposal:

(1) a pharmacy;

(2) a practitioner;

(3) a person who obtains a dangerous drug for lawful research, teaching, or testing purposes, but not for resale;

(4) a hospital that obtains a dangerous drug for lawful administration by a practitioner; and

(5) a manufacturer or wholesaler *licensed by* [~~registered with~~] the *Department* [~~commissioner~~] of *State Health Services* [~~health~~] under Chapter 431 (Texas Food, Drug, and Cosmetic Act).

SECTION 3.1240. Section 483.041(c), Health and Safety Code, is amended to read as follows:

(c) Subsection (a) does not apply to the possession of a dangerous drug in the usual course of business or practice or in the performance of official duties by the following persons or an agent or employee of the person:

(1) a pharmacy licensed by the board;

(2) a practitioner;

(3) a person who obtains a dangerous drug for lawful research, teaching, or testing, but not for resale;

(4) a hospital that obtains a dangerous drug for lawful administration by a practitioner;

(5) an officer or employee of the federal, state, or local government;

(6) a manufacturer or wholesaler licensed by the Department of State Health Services under Chapter 431 (Texas Food, Drug, and Cosmetic Act);

(7) a carrier or warehouseman;

(8) a home and community support services agency licensed under and acting in accordance with Chapter 142;

(9) a licensed midwife who obtains oxygen for administration to a mother or newborn or who obtains a dangerous drug for the administration of prophylaxis to a newborn for the prevention of ophthalmia neonatorum in accordance with Section 203.353, Occupations Code;

(10) a salvage broker or salvage operator licensed under Chapter 432; or

(11) a certified laser hair removal professional under Subchapter M, Chapter 401, who possesses and uses a laser or pulsed light device approved by and registered with the *Department of State Health Services* [~~department~~] and in compliance with department rules for the sole purpose of cosmetic nonablative hair removal.

SECTION 3.1241. Section 485.001, Health and Safety Code, is amended by amending Subdivisions (4) and (7) and adding Subdivision (7–a) to read as follows:

(4) "Commissioner" means the commissioner of *state* health *services*.

(7) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(7–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1242. Section 485.002, Health and Safety Code, is amended to read as follows:

Sec. 485.002. RULES. The *executive commissioner* [~~board~~] may adopt rules necessary to comply with any labeling requirements concerning precautions against inhalation of an abusable volatile chemical established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, or under regulations adopted under that Act.

SECTION 3.1243. Sections 485.012(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules as necessary to administer this chapter, including application procedures and procedures by which the department shall give each permit holder reasonable notice of permit expiration and renewal requirements.

(d) A permit issued or renewed under this chapter is valid for *two years* [~~one year~~] from the date of issuance or renewal.

SECTION 3.1244. Section 485.013, Health and Safety Code, is amended to read as follows:

Sec. 485.013. FEE. The *executive commissioner* [~~board~~] by rule may establish fees in amounts *as prescribed by Section 12.0111* [~~not to exceed $25 for the issuance of a permit under this chapter~~].

SECTION 3.1245. Section 485.104(b), Health and Safety Code, is amended to read as follows:

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the *department* [~~commissioner~~] by order shall [~~approve the determination and~~] impose the recommended penalty.

SECTION 3.1246. Section 485.105, Health and Safety Code, is amended to read as follows:

Sec. 485.105. HEARING. (a) If the person requests a hearing, the *department* [~~commissioner~~] shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. *The department shall* [~~and~~] give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~commissioner~~] a *written* proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

SECTION 3.1247. Section 485.106, Health and Safety Code, is amended to read as follows:

Sec. 485.106. DECISION BY *DEPARTMENT* [~~COMMISSIONER~~]. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~commissioner~~] by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the *department's* [~~commissioner's~~] order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

SECTION 3.1248. Section 485.107, Health and Safety Code, is amended to read as follows:

Sec. 485.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date the order of the *department* [~~commissioner~~] under Section 485.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the *department's* [~~commissioner's~~] order contesting the occurrence of the violation, the amount of the penalty, or both.

SECTION 3.1249. Section 485.108, Health and Safety Code, is amended to read as follows:

Sec. 485.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 485.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the *department's* [~~commissioner's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the *department* [~~commissioner~~] by certified mail.

(b) If the *department* [~~commissioner~~] receives a copy of an affidavit under Subsection

(a)(2), the *department* [~~commissioner~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

SECTION 3.1250. Section 486.001(a), Health and Safety Code, is amended by adding Subdivision (4–a) to read as follows:

(4–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1251. Section 486.003, Health and Safety Code, is amended to read as follows:

Sec. 486.003. RULES. The *executive commissioner* [~~council~~] shall adopt rules necessary to implement and enforce this chapter.

SECTION 3.1252. Section 486.004(b), Health and Safety Code, is amended to read as follows:

(b) The *executive* commissioner by rule shall set the fees in amounts that allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing applications for the issuance of a certificate of authority under this chapter;

(2) issuing certificates of authority under this chapter;

(3) inspecting and auditing a business establishment that is issued a certificate of authority under this chapter; and

(4) otherwise implementing *and* enforcing this chapter.

SECTION 3.1253. Section 486.012(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~department~~] by rule shall establish requirements for the issuance of a certificate of authority under this section. The rules must include a consideration [~~by the department~~] of whether the establishment:

(1) complies with the requirements of the Texas State Board of Pharmacy for the issuance of a license to operate a pharmacy;

(2) sells a wide variety of healthcare products; and

(3) employs sales techniques and other measures designed to deter the theft of products containing ephedrine, pseudoephedrine, or norpseudoephedrine and other items used in the manufacture of methamphetamine.

SECTION 3.1254. Section 486.0142(a), Health and Safety Code, is amended to read as follows:

(a) On application by a business establishment that operates a pharmacy and engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine as authorized by Section 486.011, the *Texas* State Board of Pharmacy may grant that business establishment a temporary exemption, not to exceed 180 days, from the requirement of using a real-time electronic logging system under this chapter.

SECTION 3.1255. Section 486.024(b), Health and Safety Code, is amended to read as follows:

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the *department* [~~commissioner~~] by order shall *impose the penalty* [~~approve the determination~~].

SECTION 3.1256. Section 486.025, Health and Safety Code, is amended to read as follows:

Sec. 486.025. HEARING. (a) If the person requests a hearing, the *department* [~~com-~~

~~missioner~~] shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date, and *the department shall* give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~commissioner~~] a *written* proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

SECTION 3.1257. Section 486.026, Health and Safety Code, is amended to read as follows:

Sec. 486.026. DECISION. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~commissioner~~] by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the *department's* [~~commissioner's~~] order under Subsection (a) that is sent to the person in the manner provided by Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

SECTION 3.1258. Section 486.028, Health and Safety Code, is amended to read as follows:

Sec. 486.028. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 486.027, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the *department* [~~commissioner~~] by certified mail.

(b) Following receipt of a copy of an affidavit under Subsection (a)(2), the *department* [~~commissioner~~] may file with the court, before the sixth day after the date of receipt, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

SECTION 3.1259. Section 501.001, Health and Safety Code, is amended by amending Subdivisions (3) and (4) and adding Subdivision (4–a) to read as follows:

(3) "Commissioner" means the commissioner of *state* [~~public~~] health *services*.

(4) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(4–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1260. Sections 501.002(d) and (k), Health and Safety Code, are amended to read as follows:

(d) A substance or article is extremely flammable, flammable, or combustible if it is defined as extremely flammable, flammable, or combustible by rule *adopted by* [~~of~~] the *executive commissioner* [~~board~~]. The *executive commissioner* [~~board~~] shall define the terms as they are defined by the Federal Hazardous Substances Act (15 U.S.C. Section

1261 et seq.), as amended, and by federal regulations adopted under that Act. The terms each have the meaning assigned by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) and by federal regulations adopted under that Act, as of September 1, 2001.

(k) The following are not hazardous substances:

(1) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section *136* [~~135~~] et seq.);

(2) a food, drug, or cosmetic subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) or Chapter 431 (Texas Food, Drug, and Cosmetic Act);

(3) a beverage complying with or subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.);

(4) a substance intended for use as fuel that is stored in a container and used in the heating, cooking, or refrigeration system of a private residence; and

(5) source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954 (42 U.S.C. Chapter 23) and regulations issued under that Act by the *United States Nuclear Regulatory Commission* [~~Atomic Energy Commission~~].

SECTION 3.1261. Section 501.003, Health and Safety Code, is amended to read as follows:

Sec. 501.003. DESIGNATION OF RADIOACTIVE SUBSTANCE AS HAZARDOUS. The *executive commissioner* [~~board~~] by rule shall designate a radioactive substance to be a hazardous substance if, with respect to the substance as used in a particular class of article or as packaged, the *executive commissioner* [~~board~~] finds that the substance is sufficiently hazardous as to require labeling as a hazardous substance under this chapter in order to protect the public health.

SECTION 3.1262. Sections 501.021(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall establish the methods for determining the flammability of solids, fabrics, children's clothing, household furnishings, and the contents of self-pressurized containers that the *executive commissioner* [~~board~~] finds are generally applicable to those materials or containers.

(b) The *executive commissioner* [~~board~~] by rule shall establish flammability standards for articles described by Subsection (a). The standards must conform to standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), as amended, the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.), as amended. Until the *executive commissioner* [~~board~~] adopts standards, the flammability standards for articles described by Subsection (a) are the standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) as of September 1, 2001.

SECTION 3.1263. Sections 501.022(a), (b), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall designate as a banned hazardous substance any article, including clothing intended for the use of children, that is not properly packaged or that does not comply with applicable flammability standards established by the *executive commissioner* [~~board~~]. The *executive commissioner's* [~~board's~~] determination that articles of clothing of a specified range of sizes are intended for the use of a child 14 years of age or younger is conclusive.

(b) The *executive commissioner* [~~board~~] by rule shall designate as a banned hazardous substance any toy or other article, other than clothing, intended for the use of children that is a hazardous substance or bears or contains a hazardous substance in a manner accessible by a child to whom the toy or other article is entrusted.

(c) The *executive commissioner* [~~board~~] by rule shall designate as a banned hazardous substance any hazardous substance intended or packaged in a form suitable for use in a household that, notwithstanding cautionary labeling required by this chapter, is potentially so dangerous or hazardous when present or used in a household that the protection of the public health and safety may be adequately served only by keeping the substance out of commerce.

(d) The *executive commissioner* [~~board~~] by rule shall designate as a banned hazardous substance any article subject to this chapter that cannot be labeled adequately to protect the public health and safety or that presents an imminent danger to the public health and safety.

(e) This section does not apply to a toy or article such as a chemical set that because of its functional purpose requires the inclusion of a hazardous substance or necessarily presents an electrical, mechanical, or thermal hazard if the toy or article:

(1) bears labeling that in the judgment of the *department* [~~board~~] gives adequate directions and warnings for safe use; and

(2) is intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed those directions and warnings.

SECTION 3.1264. Section 501.0231, Health and Safety Code, is amended to read as follows:

Sec. 501.0231. LABELING OF CERTAIN TOYS AND GAMES. (a) Toys or games intended for use by children, including the parts of those toys or games, shall be labeled in the manner required by *department* rule [~~of the board~~]. The [~~board's~~] rules *adopted* under this subsection shall be consistent with federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended. Until the *executive commissioner* [~~board~~] adopts rules under this subsection, the toys, games, and parts shall be labeled in the manner required by federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1, 2001.

(b) Latex balloons, small balls, marbles, and any toy or game that contains such a balloon, ball, or marble shall be labeled in the manner required by *department* rule [~~of the board~~]. The [~~board's~~] rules *adopted* under this subsection shall be consistent with federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended. Until the *executive commissioner* [~~board~~] adopts rules under this subsection, latex balloons, small balls, marbles, and any toy or game that contains such a balloon, ball, or marble shall be labeled in the manner required by federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1, 2001.

SECTION 3.1265. Section 501.0232(b), Health and Safety Code, is amended to read as follows:

(b) Art materials shall be labeled in the manner required by *department* rule [~~of the board~~]. The [~~board's~~] rules *adopted* under this subsection shall be consistent with the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and federal regulations adopted under that Act. Until the *executive commissioner* [~~board~~] adopts rules under this subsection, art materials shall be labeled in the manner required by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and federal regulations adopted under that Act, as of September 1, 2001.

SECTION 3.1266. Section 501.0233, Health and Safety Code, is amended to read as follows:

Sec. 501.0233. PACKAGING OF HAZARDOUS SUBSTANCES. Hazardous substances shall be packaged in the manner required by special packaging rules adopted by the *executive commissioner* [~~board~~]. The [~~board's~~] rules *adopted* under this section shall be consistent with federal special packaging regulations adopted under the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as amended. Until the *executive commissioner* [~~board~~] adopts rules under this section, hazardous substances shall be packaged in the manner required by federal special packaging regula-

tions adopted under the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as of September 1, 2001.

SECTION 3.1267. Sections 501.024(b) and (d), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule shall detail the registration requirements and prescribe the contents of the registration statement.

(d) The initial registration statement and each annual registration statement must be accompanied by a fee prescribed by the *executive commissioner by rule* [~~board~~].

SECTION 3.1268. Section 501.025, Health and Safety Code, is amended to read as follows:

Sec. 501.025. RULES. The *executive commissioner* [~~board~~] may adopt reasonable rules necessary for the efficient administration and enforcement of this chapter. The rules must conform with regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.), as amended, the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), as amended, and the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as amended, as applicable.

SECTION 3.1269. Section 501.026, Health and Safety Code, is amended to read as follows:

Sec. 501.026. FEES. The *executive commissioner* [~~board~~] by rule shall set reasonable registration fees in an amount *as prescribed by Section 12.0111* [~~designed to recover not more than the costs to the department of administering, monitoring compliance with, enforcing, and conducting tests under this chapter~~].

SECTION 3.1270. Section 501.104(b), Health and Safety Code, is amended to read as follows:

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the *department* [~~commissioner of public health~~] by order shall [~~approve the determination and~~] impose the recommended penalty.

SECTION 3.1271. Section 501.105, Health and Safety Code, is amended to read as follows:

Sec. 501.105. HEARING. (a) If the person requests a hearing, the *department* [~~commissioner of public health~~] shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. *The department shall* [~~and~~] give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~commissioner of public health~~] a *written* proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

SECTION 3.1272. Section 501.106, Health and Safety Code, is amended to read as follows:

Sec. 501.106. DECISION BY *DEPARTMENT* [~~COMMISSIONER~~]. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~commissioner of public health~~] by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the *department's* [~~commissioner's~~] order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

SECTION 3.1273. Section 501.107, Health and Safety Code, is amended to read as follows:

Sec. 501.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30

days after the date an order of the *department* [~~commissioner of public health~~] under Section 501.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the *department's* [~~commissioner's~~] order contesting the occurrence of the violation, the amount of the penalty, or both.

SECTION 3.1274. Section 501.108, Health and Safety Code, is amended to read as follows:

Sec. 501.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 501.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the *department's* [~~commissioner's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner of public health~~] by certified mail.

(b) If the *department* [~~commissioner of public health~~] receives a copy of an affidavit under Subsection (a)(2), the *department* [~~commissioner~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

SECTION 3.1275. Section 502.003, Health and Safety Code, is amended by amending Subdivisions (3), (4), (6), (9), (11), (13), (15), (18), and (20) and adding Subdivision (11-a) to read as follows:

(3) "Chemical manufacturer" means an employer in *North American Industry Classification System (NAICS)* [~~Standard Industrial Classification (SIC)~~] Codes *31-33* [~~20-39~~] with a workplace where chemicals are produced for use or distribution.

(4) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard *classification* [~~evaluation~~].

(6) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(9) "Distributor" means a business in *North American Industry Classification System (NAICS) Code 424 or 425* [~~Standard Industrial Classification Major Industry Group 516 or 517~~] that supplies hazardous chemicals to an employer who must comply with this *chapter* [~~Act~~].

(11) "Employer" means a person engaged in private business who is regulated by the federal Occupational Safety and Health Act of 1970 *(29 U.S.C. Section 651 et seq.)* [~~(Pub. L. No. 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173),~~] or the Federal Mine Safety and Health [~~Amendments~~] Act of 1977 *(30 U.S.C. Section 801 et seq.)* [~~(Pub. L. No. 95-164)~~] on *September 1, 1993* [~~the effective date of this Act~~], or the state or a political subdivision of the state, including a state,

county, or municipal agency, a public school, a college or university, a river authority or publicly owned utility, a volunteer emergency service organization, and other similar employers. The term does not include any person to whom the federal Occupational Safety and Health Act of 1970 *(29 U.S.C. Section 651 et seq.)* [~~(Pub. L. No. 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173),~~] or the Federal Mine Safety and Health [~~Amendments~~] Act of 1977 *(30 U.S.C. Section 801 et seq.)* [~~(Pub. L. No. 95-164)~~] is applicable if that employer is covered by the OSHA standard or the other two federal laws.

(11-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(13) "Hazardous chemical" or "chemical" means an element, compound, or mixture of elements or compounds that is a physical hazard or health hazard as defined by the OSHA standard in 29 CFR Section 1910.1200(c), or a hazardous substance as *classified under* [~~defined by~~] the OSHA standard in 29 CFR Section 1910.1200(d)(3), or by OSHA's written interpretations. A hazard determination may be made by employers who choose not to rely on the evaluations made by their suppliers if there are relevant qualitative or quantitative differences. A hazard determination shall involve the best professional judgment.

(15) "Identity" means a chemical or common name, or alphabetical or numerical identification, that is indicated on the [~~material~~] safety data sheet *(SDS)* [~~(MSDS)~~] for the chemical. The identity used must permit cross-references to be made among the workplace chemical list, the label, and the *SDS* [~~MSDS~~].

(18) "MSHA standard" means the Hazard Communication Standard issued by the *Mine* [~~Mining~~] Safety and Health Administration.

(20) "Physical hazard" means a chemical *that is classified as posing one of the following hazardous effects: explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas* [~~for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard~~].

SECTION 3.1276. Section 502.003(17), Health and Safety Code, is redesignated as Section 502.003(20-a), Health and Safety Code, and amended to read as follows:

(20-a) "Safety [~~(17) "Material Safety~~] Data Sheet" *("SDS")* [~~("MSDS")~~] means *written or printed material concerning a hazardous chemical* [~~a document containing chemical hazard and safe handling information~~] that is prepared in accordance with the requirements of the OSHA standard for that *material* [~~document~~].

SECTION 3.1277. Section 502.004(f), Health and Safety Code, is amended to read as follows:

(f) This chapter does not apply to:

(1) any hazardous waste, as that term is defined by the federal Solid Waste Disposal Act[~~, as amended by the Resource Conservation and Recovery Act of 1976, as amended~~] (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;

(2) a chemical in a laboratory under the direct supervision or guidance of a technically qualified individual if:

(A) labels on incoming containers of chemicals are not removed or defaced;

(B) the employer complies with Sections 502.006 and 502.009 with respect to laboratory employees; and

(C) the laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes;

(3) tobacco or tobacco products;

(4) wood or wood products;

(5) articles;

(6) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(7) food, drugs, or cosmetics intended for personal consumption by an employee while in the workplace;

(8) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the workplace in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(9) any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.); and

(10) radioactive waste.

SECTION 3.1278. Sections 502.005(a) and (d), Health and Safety Code, are amended to read as follows:

(a) For the purpose of worker right-to-know, an employer shall compile and maintain a workplace chemical list that contains the following information for each hazardous chemical normally present in the workplace or temporary workplace in excess of 55 gallons or 500 pounds or in excess of an amount that the *executive commissioner* [~~board~~] determines by rule for certain highly toxic or dangerous hazardous chemicals:

(1) the identity used on the *SDS* [~~MSDS~~] and container label; and

(2) the work area in which the hazardous chemical is normally present.

(d) An employer shall maintain a workplace chemical list for at least 30 years. The employer shall send complete records to the *department* [~~director~~] if the employer ceases to operate.

SECTION 3.1279. Section 502.006, Health and Safety Code, is amended to read as follows:

Sec. 502.006. [~~MATERIAL~~] SAFETY DATA SHEET. (a) A chemical manufacturer or distributor shall provide appropriate [~~material~~] safety data sheets to employers who acquire hazardous chemicals in this state with each initial shipment and with the first shipment after an *SDS* [~~MSDS~~] is updated. The *SDSs* [~~MSDSs~~] must conform to the most current requirements of the OSHA standard.

(b) An employer shall maintain a legible copy of a current *SDS* [~~MSDS~~] for each hazardous chemical purchased. If the employer does not have a current *SDS* [~~MSDS~~] for a hazardous chemical when the chemical is received at the workplace, the employer shall request an *SDS* [~~MSDS~~] in writing from the manufacturer or distributor in a timely manner or shall otherwise obtain a current *SDS* [~~MSDS~~]. The manufacturer or distributor shall respond with an appropriate *SDS* [~~MSDS~~] in a timely manner.

(c) *Safety* [~~Material safety~~] data sheets shall be readily available, on request, for review by employees or designated representatives at each workplace.

(d) A copy of an *SDS* [~~MSDS~~] maintained by an employer under this section shall be provided to the *department* [~~director~~] on request.

SECTION 3.1280. Section 502.007(a), Health and Safety Code, is amended to read as follows:

(a) A label on an existing container of a hazardous chemical may not be removed or defaced unless it is illegible, inaccurate, or does not conform to the OSHA standard or other applicable labeling requirement. Primary containers must be relabeled with at least the identity appearing on the *SDS* [~~MSDS~~], the pertinent physical and health hazards, including the organs that would be affected, and the manufacturer's name and address. Except as provided by Subsection (b), secondary containers must be relabeled

with at least the identity appearing on the *SDS* [~~MSDS~~] and appropriate hazard warnings.

SECTION 3.1281. Section 502.008, Health and Safety Code, is amended to read as follows:

Sec. 502.008. OUTREACH PROGRAM. (a) The *department* [~~director~~] shall develop an outreach program that:

(1) consists of an education and training program in the form of instructional materials to assist employers in fulfilling the requirements of Section 502.009; and

(2) includes the development and distribution of a supply of informational leaflets concerning employer's duties, employee rights, the outreach program, and the effects of hazardous chemicals.

(b) The *department* [~~director~~] may contract with a public institution of higher education or other public or private organization to develop and implement the outreach program.

(c) The *department* [~~director~~] shall develop and provide to each employer a suitable form of notice providing employees with information relating to employee rights under this chapter.

(d) The *department* [~~director~~] shall publicize the availability of information to answer inquiries from employees, employers, or the public in this state concerning the effects of hazardous chemicals.

(e) In cooperation with the *department* [~~director~~], an employer may provide an outreach program in the community.

SECTION 3.1282. Sections 502.009(c) and (i), Health and Safety Code, are amended to read as follows:

(c) An education and training program must include, as appropriate:

(1) information on interpreting labels and *SDSs* [~~MSDSs~~] and the relationship between those two methods of hazard communication;

(2) the location by work area, acute and chronic effects, and safe handling of hazardous chemicals known to be present in the employees' work area and to which the employees may be exposed;

(3) the proper use of protective equipment and first aid treatment to be used with respect to the hazardous chemicals to which the employees may be exposed; and

(4) general safety instructions on the handling, cleanup procedures, and disposal of hazardous chemicals.

(i) As part of an outreach program created in accordance with Section 502.008, the *department* [~~director~~] shall develop an education and training assistance program to assist employers who are unable to develop the programs because of size or other practical considerations. The program shall be made available to those employers on request.

SECTION 3.1283. Sections 502.011(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~director~~] or the *department's* [~~director's~~] representative shall investigate in a timely manner a complaint received in writing from an employee or an employee's designated representative relating to an alleged violation of this chapter by an employer.

(b) A complaint received from a person relating to an alleged violation shall be referred to the federal Occupational Safety and Health Administration (OSHA) or to the federal Mine Safety and Health Administration (MSHA) if the complaint is related to an applicable OSHA or MSHA requirement and the applicable OSHA or MSHA standard is in effect. The *department* [~~director~~] or the *department's* [~~director's~~] representative shall investigate the complaint if:

(1) the applicable OSHA or MSHA standard is not in effect; or

(2) the complaint is based on a requirement of this chapter.

(c) On presentation of appropriate credentials, *a department* [~~an officer or~~] representative [~~of the director~~] may enter a workplace at reasonable times to inspect and investigate complaints.

SECTION 3.1284. Sections 502.014(a), (b), (k), and (l), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~director~~] may assess an administrative penalty against an employer who violates this chapter, *department* [~~board~~] rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the *department* [~~director~~] may issue a notice of violation to the employer. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of the chapter, and state the amount of the penalty, if any, to be assessed by the *department* [~~director~~].

(k) The *department* [~~director~~] may not assess an administrative penalty for any violation that has been corrected within 15 days after the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the employer of the department's response to the informal conference provided for in Subsection *(g)* [~~(c)~~], whichever is later.

(l) In determining the amount of the penalty, the *department* [~~director~~] shall consider:

(1) the employer's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the employee;

(4) the employer's demonstrated good faith;

(5) the duration of the violation; and

(6) other matters as justice may require.

SECTION 3.1285. Sections 502.0141(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) If a hearing is *to be* held, the *department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office* [~~director~~] shall make findings of fact and shall issue *to the department* a written *proposal for* decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the employer charged with the violation does not request a hearing in a timely manner, the *department* [~~director~~] may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against an employer, the *department* [~~director~~] shall issue an order requiring that the employer pay the penalty.

SECTION 3.1286. Sections 502.0142(a), (b), (c), (e), (f), and (g), Health and Safety Code, are amended to read as follows:

(a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the *department* [~~director~~] shall inform the employer against whom the order is issued of the amount of the penalty for the violation.

(b) Within 30 days after the date the *department's* [~~director's~~] order is final as provided by Subchapter F, Chapter 2001, Government Code, the employer shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review

contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30–day period, an employer who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the *department's* [~~director's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the employer stating that the employer is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~director~~] by certified mail.

(e) If the *department* [~~director~~] receives a copy of an affidavit under Subsection (c)(2), the *department* [~~director~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The employer who files an affidavit has the burden of proving that the employer is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(f) If the employer does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the *department* [~~director~~] may refer the matter to the attorney general for collection of the amount of the penalty.

(g) Judicial review of the order of the *department* [~~director~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.1287. Section 502.015(a), Health and Safety Code, is amended to read as follows:

(a) If it appears that an employer has violated, is violating, or is threatening to violate this chapter or any rule adopted or order issued under this chapter, the *department* [~~director~~] may request the attorney general or the district, county, or city attorney of the municipality or county in which the violation has occurred, is occurring, or may occur to institute a civil suit for:

(1) injunctive relief to restrain the employer from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty for a violation; or

(3) both the injunctive relief and the civil penalty.

SECTION 3.1288. Section 502.017(a), Health and Safety Code, is amended to read as follows:

(a) An employer shall post and maintain adequate notice, at locations where notices are normally posted, informing employees of their rights under this chapter. If the *department* [~~director~~] does not prepare the notice under Section 502.008, the employer shall prepare the notice.

SECTION 3.1289. Section 502.018, Health and Safety Code, is amended to read as follows:

Sec. 502.018. STANDARD FOR PHYSICIAN TREATMENT. For the purposes of this chapter, the requirements in the OSHA standard for physicians treating employees (29 CFR *Section 1910.1200(i)* [~~1910.1200(i)~~]) apply to physicians treating persons.

SECTION 3.1290. Section 502.019, Health and Safety Code, is amended to read as

follows:

Sec. 502.019. RULES. The *executive commissioner* [~~board~~] may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

SECTION 3.1291. Section 503.001(3), Health and Safety Code, is amended to read as follows:

(3) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

SECTION 3.1292. Section 503.002(a), Health and Safety Code, is amended to read as follows:

(a) The Toxic Substances Coordinating Committee is composed of one representative from the:

(1) department;

(2) Department of Agriculture;

(3) Texas [~~Natural Resource Conservation~~] Commission *on Environmental Quality*;

(4) Parks and Wildlife Department;

(5) Department of Public Safety *of the State of Texas*; and

(6) Railroad Commission of Texas.

SECTION 3.1293. Section 505.002(b), Health and Safety Code, is amended to read as follows:

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the *department* [~~director~~] to make the information available to the public through specific procedures.

SECTION 3.1294. Section 505.003(b), Health and Safety Code, is amended to read as follows:

(b) In this chapter, a reference to *North American Industry* [~~Standard Industrial~~] Classification *System (NAICS)* [~~(SIC)~~], to nomenclature systems developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or to other information, including information such as classification codes, performance standards, systematic names, standards, and systems described in publications sponsored by private technical or trade organizations, means a reference to the most current version of the publication.

SECTION 3.1295. Section 505.004, Health and Safety Code, is amended by adding Subdivisions (3–a) and (8–a) and amending Subdivisions (5), (10), (13), (15), (20), (22), and (24) to read as follows:

(3–a) "Commissioner" means the commissioner of state health services.

(5) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(8–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with that person, and that is in *North American Industry Classification System (NAICS)* [~~Standard Industrial~~] Codes *31–33* [~~(SIC) 20–39~~].

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the *United States* Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the [~~material~~] safety data sheet *(SDS)* [~~(MSDS)~~] for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the *SDS* [~~MSDS~~].

(20) "Physical hazard" means a chemical *that is classified as posing one of the following hazardous effects: explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas* [~~for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard~~].

(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as *established* [~~defined~~] by the EPA pursuant to EPCRA, Section 302.

(24) "Workplace chemical list" means a list of hazardous chemicals developed under 29 CFR Section *1910.1200(e)(1)(i)* [~~1910.1200(e)(i)~~].

SECTION 3.1296. Subdivision (18), Section 505.004, Health and Safety Code, is redesignated as Subdivision (20–a), Section 505.004, Health and Safety Code, and amended to read as follows:

(20–a) "Safety [~~(18) "Material safety~~] data sheet" or *"SDS"* [~~"MSDS"~~] means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

SECTION 3.1297. Sections 505.005(a) and (d), Health and Safety Code, are amended to read as follows:

(a) Facility operators whose facilities are in *NAICS* [~~SIC~~] Codes *31–33* [~~20–39~~] shall comply with this chapter.

(d) The *department* [~~director~~] shall develop an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

SECTION 3.1298. Sections 505.006(a), (c), and (f), Health and Safety Code, are amended to read as follows:

(a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by *department* [~~board~~] rule for certain highly toxic or extremely hazardous substances.

(c) Each tier two form shall be filed annually with the appropriate fee according to the procedures specified by *department* [~~board~~] rules. The facility operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(f) A facility operator shall file a [~~material~~] safety data sheet with the department on the department's request.

SECTION 3.1299. Sections 505.008(b) and (c), Health and Safety Code, are amended to read as follows:

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the *commissioner* [~~director~~], the fire chief, or the local emergency planning committee a copy of the *SDS* [~~MSDS~~] for any chemical on the tier two form furnished under Section 505.006 or for any chemical present at the facility.

(c) The *executive commissioner* [~~board~~] by rule may require certain categories of facility operators under certain circumstances to implement the National Fire Protection Association 704 identification system if an equivalent system is not in use.

SECTION 3.1300. Section 505.009, Health and Safety Code, is amended to read as follows:

Sec. 505.009. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, *a department* [~~an officer or~~] representative [~~of the director~~] may enter a facility at reasonable times to inspect and investigate complaints.

SECTION 3.1301. Sections 505.010(a), (b), (k), (l), and (m), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~director~~] may assess an administrative penalty against an operator who violates this chapter, [~~board~~] rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the *department* [~~director~~] may issue a notice of violation to the operator. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of this chapter, and state the amount of the penalty, if any, to be assessed by the *department* [~~director~~].

(k) Except as provided in Subsection (l), the *department* [~~director~~] may not assess an administrative penalty for any violation that has been corrected within 15 days of the date of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the operator of the department's response to the informal conference provided for in Subsection (d), whichever is later.

(l) If a violation involves a failure to make a good faith effort to comply with this chapter, the *department* [~~director~~] may assess the administrative penalty at any time.

(m) In determining the amount of the penalty, the *department* [~~director~~] shall consider:

(1) the operator's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the employer's demonstrated good faith;

(5) the duration of the violation; and

(6) other matters as justice may require.

SECTION 3.1302. Sections 505.011(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) If a hearing is held, the *department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office* [~~director~~] shall make findings of fact and shall issue a written *proposal for* decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the facility operator charged with the violation does not request a hearing, the *department* [~~director~~] may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After [~~making~~] a determination under this section *is made* that a penalty is to be assessed against a facility operator, the *department* [~~director~~] shall issue an order requiring that the facility operator pay the penalty.

SECTION 3.1303. Sections 505.012(a), (b), (c), (d), (e), and (f), Health and Safety Code, are amended to read as follows:

(a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the *department* [~~director~~] shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.

(b) Except as provided by in Section 505.011(e), within 30 days after the date the *department's* [~~director's~~] order is final as provided by Subchapter F, Chapter 2001, Government Code, the facility operator shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30–day period, a facility operator who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the *department's* [~~director's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the facility operator stating that the facility operator is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~director~~] by certified mail.

(d) If the *department* [~~director~~] receives a copy of an affidavit under Subsection (c)(2), the *department* [~~director~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The facility operator who files an affidavit has the burden of proving that the facility operator is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the facility operator does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the *department* [~~director~~] may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the order of the *department* [~~director~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.1304. Sections 505.016(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The *executive commissioner by rule* [~~board~~] may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. Except as provided by Subsection (d), fees may be used only to fund activities under this chapter. The fee for facilities may not exceed:

(1) $100 for each required submission having no more than 25 hazardous chemicals or hazardous chemical categories;

(2) $200 for each required submission having no more than 50 hazardous chemicals or hazardous chemical categories;

(3) $300 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories;

(4) $400 for each required submission having no more than 100 hazardous chemicals or hazardous chemical categories; or

(5) $500 for each required submission having more than 100 hazardous chemicals or chemical categories.

(c) To minimize the fees, the *executive commissioner* [~~board~~] by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

SECTION 3.1305. Section 506.002(b), Health and Safety Code, is amended to read as follows:

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemical is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the *department* [~~director~~] to make the information available to the public through specific procedures.

SECTION 3.1306. Section 506.004, Health and Safety Code, is amended by adding Subdivisions (3–a) and (8–a) and amending Subdivisions (5), (13), (15), (20), and (23) to read as follows:

(3–a) "Commissioner" means the commissioner of state health services.

(5) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(8–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the *United States* Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent that it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the [~~material~~] safety data sheet *(SDS)* [~~(MSDS)~~] for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the *SDS* [~~MSDS~~].

(20) "Physical hazard" means a chemical *that is classified as posing one of the following hazardous effects: explosive; flammable (gases, aerosols, liquids, or solids);*

oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas [~~for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard~~].

(23) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as *established* [~~defined~~] by the EPA pursuant to EPCRA, Section 302.

SECTION 3.1307. Section 506.004(18), Health and Safety Code, is redesignated as Section 506.004(21–a), Health and Safety Code, and amended to read as follows:

(21–a) "Safety [~~(18) "Material safety~~] data sheet" or *"SDS"* [~~"MSDS"~~] means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

SECTION 3.1308. Section 506.005(d), Health and Safety Code, is amended to read as follows:

(d) The *department* [~~director~~] shall develop an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

SECTION 3.1309. Sections 506.006(a), (c), and (e), Health and Safety Code, are amended to read as follows:

(a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by *department* [~~board~~] rule for certain highly toxic or extremely hazardous substances.

(c) Each tier two form shall be filed annually with the appropriate fee according to the procedures specified by *department* [~~board~~] rules. The facility operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(e) A facility operator shall file a [~~material~~] safety data sheet with the department on the department's request.

SECTION 3.1310. Sections 506.008(b) and (c), Health and Safety Code, are amended to read as follows:

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the *commissioner* [~~director~~], the fire chief, or the local emergency planning committee a copy of the *SDS* [~~MSDS~~] for any chemical on the tier two form furnished under Section 506.006 or for any chemical present at the facility.

(c) The *executive commissioner* [~~board~~] by rule may require certain categories of facility operators under certain circumstances to implement the National Fire Protection Association 704 identification system if an equivalent system is not in use.

SECTION 3.1311. Section 506.009, Health and Safety Code, is amended to read as follows:

Sec. 506.009. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, *a department* [~~an officer or~~] representative [~~of the director~~] may enter a facility at reasonable times to inspect and investigate complaints.

SECTION 3.1312. Sections 506.010(a), (b), (k), and (l), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~director~~] may assess an administrative penalty against an opera-

tor who violates this chapter, [~~board~~] rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the *department* [~~director~~] may issue a notice of violation to the operator. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of this chapter, and state the amount of the penalty, if any, to be assessed by the *department* [~~director~~].

(k) The *department* [~~director~~] may not assess an administrative penalty for any violation that has been corrected within 15 days of the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the operator of the department's response to the informal conference provided for in Subsection (d), whichever is later.

(l) In determining the amount of the penalty, the *department* [~~director~~] shall consider:

(1) the operator's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the employer's demonstrated good faith;

(5) the duration of the violation; and

(6) other matters as justice may require.

SECTION 3.1313. Sections 506.011(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) If a hearing is held, the *department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office* [~~director~~] shall make findings of fact and shall issue a written *proposal for* decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the facility operator charged with the violation does not request a hearing, the *department* [~~director~~] may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After [~~making~~] a determination *is made* under this section that a penalty is to be assessed against a facility operator, the *department* [~~director~~] shall issue an order requiring that the facility operator pay the penalty.

SECTION 3.1314. Section 506.012, Health and Safety Code, is amended to read as follows:

Sec. 506.012. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the *department* [~~director~~] shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.

(b) Except as provided in Section 506.011(e), not later than the 30th day after the date on which a decision or order charging a facility operator with a penalty is final, the facility operator shall pay the penalty in full, unless the facility operator seeks judicial review of the amount of the penalty, the fact of the violation, or both. The *executive commissioner* [~~board~~] may by rule provide for appeals by the state and political subdivisions of the state.

SECTION 3.1315. Section 506.013, Health and Safety Code, is amended to read as follows:

Sec. 506.013. REFUND OF ADMINISTRATIVE PENALTY. Not later than the 30th day after the date of a judicial determination that an administrative penalty against a facility operator should be reduced or not assessed, the *department* [~~director~~] shall remit to the facility operator the appropriate amount of any penalty payment already paid plus accrued interest.

SECTION 3.1316. Section 506.014, Health and Safety Code, is amended to read as

follows:

Sec. 506.014. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the *department* [~~director~~] may bring a civil action to recover an administrative penalty under this chapter.

SECTION 3.1317. Sections 506.017(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The *executive commissioner by rule* [~~board~~] may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. The fee may not exceed:

(1) $50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or

(2) $100 for each required submission having more than 75 hazardous chemicals or chemical categories.

(c) To minimize the fees, the *executive commissioner* [~~board~~] by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

SECTION 3.1318. Section 507.002(b), Health and Safety Code, is amended to read as follows:

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the *department* [~~director~~] to make the information available to the public through specific procedures.

SECTION 3.1319. Section 507.004, Health and Safety Code, is amended by adding Subdivisions (3–a) and (8–a) and amending Subdivisions (5), (13), (15), (20), and (22) to read as follows:

(3–a) "Commissioner" means the commissioner of state health services.

(5) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(8–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the *United States* Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent that it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(15) "Identity" means a chemical or common name, or alphabetical or numerical

identification, that is indicated on the [~~material~~] safety data sheet *(SDS)* [~~(MSDS)~~] for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the *SDS* [~~MSDS~~].

(20) "Physical hazard" means a chemical *that is classified as posing one of the following hazardous effects: explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas* [~~for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard~~].

(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as *established* [~~defined~~] by the EPA pursuant to EPCRA, Section 302.

SECTION 3.1320. Subdivision (18), Section 507.004, Health and Safety Code, is redesignated as Subdivision (20–a), Section 507.004, Health and Safety Code, and amended to read as follows:

(20–a) "Safety [~~(18) "Material safety~~] data sheet" or *"SDS"* [~~"MSDS"~~] means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

SECTION 3.1321. Section 507.005(d), Health and Safety Code, is amended to read as follows:

(d) The *department* [~~director~~] shall develop an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

SECTION 3.1322. Sections 507.006(a), (c), and (f), Health and Safety Code, are amended to read as follows:

(a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by *department* [~~board~~] rule for certain highly toxic or extremely hazardous substances.

(c) Each tier two form shall be filed annually with the appropriate fee according to the procedures specified by *department* [~~board~~] rules. The facility operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(f) A facility operator shall file a [~~material~~] safety data sheet with the department on the department's request.

SECTION 3.1323. Sections 507.007(b) and (c), Health and Safety Code, are amended to read as follows:

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the *commissioner* [~~director~~], the fire chief, or the local emergency planning committee a copy of the *SDS* [~~MSDS~~] for any chemical on the tier two form furnished under Section 507.006 or for any chemical present at the facility.

(c) The *executive commissioner* [~~board~~] by rule may require certain categories of facility operators under certain circumstances to implement the National Fire Protection Association 704 identification system if an equivalent system is not in use.

SECTION 3.1324. Section 507.008, Health and Safety Code, is amended to read as follows:

Sec. 507.008. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, *a department* [~~an officer or~~] representative [~~of the director~~] may enter a facility at reasonable times to inspect and investigate complaints.

SECTION 3.1325. Sections 507.009(a), (b), (k), (l), and (m), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~director~~] may assess an administrative penalty against a facility operator who violates this chapter, [~~board~~] rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the *department* [~~director~~] may issue a notice of violation to the operator. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of this chapter, and state the amount of the penalty, if any, to be assessed by the *department* [~~director~~].

(k) Except as provided in Subsection (l), the *department* [~~director~~] may not assess an administrative penalty for any violation that has been corrected within 15 days of the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the operator of the department's response to the informal conference provided for in Subsection (d), whichever is later.

(l) If a violation involves a failure to make a good-faith effort to comply with this chapter, the *department* [~~director~~] may assess the administrative penalty at any time.

(m) In determining the amount of the penalty, the *department* [~~director~~] shall consider:

(1) the operator's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the operator's demonstrated good faith;

(5) the duration of the violation; and

(6) other matters as justice may require.

SECTION 3.1326. Sections 507.010(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) If a hearing is held, the *department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office* [~~director~~] shall make findings of fact and shall issue a written *proposal for* decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the facility operator charged with the violation does not request a hearing, the *department* [~~director~~] may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After [~~making~~] a determination *is made* under this section that a penalty is to be assessed against a facility operator, the *department* [~~director~~] shall issue an order requiring that the facility operator pay the penalty.

SECTION 3.1327. Sections 507.011(a), (b), (c), (d), (e), and (f), Health and Safety Code, are amended to read as follows:

(a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the *department* [~~director~~] shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.

(b) Except as provided by Section 507.010(e), within 30 days after the date the *department's* [~~director's~~] order is final as provided by Subchapter F, Chapter 2001, Government Code, the facility operator shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30–day period, a facility operator who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the *department's* [~~director's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the facility operator stating that the facility operator is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~executive director~~] by certified mail.

(d) If the *department* [~~director~~] receives a copy of an affidavit under Subsection (c)(2), the *department* [~~director~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The facility operator who files an affidavit has the burden of proving that the facility operator is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the facility operator does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the *department* [~~director~~] may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the order of the *department* [~~director~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.1328. Sections 507.013(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The *executive commissioner by rule* [~~board~~] may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. Except as provided by Subsection (d), fees may be used only to fund activities under this chapter. The fee may not exceed:

(1) $50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or

(2) $100 for each required submission having more than 75 hazardous chemicals or chemical categories.

(c) To minimize the fees, the *executive commissioner* [~~board~~] by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

SECTION 3.1329. Section 508.003, Health and Safety Code, is amended to read as follows:

Sec. 508.003. AREA QUARANTINE. (a) If the commissioner of *state* [~~public~~] health *services* or one or more health authorities determine that the introduction of an environmental or toxic agent into the environment has occurred, the commissioner or authorities may impose an area quarantine in the manner and subject to the procedures

provided for an area quarantine imposed under Section 81.085. The commissioner of *state* [~~public~~] health *services* or a health authority may, with respect to an area quarantine imposed under this chapter, exercise any power for a response to the introduction of an environmental or toxic agent into the environment under this section that is authorized by Section 81.085 for a response to an outbreak of a communicable disease. The area quarantine must be accomplished by the least restrictive means necessary to protect public health considering the availability of resources.

(b) A quarantine imposed by a health authority under this section expires at the earlier of:

(1) the 24th hour after the time the quarantine is imposed; or

(2) the time that appropriate action to terminate the quarantine or impose superseding requirements is taken under Chapter 418, Government Code, or is taken by the commissioner of *state* [~~public~~] health *services* under this section.

SECTION 3.1330. Section 508.004, Health and Safety Code, is amended to read as follows:

Sec. 508.004. CRIMINAL PENALTY. A person commits an offense if the person knowingly fails or refuses to obey an order or instruction of the commissioner of *state* [~~public~~] health *services* or a health authority issued under this chapter and published during an area quarantine under this section. An offense under this subsection is a felony of the third degree.

SECTION 3.1331. The heading to Title 7, Health and Safety Code, is amended to read as follows:

TITLE 7. MENTAL HEALTH AND *INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~]

SECTION 3.1332. The heading to Subtitle A, Title 7, Health and Safety Code, is amended to read as follows:

SUBTITLE A. *SERVICES FOR PERSONS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY* [~~TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION~~]

SECTION 3.1333. Chapter 531, Health and Safety Code, is amended to read as follows:

CHAPTER 531. PROVISIONS GENERALLY APPLICABLE TO *MENTAL HEALTH AND INTELLECTUAL DISABILITY SERVICES* [~~THE TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION~~]

Sec. 531.001. PURPOSE; POLICY. (a) It is the purpose of this subtitle to provide for the effective administration and coordination of mental health and *intellectual disability* [~~mental retardation~~] services at the state and local levels.

(b) Recognizing that a variety of alternatives for serving *persons with mental illness or an intellectual disability* [~~the mentally disabled~~] exists, it is the purpose of this subtitle to ensure that a continuum of services is provided. The continuum of services includes:

(1) mental health facilities operated by the [~~Texas~~] Department of *State Health Services* [~~Mental Health and Mental Retardation~~] and community services *for persons with mental illness* provided by the department and other entities through contracts with the department; *or*

(2) state supported living centers operated by the Department of Aging and Disability Services and community services for persons with an intellectual disability provided by the department and other entities through contracts with the department.

(c) It is the goal of this state to provide a comprehensive range of services for persons

with mental illness or *an intellectual disability* [~~mental retardation~~] who need publicly supported care, treatment, or habilitation. In providing those services, efforts will be made to coordinate services and programs with services and programs provided by other governmental entities to minimize duplication and to share with other governmental entities in financing those services and programs.

(d) It is the policy of this state that, when appropriate and feasible, persons with mental illness or *an intellectual disability* [~~mental retardation~~] shall be afforded treatment in their own communities.

(e) It is the public policy of this state that mental health and *intellectual disability* [~~mental retardation~~] services be the responsibility of local agencies and organizations to the greatest extent possible. The *Department of State Health Services* [~~department~~] shall assist the local agencies and organizations by coordinating the implementation of a statewide system of *mental health* services. *The Department of Aging and Disability Services shall assist the local agencies and organizations by coordinating the implementation of a statewide system of intellectual disability services. Each* [~~The~~] department shall ensure that mental health and *intellectual disability* [~~mental retardation~~] services, *as applicable,* are provided. *Each* [~~The~~] department shall provide technical assistance for and regulation of the programs that receive funding through contracts with *that* [~~the~~] department.

(f) It is the public policy of this state to offer services first to those persons who are most in need. Therefore, funds appropriated by the legislature for mental health and *intellectual disability* [~~mental retardation~~] services may be spent only to provide services to the priority populations identified in the *applicable* department's long-range plan.

(g) It is the goal of this state to establish at least one special officer for mental health assignment in each county. To achieve this goal, the *Department of State Health Services* [~~department~~] shall assist a local law enforcement agency that desires to have an officer certified under Section 1701.404, Occupations Code.

(h) It is the policy of this state that the *Department of State Health Services* [~~board~~] serves as the state's mental health *authority* and *the Department of Aging and Disability Services serves as the state's intellectual disability* [~~mental retardation~~] authority. *The executive commissioner* [~~and~~] is responsible for the planning, policy development, and resource development and allocation for and oversight of mental health and *intellectual disability* [~~mental retardation~~] services in this state. It is the policy of this state that, when appropriate and feasible, the *executive commissioner* [~~board~~] may delegate the *executive commissioner's* [~~board's~~] authority to a single entity in each region of the state that may function as the local mental health or *intellectual and developmental disability* [~~mental retardation~~] authority for one or more service areas in the region.

Sec. 531.002. DEFINITIONS. In this subtitle:

(1) [~~"Board" means the Texas Board of Mental Health and Mental Retardation.~~

[~~(2)~~] "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

(2) [~~(3)~~] "Chemical dependency" *means:*

(A) abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance [~~has the meaning assigned by Section 461.002~~].

(3) "Commission" means the Health and Human Services Commission.

(4) "Commissioner" means:

(A) the commissioner of *state health services in relation to mental health services; and*

(B) the commissioner of aging and disability services in relation to intellectual disability services [~~mental health and mental retardation~~].

(5) "Community center" means a center established under Subchapter A, Chapter 534.

(6) "Department" means:

(A) the [~~Texas~~] Department of *State Health Services in relation to mental health services; and*

(B) the Department of Aging and Disability Services in relation to intellectual disability services [~~Mental Health and Mental Retardation~~].

(7) "Effective administration" includes continuous planning and evaluation within the system that result in more efficient fulfillment of the purposes and policies of this subtitle.

(8) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(9) "ICF–IID" [~~(8) "ICF–MR"~~] means the medical assistance program serving *individuals with an intellectual or developmental disability* [~~persons with mental retardation~~] who receive care in intermediate care facilities.

(10) "Intellectual disability services" [~~(13) "Mental retardation services"~~] includes all services concerned with research, prevention, and detection of *intellectual disabilities* [~~mental retardation~~], and all services related to the education, training, habilitation, care, treatment, *and* supervision[~~, and control~~] of persons with *an intellectual disability* [~~mental retardation~~], but does not include the education of school-age persons that the public educational system is authorized to provide.

(11) [~~(9)~~] "Local agency" means:

(A) a municipality, county, hospital district, rehabilitation district, school district, state-supported institution of higher education, or state-supported medical school; or

(B) any organizational combination of two or more of those entities.

(12) [~~(11)~~] "Local *intellectual and developmental disability* [~~mental retardation~~] authority" means an entity to which the *executive commissioner* [~~board~~] delegates *the executive commissioner's* [~~its~~] authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of *intellectual disability* [~~mental retardation~~] services to persons with *intellectual and developmental disabilities* [~~mental retardation~~] in the most appropriate and available setting to meet individual needs in one or more local service areas.

(13) [~~(10)~~] "Local mental health authority" means an entity to which the *executive commissioner* [~~board~~] delegates *the executive commissioner's* [~~its~~] authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in the most appropriate and available setting to meet individual needs in one or more local service areas.

(14) [~~(12)~~] "Mental health services" includes all services concerned with research, prevention, and detection of mental disorders and disabilities, and all services necessary to treat, care for[~~, control~~], supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from *a substance abuse disorder* [~~alcoholism or drug addiction~~].

(15) [~~(13–a)~~] "Person with a developmental disability" means an individual with a severe, chronic disability attributable to a mental or physical impairment or a combination of mental and physical impairments that:

(A) manifests before the person reaches 22 years of age;

(B) is likely to continue indefinitely;

(C) reflects the individual's need for a combination and sequence of special,

interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of a lifelong or extended duration and are individually planned and coordinated; and

(D) results in substantial functional limitations in three or more of the following categories of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(16) [~~(14)~~] "Person with *an intellectual disability*" [~~mental retardation~~"] means a person, other than a person with a mental disorder, whose mental deficit requires the person to have special training, education, supervision, treatment, *or* care[~~, or control~~] in the person's home or community or in a state *supported living center* [~~school~~].

(17) [~~(15)~~] "Priority population" means those groups of persons with mental illness or *an intellectual disability* [~~mental retardation~~] identified by the *applicable* department as being most in need of mental health or *intellectual disability* [~~mental retardation~~] services.

(18) [~~(16)~~] "Region" means the area within the boundaries of the local agencies participating in the operation of community centers established under Subchapter A, Chapter 534.

(19) [~~(17)~~] "State supported living center" means a state-supported and structured residential facility operated by the Department of Aging and Disability Services to provide to clients with *an intellectual disability* [~~mental retardation~~] a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.

Sec. 531.0021. REFERENCE TO STATE SCHOOL, [~~OR~~] SUPERINTENDENT, *OR LOCAL MENTAL RETARDATION AUTHORITY*. (a) A reference in law to a "state school" means a state supported living center.

(b) A reference in law to a "superintendent," to the extent the term is intended to refer to the person in charge of a state supported living center, means the director of a state supported living center.

(c) A reference in law to a "local mental retardation authority" means a local intellectual and developmental disability authority.

SECTION 3.1334. Subtitle A, Title 7, Health and Safety Code, is amended by amending Chapter 532 and adding Chapter 532A to read as follows:

CHAPTER 532. *GENERAL PROVISIONS RELATING TO DEPARTMENT OF STATE HEALTH SERVICES* [~~ORGANIZATION OF TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION~~]

Sec. 532.001. *DEFINITIONS; MENTAL HEALTH COMPONENTS* [~~COMPOSITION~~] OF DEPARTMENT. (a) *In this chapter:*

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services [~~The Texas Department of Mental Health and Mental Retardation is composed of:~~

[~~(1) the Texas Board of Mental Health and Mental Retardation;~~

[~~(2) the commissioner of mental health and mental retardation; and~~

[~~(3) a staff under the direction of the commissioner~~].

(b) The *department includes* [~~Department of Aging and Disability Services and the Department of State Health Services also include~~] community services operated by *the department* [~~those departments~~] and the following facilities[~~, as appropriate~~]:

(1) the central office of *the* [~~each~~] department;

(2) the Austin State Hospital;

(3) the Big Spring State Hospital;

(4) the Kerrville State Hospital;

(5) the Rusk State Hospital;

(6) the San Antonio State Hospital;

(7) the Terrell State Hospital;

(8) the North Texas State Hospital;

(9) [~~the Abilene State Supported Living Center;~~

[~~(10) the Austin State Supported Living Center;~~

[~~(11) the Brenham State Supported Living Center;~~

[~~(12) the Corpus Christi State Supported Living Center;~~

[~~(13) the Denton State Supported Living Center;~~

[~~(14) the Lubbock State Supported Living Center;~~

[~~(15) the Lufkin State Supported Living Center;~~

[~~(16) the Mexia State Supported Living Center;~~

[~~(17) the Richmond State Supported Living Center;~~

[~~(18) the San Angelo State Supported Living Center;~~

[~~(19) the San Antonio State Supported Living Center;~~

[~~(20) the El Paso State Supported Living Center;~~

[~~(21)~~] the Rio Grande State Center;

(10) [~~(22)~~] the Waco Center for Youth; and

(11) [~~(23)~~] the El Paso Psychiatric Center.

Sec. 532.002. [~~SUNSET PROVISION. The Texas Department of Mental Health and Mental Retardation was abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of that agency under this chapter were transferred to other agencies, which are subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that Act, this chapter expires September 1, 2015.~~

[~~Sec. 532.003. COMPOSITION OF BOARD. (a) The board is composed of nine members appointed by the governor with the advice and consent of the senate.~~

[~~(b) The members must be representatives of the public who have demonstrated interest in mental health, mental retardation, developmental disabilities, or the health and human services system. At least one member must be a consumer of services for persons with mental illness or mental retardation or a family member of a consumer of those services.~~

[~~(c) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.~~

[~~Sec. 532.0035. BOARD TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training session that complies with this section.~~

[~~(b) The training program must provide the person with information regarding:~~

[~~(1) the legislation that created the department and board;~~

[~~(2) the programs operated by the department;~~

[~~(3) the roles and functions of the department;~~

[~~(4) the rules of the department with an emphasis on the rules that relate to disciplinary and investigatory authority;~~

[~~(5) the current budget for the department;~~

[~~(6) the results of the most recent formal audit of the department;~~

[~~(7) the requirements of:~~

[~~(A) the open meetings law, Chapter 551, Government Code;~~

[~~(B) the public information law, Chapter 552, Government Code;~~

[~~(C) the administrative procedure law, Chapter 2001, Government Code; and~~

[~~(D) other laws relating to public officials, including conflict-of-interest laws; and~~

[~~(8) any applicable ethics policies adopted by the department or the Texas Ethics Commission.~~

[~~(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.~~

[~~Sec. 532.004. RESTRICTIONS ON BOARD APPOINTMENT AND MEMBERSHIP AND ON DEPARTMENT EMPLOYMENT. (a) A person is not eligible for appointment as a board member if the person or the person's spouse:~~

[~~(1) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or~~

[~~(2) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than:~~

[~~(A) compensation or reimbursement authorized by law for board membership, attendance, or expenses; or~~

[~~(B) as a parent or guardian of a client or patient receiving services from the department.~~

[~~(b) An officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a member of the board or an employee of the department.~~

[~~(c) A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a board member or a department employee grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.~~

[~~(d) A person may not serve as a member of the board or act as the general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.~~

[~~(e) For purposes of this section, a trade association is a nonprofit, cooperative, voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.~~

[~~Sec. 532.005. TERMS. Board members serve six-year terms.~~

[~~Sec. 532.006. CHAIRMAN. The governor shall designate a board member as chairman.~~

[~~Sec. 532.007. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:~~

~~[(1) is not eligible for appointment to the board at the time of appointment as provided by Section 532.004(a);~~

~~[(2) does not maintain during service on the board the qualifications required by Section 532.004(a);~~

~~[(3) violates a prohibition established by Section 532.004(b), (c), or (d);~~

~~[(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or~~

~~[(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.~~

~~[(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.~~

~~[(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.~~

~~[Sec. 532.009. REIMBURSEMENT FOR EXPENSES; PER DIEM. A board member is entitled to receive:~~

~~[(1) reimbursement for actual and necessary expenses incurred in discharging the member's duties; and~~

~~[(2) the per diem compensation as provided by appropriation for each day the member actually performs official duties.~~

~~[Sec. 532.010. BOARD MEETINGS. (a) The board shall hold at least four regular meetings each year in the city of Austin on dates set by board rule. The board shall adopt rules that provide for holding special meetings.~~

~~[(b) A board meeting, other than a meeting to deliberate the appointment of the commissioner, is open to the public.~~

~~[(c) The board shall adopt policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.~~

~~[Sec. 532.011. COMMISSIONER. (a) The commissioner of health and human services shall employ a commissioner in accordance with Section 531.0056, Government Code.~~

~~[(b) To be qualified for employment as commissioner, a person must have:~~

~~[(1) professional training and experience in the administration or management of comprehensive health care or human service operations; and~~

~~[(2) proven administrative and management ability, preferably in the health care area.~~

~~[(d) The commissioner:~~

~~[(1) has the administrative and decisional powers granted under this subtitle; and~~

~~[(2) shall administer the department and this subtitle and ensure the effective administration of the department and its programs and services.~~

~~[(e) The commissioner shall:~~

~~[(1) establish qualifications for department personnel that balance clinical and programmatic knowledge and management experience; and~~

~~[(2) standardize qualifications for personnel positions throughout the department.~~

~~[(f) The commissioner shall:~~

~~[(1) establish an organizational structure within the department that will promote the effective administration of this subtitle; and~~

~~[(2) establish the duties and functions of the department's staff.~~

[~~(g) The commissioner is responsible for implementation of the board's planning, policy, resource development and allocation, and oversight related to mental health and mental retardation services.~~

[~~Sec. 532.012.~~] MEDICAL DIRECTOR. (a) The commissioner shall appoint a medical director.

(b) To be qualified for appointment as *the* medical director *under this section*, a person must:

(1) be a physician licensed to practice in this state; and

(2) have proven administrative experience and ability in comprehensive health care or human service operations.

(c) The medical director reports to the commissioner and is responsible for *the following duties under this title*:

(1) oversight of the quality and appropriateness of clinical services delivered in department *mental health* facilities or under contract to the department *in relation to mental health services*; and

(2) leadership in physician recruitment and retention and peer review.

Sec. *532.003* [~~532.014~~]. HEADS OF DEPARTMENTAL *MENTAL HEALTH* FACILITIES. (a) The commissioner shall appoint the head of each *mental health* facility the department administers.

(b) The head of a facility serves at the will of the commissioner.

[~~Sec. 532.015. RULES AND POLICIES. (a) The board shall adopt rules and develop basic and general policies to guide the department in administering this subtitle. The rules and policies must be consistent with the purposes, policies, principles, and standards stated in this subtitle.~~

[~~(b) The board shall adopt policies that clearly define the respective responsibilities of the board and the staff of the department.~~

[~~Sec. 532.016. PERSONNEL. (a) The commissioner shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting.~~

[~~(b) The commissioner shall develop a system of annual job performance evaluations. All merit pay for department employees must be based on the system established under this subsection.~~

[~~(c) The department shall provide to its members and employees, as often as necessary, information regarding their qualifications under this subtitle and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.~~

[~~(d) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:~~

[~~(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code;~~

[~~(2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law; and~~

[~~(3) procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.~~

[~~(e) The policy statement must:~~

[~~(1) be updated annually;~~

[~~(2) be reviewed by the Commission on Human Rights for compliance with Subsection (d)(1); and~~

[~~(3) be filed with the governor's office.~~

[~~(f) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (e)(3). The report may be made separately or as a part of other biennial reports made to the legislature.~~

[~~Sec. 532.018. AUDITS. (a) The financial transactions of the department are subject to audit by the state auditor in accordance with Chapter 321, Government Code.~~

[~~(b) The director of the internal audit unit shall report directly to the commissioner.~~

[~~(c) Each audit report shall be submitted directly to the board.~~

[~~Sec. 532.019. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The department shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.~~

[~~(b) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The board may provide for that notification:~~

[~~(1) on each registration form, application, or written contract for services of an entity regulated under this subtitle or of an entity the creation of which is authorized by this subtitle;~~

[~~(2) on a sign that is prominently displayed in the place of business of each entity regulated under this subtitle or of each entity the creation of which is authorized by this subtitle; or~~

[~~(3) in a bill for service provided by an entity regulated under this subtitle or by an entity the creation of which is authorized by this subtitle.~~

[~~(c) If a written complaint is filed with the department relating to an entity regulated by the department, the department, at least quarterly and until final disposition of the complaint, shall notify the complainant and the entity regulated by the department of the status of the complaint unless notice would jeopardize an undercover investigation.~~

[~~(d) The department shall keep an information file about each complaint filed with the department relating to an entity regulated by the department.~~]

Sec. *532.004* [~~532.020~~]. ADVISORY COMMITTEES. (a) The *executive commissioner* [~~board~~] shall appoint [~~a medical advisory committee and~~] any [~~other~~] advisory committees the *executive commissioner* [~~board~~] considers necessary to assist in the effective administration of the department's mental health [~~and mental retardation~~] programs.

(b) The department may reimburse committee members for travel costs incurred in performing their duties *as provided by Section 2110.004, Government Code* [~~at the rates authorized for state officers and employees under the General Appropriations Act~~].

[~~Sec. 532.021. CITIZENS' PLANNING ADVISORY COMMITTEE. (a) The board shall appoint a citizens' planning advisory committee that is composed of:~~

[~~(1) three persons who have demonstrated an interest in and knowledge of the department system and the legal, political, and economic environment in which the department operates;~~

[~~(2) three persons who have expertise in the development and implementation of long-range plans; and~~

[~~(3) three members of the public.~~

[~~(b) In addition to the requirements of Subsection (a), at least one member must be a consumer of services for persons with mental illness or a family member of a consumer of those services, and at least one member must be a consumer of services for persons with mental retardation or a family member of a consumer of those services.~~

~~[(c) The committee shall:~~

~~[(1) advise the department on all stages of the development and implementation of the long-range plan required by Section 533.032;~~

~~[(2) review the development, implementation, and any necessary revisions of the long-range plan;~~

~~[(3) review the department's biennial budget request and assess the degree to which the request allows for implementation of the long-range plan; and~~

~~[(4) advise the board on:~~

~~[(A) the appropriateness of the long-range plan;~~

~~[(B) any identified problems related to the implementation of the plan;~~

~~[(C) any necessary revisions to the plan; and~~

~~[(D) the adequacy of the department's budget request.~~

~~[(d) The board shall review the committee's reports in conjunction with information provided by the department on the long-range plan or the biennial budget request.~~

~~[(e) The board shall allow the committee opportunities to appear before the board as needed.~~

~~[(f) Before a board meeting relating to the development, implementation, or revision of the department's long-range plan, the department shall, in a timely manner, provide the committee with any information that will be presented to the board.~~

~~[(g) Before submitting the department's biennial budget request to the board for discussion or approval, the department shall, in a timely manner, provide the committee with a copy of the budget request.~~

~~[(h) The department shall provide the committee with the staff support necessary to allow the committee to fulfill its duties.]~~

CHAPTER 532A. GENERAL PROVISIONS RELATING TO DEPARTMENT OF AGING AND DISABILITY SERVICES

Sec. 532A.001. DEFINITIONS; INTELLECTUAL DISABILITY COMPONENTS OF DEPARTMENT. (a) In this chapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(b) The department includes community services operated by the department and the following facilities:

(1) the central office of the department;

(2) the Abilene State Supported Living Center;

(3) the Austin State Supported Living Center;

(4) the Brenham State Supported Living Center;

(5) the Corpus Christi State Supported Living Center;

(6) the Denton State Supported Living Center;

(7) the Lubbock State Supported Living Center;

(8) the Lufkin State Supported Living Center;

(9) the Mexia State Supported Living Center;

(10) the Richmond State Supported Living Center;

(11) the San Angelo State Supported Living Center;

(12) the San Antonio State Supported Living Center; and

(13) the El Paso State Supported Living Center.

Sec. 532A.002. MEDICAL DIRECTOR. (a) The commissioner shall appoint a medical director.

(b) To be qualified for appointment as the medical director under this section, a person must:

(1) be a physician licensed to practice in this state; and

(2) have proven administrative experience and ability in comprehensive health care or human service operations.

(c) The medical director reports to the commissioner and is responsible for the following duties under this title:

(1) oversight of the quality and appropriateness of clinical services delivered in state supported living centers or under contract to the department in relation to intellectual disability services; and

(2) leadership in physician recruitment and retention and peer review.

Sec. 532A.003. HEADS OF STATE SUPPORTED LIVING CENTERS. (a) The commissioner shall appoint the head of each state supported living center the department administers.

(b) The head of a state supported living center serves at the will of the commissioner.

Sec. 532A.004. ADVISORY COMMITTEES. (a) The executive commissioner shall appoint any advisory committees the executive commissioner considers necessary to assist in the effective administration of the department's intellectual disability programs.

(b) The department may reimburse committee members for travel costs incurred in performing their duties as provided by Section 2110.004, Government Code.

SECTION 3.1335. Subtitle A, Title 7, Health and Safety Code, is amended by amending Chapter 533 and adding Chapter 533A to read as follows:

CHAPTER 533. POWERS AND DUTIES *OF DEPARTMENT OF STATE HEALTH SERVICES*

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 533.0001. *DEFINITIONS. In this chapter:*

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Department facility" means a facility listed in Section 532.001(b).

Sec. 533.0002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW [~~POWERS AND DUTIES OF COMMISSIONER OF HEALTH AND HUMAN SERVICES. The commissioner of health and human services has the powers and duties relating to the board and commissioner as provided by Section 531.0055, Government Code~~]. To the extent a power or duty given to the [~~board or~~] commissioner by this title or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Sec. 533.001. GIFTS AND GRANTS. (a) The department may negotiate with a federal agency to obtain grants to assist in expanding and improving mental health [~~and mental retardation~~] services in this state.

(b) The department may accept gifts and grants of money, personal property, and real property to expand and improve the mental health [~~and mental retardation~~] services available to the people of this state.

(c) The department may accept gifts and grants of money, personal property, and real property on behalf of a department facility to expand and improve the mental health [~~or mental retardation~~] services available at the facility.

(d) The department shall use a gift or grant made for a specific purpose in accordance

with the purpose expressly prescribed by the donor. The department may decline the gift or grant if the department determines that it cannot be economically used for that purpose.

(e) The department shall keep a record of each gift or grant in the department's central office in the city of Austin.

[~~Sec. 533.002. COMPETITIVE REVIEW REQUIREMENT. The department shall establish procedures to:~~

[~~(1) promote more efficient use of public funds;~~

[~~(2) ensure periodic review of department management and support activities in order to:~~

[~~(A) improve department operations;~~

[~~(B) improve the determination of costs;~~

[~~(C) increase department productivity; and~~

[~~(D) remain competitive with the private sector; and~~

[~~(3) ensure that the state not provide a service that is available through the private sector unless the state can provide the service at a lower cost.~~]

Sec. 533.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a volunteer *mental health* program in a local mental health [~~or mental retardation~~] authority or a community center, the department may allocate available funds appropriated for providing volunteer *mental health* services.

(b) The department shall develop formal policies that encourage the growth and development of volunteer *mental health* services in local mental health [~~or mental retardation~~] authorities and community centers.

Sec. 533.004. LIENS. (a) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a patient with mental illness [~~or client with mental retardation~~] in an amount equal to the amount of reimbursement sought.

(b) The amount of the reimbursement sought may not exceed:

(1) the amount the department is authorized to charge under Section 552.017 [~~or under Subchapter D, Chapter 593,~~] if the patient [~~or client~~] received the services in a department facility; or

(2) the amount the community center is authorized to charge under Section 534.017 if the patient [~~or client~~] received the services in a community center.

(c) The lien attaches to:

(1) all nonexempt real and personal property owned or later acquired by the patient [~~or client~~] or by a person legally responsible for the patient's [~~or client's~~] support;

(2) a judgment of a court in this state or a decision of a public agency in a proceeding brought by or on behalf of the patient [~~or client~~] to recover damages for an injury for which the patient [~~or client~~] was admitted to a department facility or community center; and

(3) the proceeds of a settlement of a cause of action or a claim by the patient [~~or client~~] for an injury for which the patient [~~or client~~] was admitted to a department facility or community center.

(d) To secure the lien, the department or community center must file written notice of the lien with the county clerk of the county in which:

(1) the patient [~~or client~~], or the person legally responsible for the patient's [~~or client's~~] support, owns property; or

(2) the patient [~~or client~~] received or is receiving services.

(e) The notice must contain:

(1) the name and address of the patient [~~or client~~];

(2) the name and address of the person legally responsible for the patient's [~~or client's~~] support, if applicable;

(3) the period during which the department facility or community center provided services or a statement that services are currently being provided; and

(4) the name and location of the department facility or community center.

(f) Not later than the 31st day before the date on which the department files the notice of the lien with the county clerk, the department shall notify by certified mail the patient [~~or client~~] and the person legally responsible for the patient's [~~or client's~~] support. The notice must contain a copy of the charges, the statutory procedures relating to filing a lien, and the procedures to contest the charges. The *executive commissioner* [~~board~~] by rule shall prescribe the procedures to contest the charges.

(g) The county clerk shall record on the written notice the name of the patient [~~or client~~], the name and address of the department facility or community center, and, if requested by the person filing the lien, the name of the person legally responsible for the patient's [~~or client's~~] support. The clerk shall index the notice record in the name of the patient [~~or client~~] and, if requested by the person filing the lien, in the name of the person legally responsible for the patient's [~~or client's~~] support.

(h) The notice record must include an attachment that contains an account of the charges made by the department facility or community center and the amount due to the facility or center. The superintendent or director of the facility or center must swear to the validity of the account. The account is presumed to be correct, and in a suit to cancel the debt and discharge the lien or to foreclose on the lien, the account is sufficient evidence to authorize a court to render a judgment for the facility or center.

(i) To discharge the lien, the superintendent or director of the department facility or community center or a claims representative of the facility or center must execute and file with the county clerk of the county in which the lien notice is filed a certificate stating that the debt covered by the lien has been paid, settled, or released and authorizing the clerk to discharge the lien. The county clerk shall record a memorandum of the certificate and the date on which it is filed. The filing of the certificate and recording of the memorandum discharge the lien.

Sec. 533.005. EASEMENTS. The department, *in coordination with the executive commissioner,* may grant a temporary or permanent easement or right-of-way on land held by the department *that relates to services provided under this title.* The department, *in coordination with the executive commissioner,* must grant an easement or right-of-way on terms and conditions the *executive commissioner* [~~department~~] considers to be in the state's best interest.

Sec. 533.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN. (a) The department shall report to the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~] any allegation received by the department that a physician employed by or under contract with the department *in relation to services provided under this title* has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 164.051, Occupations Code. The report must be made in the manner provided by Section 154.051, Occupations Code.

(b) The department shall provide to the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~] a copy of any report or finding relating to an investigation of an allegation reported to that board.

Sec. 533.007. *USE OF* [~~ACCESS TO~~] CRIMINAL HISTORY RECORD INFORMATION[~~; CRIMINAL PENALTY FOR UNLAWFUL DISCLOSURE~~]. (a) *Subject to the requirements of Chapter 250, the* [~~The~~] department, *in relation to services provided under this title, or* a local mental health [~~or mental retardation~~] authority[~~,~~] or [~~a~~] community center, may deny employment or volunteer status to an applicant if:

(1) the department, authority, or community center determines that the applicant's criminal history record information indicates that the person is not qualified or suitable; or

(2) the applicant fails to provide a complete set of fingerprints if the department establishes that method of obtaining criminal history record information.

(b) The *executive commissioner* [~~board~~] shall adopt rules relating to the use of information obtained under this section, including rules that prohibit an adverse personnel action based on arrest warrant or wanted persons information received by the department.

Sec. 533.0075. EXCHANGE OF EMPLOYMENT RECORDS. The department, *in relation to services provided under this title, or* a local mental health [~~or mental retardation~~] authority[~~,~~] or [~~a~~] community center, may exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority, or community center.

Sec. 533.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH MENTAL ILLNESS *OR AN INTELLECTUAL DISABILITY* [~~AND MENTAL RETARDATION~~]. (a) Each department facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for individuals with mental illness *or an intellectual disability* [~~and mental retardation~~] in the facility's or center's service area.

(b) In making the assessment, the department facility or community center shall consider the feasibility of using an array of job opportunities that may lead to competitive employment, including sheltered employment and supported employment.

(c) Each department facility and community center shall annually submit to the department a report showing that the facility or center has complied with Subsection (a).

(d) The department shall compile information from the reports and shall make the information available to each designated provider in a service area.

(e) Each department facility and community center shall ensure that designated staff are trained to:

(1) assist clients through the Social Security Administration disability determination process;

(2) provide clients and their families information related to the Social Security Administration Work Incentive Provisions; and

(3) assist clients in accessing and utilizing the Social Security Administration Work Incentive Provisions to finance training, services, and supports needed to obtain career goals.

Sec. 533.009. EXCHANGE OF PATIENT [~~AND CLIENT~~] RECORDS. (a) Department facilities, local mental health [~~or mental retardation~~] authorities, community centers, other designated providers, and *subcontractors* [~~subcontractees~~] of mental health [~~and mental retardation~~] services are component parts of one service delivery system within which patient [~~or client~~] records may be exchanged without the patient's [~~or client's~~] consent.

(b) The *executive commissioner* [~~board~~] shall adopt rules to carry out the purposes of this section.

Sec. 533.0095. COLLECTION AND MAINTENANCE OF INFORMATION REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall require the department to collect information and maintain current records regarding a person found not guilty of an offense by reason of insanity under Chapter 46C, Code of Criminal Procedure, who is:

(1) ordered by a court to receive inpatient mental health services under Chapter 574 or under Chapter 46C, Code of Criminal Procedure; *or*

(2) [~~committed by a court for long-term placement in a residential care facility under Chapter 593 or under Chapter 46C, Code of Criminal Procedure; or~~

[~~(3)~~] ordered by a court to receive outpatient or community-based treatment and supervision.

(b) Information maintained by the department under this section must include the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

(c) The department shall file annually with the presiding officer of each house of the legislature a written report containing the name of each person described by Subsection (a), the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

Sec. 533.010. INFORMATION RELATING TO [~~PATIENT'S~~] CONDITION. (a) A person, including a hospital, [~~sanitarium,~~] nursing *facility* [~~or rest home~~], medical society, or other organization, may provide to the department or a medical organization, hospital, or hospital committee any information, including interviews, reports, statements, or memoranda relating to a person's condition and treatment for use in a study to reduce mental *illness* [~~disorders~~] and *intellectual* [~~mental~~] disabilities.

(b) The department or a medical organization, hospital, or hospital committee receiving the information may use or publish the information only to advance mental health and *intellectual disability* [~~mental retardation~~] research and education in order to reduce mental *illness* [~~disorders~~] and *intellectual* [~~mental~~] disabilities. A summary of the study may be released for general publication.

(c) The identity of a person whose condition or treatment is studied is confidential and may not be revealed under any circumstances. Information provided under this section and any finding or conclusion resulting from the study is privileged information.

(d) A person is not liable for damages or other relief if the person:

(1) provides information under this section;

(2) releases or publishes the findings and conclusions of the person or organization to advance mental health and *intellectual disability* [~~mental retardation~~] research and education; or

(3) releases or publishes generally a summary of a study.

Sec. 533.012. COOPERATION OF STATE AGENCIES. [~~(a)~~] At the department's request *and in coordination with the executive commissioner*, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions *and that relate to services provided under this title*.

[~~Sec. 533.013. DUPLICATION OF REHABILITATION SERVICES. The department shall enter into an agreement with the Texas Rehabilitation Commission that defines the roles and responsibilities of the department and the commission regarding the agencies' shared client populations. The agreement must establish methods to prevent the duplication and fragmentation of employment services provided by the agencies.~~]

Sec. 533.014. RESPONSIBILITY OF LOCAL MENTAL HEALTH AUTHORITIES IN MAKING TREATMENT RECOMMENDATIONS. (a) The *executive commissioner* [~~board~~] shall adopt rules that:

(1) relate to the responsibility of the local mental health authorities to make recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health services, including individuals who are in contact with the criminal justice system and individuals detained in local jails and juvenile detention facilities;

(2) govern commitments to a local mental health authority;

(3) govern transfers of patients that involve a local mental health authority; and

(4) provide for emergency admission to a department mental health facility if obtaining approval from the authority could result in a delay that might endanger the patient or others.

(b) The *executive commissioner's* [~~board's~~] first consideration in developing rules under this section must be to satisfy individual patient treatment needs in the most appropriate setting. The *executive commissioner* [~~board~~] shall also consider reducing patient inconvenience resulting from admissions and transfers between providers.

(c) The department shall notify each judge who has probate jurisdiction in the service area and any other person the local mental health authority considers necessary of the responsibility of the local mental health authority to make recommendations relating to the most appropriate and available treatment alternatives and the procedures required in the area.

Sec. 533.015. UNANNOUNCED INSPECTIONS. The department may make any inspection of a *department* facility or program under the department's jurisdiction *under this title* without announcing the inspection.

Sec. 533.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY SERVICE PROVIDERS. (a) *This section does not apply to a "health and human services agency," as that term is defined by Section 531.001, Government Code.*

(a–1) A state agency, local agency, *or* local mental health authority[~~, or local mental retardation authority~~] that expends public money to acquire goods or services in connection with providing or coordinating the provision of mental health [~~or mental retardation~~] services may satisfy the requirements of any state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with the public money in accordance with Section 533.017 or in accordance with:

(1) [~~Section 2155.144, Government Code, if the entity is a state agency subject to that law;~~

[~~(2)~~] Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or

(2) [~~(3)~~] this section, if the entity is not covered by Subdivision (1) [~~or (2)~~].

(b) An agency or authority under Subsection *(a–1)(2)* [~~(a)(3)~~] may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

(c) Subject to Subsection (d), the agency or authority may consider all relevant factors in determining the best value, including:

(1) any installation costs;

(2) the delivery terms;

(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the agency's or authority's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the agency or authority to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;

(7) the total long-term cost to the agency or authority of acquiring the vendor's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on the agency's or authority's productivity;

(10) the acquisition price; and

(11) any other factor relevant to determining the best value for the agency or authority in the context of a particular acquisition.

(d) If a state agency to which this section applies acquires goods or services with a value that exceeds $100,000, the state agency shall consult with and receive approval from the *commission* [~~Health and Human Services Commission~~] before considering factors other than price and meeting specifications.

(e) The state auditor or the *executive commissioner* [~~department~~] may audit the

agency's or authority's acquisitions of goods and services under this section to the extent state money or federal money appropriated by the state is used to make the acquisitions.

(f) The agency or authority may adopt rules and procedures for the acquisition of goods and services under this section.

Sec. 533.017. PARTICIPATION IN [~~DEPARTMENT~~] PURCHASING CONTRACTS OR GROUP PURCHASING PROGRAM. *(a) This section does not apply to a "health and human services agency," as that term is defined by Section 531.001, Government Code.*

(b) The *executive commissioner* [~~department~~] may allow a state agency, local agency, *or* local mental health authority[~~, or local mental retardation authority~~] that expends public money to purchase goods or services in connection with providing or coordinating the provision of mental health [~~or mental retardation~~] services to purchase goods or services with the public money by participating in:

(1) a contract the *executive commissioner* [~~department~~] has made to purchase goods or services; or

(2) a group purchasing program established or designated by the *executive commissioner* [~~department~~] that offers discounts to providers of mental health [~~or mental retardation~~] services.

SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF *MENTAL HEALTH* SERVICES

Sec. 533.031. DEFINITIONS. In this subchapter:

(1) "Elderly resident" means a person 65 years of age or older residing in a department facility.

(2) "Extended care unit" means a residential unit in a department facility that contains patients with chronic mental illness who require long-term care, maintenance, limited programming, and constant supervision.

(3) "Transitional living unit" means a residential unit that is designed for the primary purpose of facilitating the return of hard-to-place psychiatric patients with chronic mental illness from acute care units to the community through an array of services appropriate for those patients.

[~~(4) "Commission" means the Health and Human Services Commission.~~

[~~(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.~~

[~~(6) "ICF-MR and related waiver programs" includes ICF-MR Section 1915(c) waiver programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with mental retardation.~~

[~~(7) "Section 1915(c) waiver program" means a federally funded Medicaid program of the state that is authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)).~~

[~~(8) "Qualified service provider" means an entity that meets requirements for service providers established by the executive commissioner.~~]

Sec. 533.032. LONG–RANGE PLANNING. (a) The department shall have a long-range plan *relating to the provision of services under this title* covering at least six years that includes at least the provisions required by Sections 531.022 and 531.023, Government Code, and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons *with mental illness* the department serves are met.

(b) In developing the plan, the department shall:

(1) solicit input from:

(A) local *mental health* authorities [~~for mental health and mental retardation~~];

(B) community representatives;

(C) consumers of mental health [~~and mental retardation~~] services, including consumers of campus-based and community-based services, and family members of consumers of those services; and

(D) other interested persons; and

(2) consider the report developed under Subsection (c).

(c) The department shall develop a report containing information and recommendations regarding the most efficient long-term use and management of the department's campus-based facilities. The report must:

(1) project future bed requirements for [~~state schools and~~] state hospitals;

(2) document the methodology used to develop the projection of future bed requirements;

(3) project maintenance costs for institutional facilities;

(4) recommend strategies to maximize the use of institutional facilities; and

(5) specify how each [~~state school and~~] state hospital will:

(A) serve and support the communities and consumers in its service area; and

(B) fulfill statewide needs for specialized services.

(d) In developing the report under Subsection (c), the department shall:

(1) conduct two public meetings, one meeting to be held at the beginning of the process and the second meeting to be held at the end of the process, to receive comments from interested parties; and

(2) consider:

(A) the medical needs of the most medically fragile of its *patients with mental illness* [~~clients~~]; *and*

(B) [~~the provision of services to clients with severe and profound mental retardation and to persons with mental retardation who are medically fragile or have behavioral problems;~~

[~~(C) the program and service preference information collected under Section 533.038; and~~

[~~(D)~~] input solicited from consumers of services of [~~state schools and~~] state hospitals.

(g) The department shall:

(1) attach the report required by Subsection (c) to the department's legislative appropriations request for each biennium;

(2) at the time the department presents its legislative appropriations request, present the report to the:

(A) governor;

(B) governor's budget office;

(C) lieutenant governor;

(D) speaker of the house of representatives;

(E) Legislative Budget Board; and

(F) *commission* [~~Health and Human Services Commission~~]; and

(3) update the department's long-range plan biennially and include the report in the plan.

(h) The department shall, in coordination with the *commission* [~~Health and Human Services Commission~~], evaluate the current and long-term costs associated with serving inpatient psychiatric needs of persons living in counties now served by at least three state hospitals within 120 miles of one another. This evaluation shall take into consideration the condition of the physical plants and other long-term asset manage-

ment issues associated with the operation of the hospitals, as well as other issues associated with quality psychiatric care. After such determination is made, the *commission* [~~Health and Human Services Commission~~] shall begin to take action to influence the utilization of these state hospitals in order to ensure efficient service delivery.

Sec. 533.0325. CONTINUUM OF SERVICES IN CAMPUS FACILITIES. The *executive commissioner* [~~board~~] by rule shall establish criteria regarding the uses of the department's campus-based facilities as part of a full continuum of services *under this title*.

Sec. 533.033. DETERMINATION OF REQUIRED RANGE OF MENTAL HEALTH SERVICES. (a) Consistent with the purposes and policies of this subtitle, the commissioner biennially shall determine:

(1) the types of mental health services that can be most economically and effectively provided at the community level for persons exhibiting various forms of mental disability; and

(2) the types of mental health services that can be most economically and effectively provided by department facilities.

(b) In the determination, the commissioner shall assess the limits, if any, that should be placed on the duration of mental health services provided at the community level or at a department facility.

(c) The department biennially shall review the types of services the department provides and shall determine if a community provider can provide services of a comparable quality at a lower cost than the department's costs.

(d) The commissioner's findings shall guide the department in planning and administering services for persons with mental illness.

Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES. [~~(a)~~] The department may cooperate, negotiate, and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based mental health [~~and mental retardation~~] services.

Sec. 533.0345. STATE AGENCY SERVICES STANDARDS. (a) The *executive commissioner* [~~department~~] by rule shall develop model program standards for mental health [~~and mental retardation~~] services for use by each state agency that provides or pays for mental health [~~or mental retardation~~] services. The department shall provide the model standards to each agency that provides mental health [~~or mental retardation~~] services as identified by the *commission* [~~Health and Human Services Commission~~].

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of mental health [~~and mental retardation~~] services provided by or through a state agency.

(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

[~~Sec. 533.0346. AUTHORITY TO TRANSFER SERVICES TO COMMUNITY CENTERS. (a) The department may transfer operations of and services provided at the Amarillo State Center, Beaumont State Center, and Laredo State Center to a community center established under Chapter 534, including a newly established center providing mental retardation services or mental health and mental retardation services.~~

[~~(b) The transfer may occur only on the department's approval of a plan submitted in accordance with Section 534.001(d) or of an amendment to a previously approved plan. In developing the plan or plan amendment, the center or proposed center proposing to accept the state center operation and service responsibilities shall consider input from consumers of mental health and mental retardation services and family members of and advocates for those consumers, organizations that represent affected employees, and other providers of mental health and mental retardation services.~~

[~~(c) The center or proposed center proposing to accept the state center operation and~~

~~service responsibilities shall publish notice of the initial planning meeting regarding the content of the plan or plan amendment and of the meeting to review the content of the proposed plan or plan amendment before it is submitted under Section 534.001(d). The notices must include the time and location of the meeting. The notice of the meeting to review the content of the plan or amendment must include information regarding how to obtain a copy of the proposed plan or amendment. The notices must be published not fewer than 30 days and not more than 90 days before the date set for the meeting in a newspaper of general circulation in each county containing any part of the proposed service area. If a county in which notice is required to be published does not have a newspaper of general circulation, the notices shall be published in a newspaper of general circulation in the nearest county in which a newspaper of general circulation is published.~~

~~[(d) At the time the operations and services are transferred to the community center, money supporting the cost of providing operations and services at a state center shall be transferred to the community center to ensure continuity of services.~~

~~[(e) The Amarillo State Center is exempt from the requirements listed in Subsections (b) and (c).~~]

Sec. 533.035. LOCAL MENTAL HEALTH [~~AND MENTAL RETARDATION~~] AUTHORITIES. (a) The executive commissioner shall designate a local mental health authority [~~and a local mental retardation authority~~] in one or more local service areas. The executive commissioner may delegate to the local *authority* [~~authorities~~] the authority and responsibility of the executive commissioner, the commission, or a department of the commission related to planning, policy development, coordination, including coordination with criminal justice entities, resource allocation, and resource development for and oversight of mental health [~~and mental retardation~~] services in the most appropriate and available setting to meet individual needs in that service area. The executive commissioner may designate a single entity as *both* the local mental health authority *under this chapter* and the local *intellectual and developmental disability* [~~mental retardation~~] authority *under Chapter 533A* for a service area.

(b) The department by contract or other method of allocation, including a case-rate or capitated arrangement, may disburse to a local mental health [~~and mental retardation~~] authority department federal and department state funds to be spent in the local service area for:

(1) community mental health and *intellectual disability* [~~mental retardation~~] services; and

(2) chemical dependency services for persons who are dually diagnosed as having both chemical dependency and mental illness or *an intellectual disability* [~~mental retardation~~].

(c) A local mental health [~~and mental retardation~~] authority, with the approval of the *department* [~~Department of State Health Services or the Department of Aging and Disability Services, or both, as applicable~~], shall use the funds received under Subsection (b) to ensure mental health[~~, mental retardation,~~] and chemical dependency services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

(1) assembling a network of service providers;

(2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health [~~or mental retardation~~] services; and

(3) procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

(d) A local mental health [~~and mental retardation~~] authority shall demonstrate to the department that the services that the authority provides directly or through subcontractors and that involve state funds comply with relevant state standards.

(e) Subject to Section 533.0358, in assembling a network of service providers, a local

mental health authority may serve as a provider of services only as a provider of last resort and only if the local authority demonstrates to the department in the local authority's local network development plan that:

(1) the local authority has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area; and

(2) there is not a willing provider of the relevant services in the local authority's service area or in the county where the provision of the services is needed.

[~~(e-1) A local mental retardation authority may serve as a provider of ICF-MR and related waiver programs only if:~~

[~~(1) the local authority complies with the limitations prescribed by Section 533.0355(d); or~~

[~~(2) the ICF-MR and related waiver programs are necessary to ensure the availability of services and the local authority demonstrates to the commission that there is not a willing ICF-MR and related waiver program qualified service provider in the local authority's service area where the service is needed.~~]

Sec. 533.0351. LOCAL AUTHORITY NETWORK ADVISORY COMMITTEE. (a) The executive commissioner shall establish a local authority network advisory committee to advise the executive commissioner and the *department* [~~Department of State Health Services~~] on technical and administrative issues that directly affect local mental health authority responsibilities.

(b) The committee is composed of equal numbers of representatives of local mental health authorities, community mental health service providers, private mental health service providers, local government officials, advocates for individuals with mental health needs, consumers of mental health services, family members of individuals with mental health needs, and other individuals with expertise in the field of mental health appointed by the executive commissioner. In addition, the executive commissioner may appoint facilitators to the committee as necessary. In appointing the members, the executive commissioner shall also ensure a balanced representation of:

(1) different regions of this state;

(2) rural and urban counties; and

(3) single-county and multicounty local mental health authorities.

(c) Members appointed to the advisory committee must have some knowledge of, familiarity with, or understanding of the day-to-day operations of a local mental health authority.

(d) The advisory committee shall:

(1) review rules and proposed rules and participate in any negotiated rulemaking process related to local mental health authority operations;

(2) advise the executive commissioner and the *department* [~~Department of State Health Services~~] regarding evaluation and coordination of initiatives related to local mental health authority operations;

(3) advise the executive commissioner and the *department* [~~Department of State Health Services~~] in developing a method of contracting with local mental health authorities that will result in contracts that are flexible and responsive to:

(A) the needs and services of local communities; and

(B) the department's performance expectations;

(4) coordinate with work groups whose actions may affect local mental health authority operations;

(5) report to the executive commissioner and the *department* [~~Department of State Health Services~~] on the committee's activities and recommendations at least once each fiscal quarter; and

(6) work with the executive commissioner or the *department* [~~Department of State Health Services~~] as the executive commissioner directs.

(e) For any written recommendation the committee makes to the *department* [~~Department of State Health Services~~], the department shall provide to the committee a written response regarding any action taken on the recommendation or the reasons for the department's inaction on the subject of the recommendation.

(f) The committee is subject to Chapter 2110, Government Code, except that the committee is not subject to Section 2110.004 or 2110.008, Government Code. The committee is abolished on September 1, 2017, unless the executive commissioner adopts a rule continuing the committee in existence beyond that date.

(g) The *department* [~~Department of State Health Services~~] may reimburse consumers of mental health services and family members of individuals with mental health needs appointed to the committee for travel costs incurred in performing their duties as provided in the General Appropriations Act.

Sec. 533.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE AREA. (a) Each local mental health [~~or mental retardation~~] authority shall develop a local service area plan to maximize the authority's services by using the best and most cost-effective means of using federal, state, and local resources to meet the needs of the local community according to the relative priority of those needs. Each local mental health [~~or mental retardation~~] authority shall undertake to maximize federal funding.

(b) A local service area plan must be consistent with the purposes, goals, and policies stated in Section 531.001 and the department's long-range plan developed under Section 533.032.

(c) The department and a local mental health [~~or mental retardation~~] authority shall use the local authority's local service plan as the basis for contracts between the department and the local authority and for establishing the local authority's responsibility for achieving outcomes related to the needs and characteristics of the authority's local service area.

(d) In developing the local service area plan, the local mental health [~~or mental retardation~~] authority shall:

(1) solicit information regarding community needs from:

(A) representatives of the local community;

(B) consumers of community-based mental health [~~and mental retardation~~] services and members of the families of those consumers; *and*

(C) [~~consumers of services of state schools for persons with mental retardation, members of families of those consumers, and members of state school volunteer services councils, if a state school is located in the local service area of the local authority; and~~

[~~(D)~~] other interested persons; and

(2) consider:

(A) criteria for assuring accountability for, cost-effectiveness of, and relative value of service delivery options;

(B) goals to minimize the need for state hospital and community hospital care;

(C) [~~goals to ensure a client with mental retardation is placed in the least restrictive environment appropriate to the person's care;~~

[~~(D) opportunities for innovation to ensure that the local authority is communicating to all potential and incoming consumers about the availability of services of state schools for persons with mental retardation in the local service area of the local authority;~~

[~~(E)~~] goals to divert consumers of services from the criminal justice system;

(D) [~~(F)~~] goals to ensure that a child with mental illness remains with the child's parent or guardian as appropriate to the child's care; and

(E) [~~(G)~~] opportunities for innovation in services and service delivery.

(e) The department and the local mental health [~~or mental retardation~~] authority by contract shall enter into a performance agreement that specifies required standard outcomes for the programs administered by the local authority. Performance related to the specified outcomes must be verifiable by the department. The performance agreement must include measures related to the outputs, costs, and units of service delivered. Information regarding the outputs, costs, and units of service delivered shall be recorded in the local authority's automated data systems, and reports regarding the outputs, costs, and units of service delivered shall be submitted to the department at least annually as provided by department rule.

(f) The department and the local mental health [~~or mental retardation~~] authority shall provide an opportunity for community centers and advocacy groups to provide information or assistance in developing the specified performance outcomes under Subsection (e).

Sec. 533.03521. LOCAL NETWORK DEVELOPMENT PLAN CREATION AND APPROVAL. (a) A local mental health authority shall develop a local network development plan regarding the configuration and development of the local mental health authority's provider network. The plan must reflect local needs and priorities and maximize consumer choice and access to qualified service providers.

(b) The local mental health authority shall submit the local network development plan to the *department* [~~Department of State Health Services~~] for approval.

(c) On receipt of a local network development plan under this section, the department shall review the plan to ensure that the plan:

(1) complies with the criteria established by Section 533.0358 if the local mental health authority is providing services under that section; and

(2) indicates that the local mental health authority is reasonably attempting to solicit the development of a provider base that is:

(A) available and appropriate; and

(B) sufficient to meet the needs of consumers in the local authority's local service area.

(d) If the department determines that the local network development plan complies with Subsection (c), the department shall approve the plan.

(e) At least biennially, the department shall review a local mental health authority's local network development plan and determine whether the plan complies with Subsection (c).

(f) As part of a local network development plan, a local mental health authority annually shall post on the local authority's website a list of persons with whom the local authority had a contract or agreement in effect during all or part of the previous year, or on the date the list is posted, related to the provision of mental health services.

Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES. (a) A local mental health authority shall ensure the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for adults with bipolar disorder, schizophrenia, or clinically severe depression and for children with serious emotional illnesses. The local mental health authority shall ensure that individuals are engaged with treatment services that are:

(1) ongoing and matched to the needs of the individual in type, duration, and intensity;

(2) focused on a process of recovery designed to allow the individual to progress through levels of service;

(3) guided by evidence-based protocols and a strength-based paradigm of service; and

(4) monitored by a system that holds the local authority accountable for specific outcomes, while allowing flexibility to maximize local resources.

(a–1) In addition to the services required under Subsection (a) and using money appropriated for that purpose or money received under the Texas Health Care Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), a local mental health authority may ensure, to the extent feasible, the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for children with serious emotional, behavioral, or mental disturbance not described by Subsection (a) and adults with severe mental illness who are experiencing significant functional impairment due to a mental health disorder not described by Subsection (a) that is defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM–5), including:

(1) major depressive disorder, including single episode or recurrent major depressive disorder;

(2) post-traumatic stress disorder;

(3) schizoaffective disorder, including bipolar and depressive types;

(4) obsessive-compulsive disorder;

(5) anxiety disorder;

(6) attention deficit disorder;

(7) delusional disorder;

(8) bulimia nervosa, anorexia nervosa, or other eating disorders not otherwise specified; or

(9) any other diagnosed mental health disorder.

(a–2) The local mental health authority shall ensure that individuals described by Subsection (a–1) are engaged with treatment services in a clinically appropriate manner.

(b) The department shall require each local mental health authority to incorporate jail diversion strategies into the authority's disease management practices for managing adults with schizophrenia and bipolar disorder to reduce the involvement of those client populations with the criminal justice system.

(b–1) The department shall require each local mental health authority to incorporate jail diversion strategies into the authority's disease management practices to reduce the involvement of the criminal justice system in managing adults with the following disorders as defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM–5), who are not described by Subsection (b):

(1) post-traumatic stress disorder;

(2) schizoaffective disorder, including bipolar and depressive types;

(3) anxiety disorder; or

(4) delusional disorder.

[~~(c) The department shall enter into performance contracts between the department and each local mental health authority for the fiscal years ending August 31, 2004, and August 31, 2005, that specify measurable outcomes related to their success in using disease management practices to meet the needs of the target populations.~~

[~~(e) The department may use the fiscal year ending August 31, 2004, as a transition period for implementing the requirements of Subsections (a)–(c).~~]

Sec. 533.0356. LOCAL BEHAVIORAL HEALTH AUTHORITIES. (a) [~~In this section, "commission" means the Texas Commission on Alcohol and Drug Abuse.~~

[~~(b)~~] The department [~~and the commission jointly~~] may designate a local behavioral health authority in a local service area to provide mental health and chemical dependency services in that area. The *department* [~~board and the commission~~] may delegate to an authority designated under this section the authority and responsibility for planning, policy development, coordination, resource allocation, and resource development for and oversight of mental health and chemical dependency services in that service area. An authority designated under this section has:

(1) all the responsibilities and duties of a local mental health authority provided by Section 533,035 and by Subchapter B, Chapter 534; and

(2) the responsibility and duty to ensure that chemical dependency services are provided in the service area as described by the statewide service delivery plan adopted under Section *461A.056* [~~461.0124~~].

(c) In the planning and implementation of services, the authority shall give proportionate priority to mental health services and chemical dependency services that ensures that funds purchasing services are used in accordance with specific regulatory and statutory requirements that govern the respective funds.

(d) A local mental health authority may apply to the department [~~and commission~~] for designation as a local behavioral health authority.

(e) The department [~~and commission~~], by contract or by a case-rate or capitated arrangement or another method of allocation, may disburse money, including federal money, to a local behavioral health authority for services.

(f) A local behavioral health authority, with the approval of the department [~~or the commission~~] as provided by contract, shall use money received under Subsection (e) to ensure that mental health and chemical dependency services are provided in the local service area at the same level as the level of services previously provided through:

(1) the local mental health authority; and

(2) the *department* [~~commission~~].

(g) In determining whether to designate a local behavioral health authority for a service area and in determining the functions of the authority if designated, the department [~~and commission~~] shall solicit and consider written comments from any interested person including community representatives, persons who are consumers of the proposed services of the authority, and family members of those consumers.

(h) An authority designated under this section shall demonstrate to the department [~~and the commission~~] that services involving state funds that the authority oversees comply with relevant state standards.

(i) The *executive commissioner* [~~board and the commission jointly~~] may adopt rules to govern the operations of local behavioral health authorities. The department [~~and the commission jointly~~] may assign the local behavioral health authority the duty of providing a single point of entry for mental health and chemical dependency services.

Sec. 533.0357. BEST PRACTICES CLEARINGHOUSE FOR LOCAL MENTAL HEALTH AUTHORITIES. (a) In coordination with local mental health authorities, the department shall establish an online clearinghouse of information relating to best practices of local mental health authorities regarding the provision of mental health services, development of a local provider network, and achievement of the best return on public investment in mental health services.

(b) The department shall solicit and collect from local mental health authorities that meet established outcome and performance measures, community centers, consumers and advocates with expertise in mental health or in the provision of mental health services, and other local entities concerned with mental health issues examples of best practices related to:

(1) developing and implementing a local network development plan;

(2) assembling and expanding a local provider network to increase consumer choice;

(3) creating and enforcing performance standards for providers;

(4) managing limited resources;

(5) maximizing available funding;

(6) producing the best client outcomes;

(7) ensuring consumers of mental health services have control over decisions regarding their health;

(8) developing procurement processes to protect public funds;

(9) achieving the best mental health consumer outcomes possible; and

(10) implementing strategies that effectively incorporate consumer and family involvement to develop and evaluate the provider network.

(c) The department may contract for the services of one or more contractors to develop, implement, and maintain a system of collecting and evaluating the best practices of local mental health authorities as provided by this section.

(d) The department shall encourage local mental health authorities that successfully implement best practices in accordance with this section to mentor local mental health authorities that have service deficiencies.

(e) Before the executive commissioner may remove a local mental health authority's designation under Section 533.035(a) as a local mental health authority, the executive commissioner shall:

(1) assist the local mental health authority in attaining training and mentorship in using the best practices established in accordance with this section; and

(2) track and document the local mental health authority's improvements in the provision of service or continued service deficiencies.

(f) Subsection (e) does not apply to the removal of a local mental health authority's designation initiated at the request of a local government official who has responsibility for the provision of mental health services.

(g) The department shall implement this section using only existing resources.

(h) The *department* [~~Department of State Health Services~~] shall ensure that a local mental health authority providing best practices information to the department or mentoring another local mental health authority complies with Section 533.03521(f).

Sec. 533.0358. LOCAL MENTAL HEALTH AUTHORITY'S PROVISION OF SERVICES AS PROVIDER OF LAST RESORT. (a) A local mental health authority may serve as a provider of services under Section 533.035(e) only if, through the local network development plan process, the local authority determines that at least one of the following applies:

(1) interested qualified service providers are not available to provide services or no service provider meets the local authority's procurement requirements;

(2) the local authority's network of providers does not provide a minimum level of consumer choice by:

(A) presenting consumers with two or more qualified service providers in the local authority's network for service packages; and

(B) presenting consumers with two or more qualified service providers in the local authority's network for specific services within a service package;

(3) the local authority's provider network does not provide consumers in the local service area with access to services at least equal to the level of access provided as of a date the executive commissioner specifies;

(4) the combined volume of services delivered by qualified service providers in the local network does not meet all of the local authority's service capacity for each service package identified in the local network development plan;

(5) the performance of the services by the local authority is necessary to preserve critical infrastructure and ensure continuous provision of services; or

(6) existing contracts or other agreements restrict the local authority from contracting with qualified service providers for services in the local network development plan.

(b) If a local mental health authority continues to provide services in accordance with this section, the local authority shall identify in the local authority's local network development plan:

(1) the proportion of its local network services that the local authority will provide; and

(2) the local authority's basis for its determination that the local authority must continue to provide services.

Sec. 533.0359. RULEMAKING FOR LOCAL MENTAL HEALTH AUTHORITIES. (a) In developing rules governing local mental health authorities under Sections 533.035, 533.0351, 533.03521, 533.0357, and 533.0358, the executive commissioner shall use rulemaking procedures under Subchapter B, Chapter 2001, Government Code.

(b) The executive commissioner by rule shall prohibit a trustee or employee of a local mental health authority from soliciting or accepting from another person a benefit, including a security or stock, a gift, or another item of value, that is intended to influence the person's conduct of authority business.

Sec. 533.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS. (a) The department may provide mental health [~~and mental retardation~~] services through halfway houses, sheltered workshops, community centers, and other mental health [~~and mental retardation~~] services programs.

(b) The department may operate or contract for the provision of part or all of the sheltered workshop services and may contract for the sale of goods produced and services provided by a sheltered workshop program. The goods and services may be sold for cash or on credit.

(c) An operating fund may be established for each sheltered workshop the department operates. Each operating fund must be in a national or state bank that is a member of the Federal Deposit Insurance Corporation.

(d) Money derived from gifts or grants received for sheltered workshop purposes and the proceeds from the sale of sheltered workshop goods and services shall be deposited to the credit of the operating fund. The money in the fund may be spent only in the operation of the sheltered workshop to:

(1) purchase supplies, materials, services, and equipment;

(2) pay salaries of and wages to participants and employees;

(3) construct, maintain, repair, and renovate facilities and equipment; and

(4) establish and maintain a petty cash fund of not more than $100.

(e) Money in an operating fund that is used to pay salaries of and wages to participants in the sheltered workshop program is money the department holds in trust for the participants' benefit.

(f) This section does not affect the authority or jurisdiction of a community center as prescribed by Chapter 534.

[~~Sec. 533.039. CLIENT SERVICES OMBUDSMAN. (a) The commissioner shall employ an ombudsman responsible for assisting a person, or a parent or guardian of a person, who has been denied service by the department, a department program or facility, or a local mental health or mental retardation authority.~~

[~~(b) The ombudsman shall:~~

[~~(1) explain and provide information on department and local mental health or mental retardation authority services, facilities, and programs and the rules, procedures, and guidelines applicable to the person denied services; and~~

[~~(2) assist the person in gaining access to an appropriate program or in placing the person on an appropriate waiting list.~~]

Sec. 533.040. SERVICES FOR CHILDREN AND YOUTH. (a) The department shall ensure the development of programs and the expansion of services at the community level for children with mental illness, or *with a dual diagnosis of mental illness and an intellectual disability* [~~mental retardation, or both~~], and for their families. The department shall:

(1) prepare and review budgets for services for children;

(2) develop departmental policies relating to children's programs and service delivery; and

(3) increase interagency coordination activities to enhance the provision of services for children.

(b) The department shall designate an employee authorized in the department's schedule of exempt positions to be responsible for planning and coordinating services and programs for children and youth. The employee shall perform budget and policy review and provide interagency coordination of services for children and youth.

(c) The department shall designate an employee as a youth suicide prevention officer. The officer shall serve as a liaison to the Texas Education Agency and public schools on matters relating to the prevention of and response to suicide or attempted suicide by public school students.

(d) The department and the *Department of Assistive and Rehabilitative Services* [~~Interagency Council on Early Childhood Intervention~~] shall:

(1) jointly develop:

(A) a continuum of care for children younger than seven years of age who have mental illness; and

(B) a plan to increase the expertise of the department's service providers in mental health issues involving children younger than seven years of age; and

(2) coordinate, if practicable, *the departments'* [~~department and council~~] activities and services involving children with mental illness and their families.

[~~Sec. 533.041. SERVICES FOR EMOTIONALLY DISTURBED CHILDREN AND YOUTH. (a) At each department mental health facility, the department shall make short-term evaluation and diagnostic services available for emotionally disturbed children and youth who are referred to the department by the Texas Department of Human Services if evaluation and diagnostic services for the children and youth are not immediately available through a local mental health authority.~~

[~~(b) The Texas Department of Human Services may pay for the services according to fees jointly agreed to by both agencies. The department may use payments received under the agreement to contract for community-based residential placements for emotionally disturbed children and youth.~~

[~~(c) The department shall maintain computerized information on emotionally disturbed children and youth that contains both individual and aggregate information. The purpose of the information is to allow the department to track services and placements and to conduct research on the treatment of the children and youth. The department may coordinate activities with the Texas Department of Human Services in developing the information. The department shall make the information available to the department's mental health facilities and to community centers.~~]

Sec. 533.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY TRAINING. (a) The *executive commissioner* [~~department, the Texas Department of Human Services~~], the Texas *Juvenile Justice Department* [~~Youth Commission, the Texas Juvenile Probation Commission~~], and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the *department, the Texas Juvenile Justice Department, the Department of Family and Protective Services, and the Texas Education Agency who are* [~~agencies~~] involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families *under this title*. The memorandum must:

(1) outline the responsibility of each agency in coordinating and developing a plan for interagency training on individualized assessment and effective intervention and treatment services for children and dysfunctional families; and

(2) provide for the establishment of an interagency task force to:

(A) develop a training program to include identified competencies, content, and hours for completion of the training with at least 20 hours of training required each year until the program is completed;

(B) design a plan for implementing the program, including regional site selection, frequency of training, and selection of experienced clinical public and private professionals or consultants to lead the training; and

(C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals.

(b) The task force consists of:

(1) one clinical professional and one training staff member from each agency, appointed by that agency; and

(2) 10 private sector clinical professionals with expertise in dealing with troubled children, youth, and dysfunctional families, two of whom are appointed by each agency.

(c) The task force shall meet at the call of the department.

(d) The *commission* [~~department~~] shall act as the lead agency in coordinating the development and implementation of the memorandum.

(e) The *executive commissioner and the* agencies shall review and by rule revise the memorandum not later than August each year.

Sec. 533.042. EVALUATION OF ELDERLY RESIDENTS. (a) The department shall evaluate each elderly resident at least annually to determine if the resident can be appropriately served in a less restrictive setting.

(b) The department shall consider the proximity to the resident of family, friends, and advocates concerned with the resident's well-being in determining whether the resident should be moved from a department facility or to a different department facility. The department shall recognize that a nursing *facility* [~~home~~] may not be able to meet the special needs of an elderly resident.

(c) In evaluating an elderly resident under this section and to ensure appropriate placement, the department shall identify the special needs of the resident, the types of services that will best meet those needs, and the type of facility that will best provide those services.

(d) The treating physician shall conduct the evaluation of an elderly resident of a department [~~mental health~~] facility. [~~The appropriate interdisciplinary team shall conduct the evaluation of an elderly resident of a department mental retardation facility.~~]

(e) The department shall attempt to place an elderly resident in a less restrictive setting if the department determines that the resident can be appropriately served in that setting. The department shall coordinate the attempt with the local mental health [~~and mental retardation~~] authority.

(f) A local mental health [~~or mental retardation~~] authority shall provide continuing care for an elderly resident placed in the authority's service area under this section.

(g) The local mental health [~~or mental retardation~~] authority shall have the right of access to all residents and records of residents who request continuing care services.

Sec. 533.043. PROPOSALS FOR GERIATRIC, EXTENDED, AND TRANSITIONAL CARE. (a) The department shall solicit proposals from community providers to operate:

(1) community residential programs that will provide at least the same services that an extended care unit provides for the population the provider proposes to serve; or

(2) transitional living units that will provide at least the same services that the department traditionally provides in facility-based transitional care units.

(b) The department shall solicit proposals from community providers to operate community residential programs for elderly residents at least every two years.

(c) A proposal for extended care services may be designed to serve all or part of an extended care unit's population.

(d) A proposal to operate transitional living units may provide that the community

provider operate the transitional living unit in a community setting or on the grounds of a department facility.

(e) The department shall require each provider to:

(1) offer adequate assurances of ability to:

(A) provide the required services;

(B) meet department standards; and

(C) safeguard the safety and well-being of each resident; and

(2) sign a memorandum of agreement with the local mental health [~~or mental retardation~~] authority[~~, as appropriate,~~] outlining the responsibilities for continuity of care and monitoring, if the provider is not the local authority.

(f) The department may fund a proposal through a contract if the provider agrees to meet the requirements prescribed by Subsection (e) and agrees to provide the services at a cost that is equal to or less than the cost to the department to provide the services.

(g) The appropriate local mental health [~~or mental retardation~~] authority shall monitor the services provided to a resident placed in a program funded under this section. The department may monitor any service for which it contracts.

(h) The department is responsible for the care of a patient in an extended care program funded under this section. The department may terminate a contract for extended care services if the program ends or does not provide the required services. The department shall provide the services or find another program to provide the services if the department terminates a contract.

[~~Sec. 533.044. MEMORANDUM OF UNDERSTANDING ON ASSESSMENT TOOLS. (a) The department and Texas Department of Human Services by rule shall adopt a joint memorandum of understanding that requires the use of a uniform assessment tool to assess whether an elderly person, a person with mental retardation, a person with a developmental disability, or a person who is suspected of being a person with mental retardation or a developmental disability and who is receiving services in a facility regulated or operated by the department or Texas Department of Human Services needs a guardian of the person or estate, or both.~~

[~~(b) The memorandum must prescribe:~~

[~~(1) the facilities that must use the assessment; and~~

[~~(2) the circumstances in which the facilities must use the assessment.~~

[~~(c) Each agency shall review and modify the memorandum as necessary not later than the last month of each state fiscal year.~~

[~~Sec. 533.045. USE OF CERTAIN DRUGS FOR CERTAIN PATIENTS. (a) The department may place on a clozapine treatment plan each patient in a state hospital for whom the treatment is medically feasible and appropriate. The department may place a patient on a treatment plan using a drug other than clozapine if the drug produces results that are similar to or better than clozapine in treating schizophrenics.~~

[~~(b) If a patient in a state hospital responds to a treatment plan required or authorized by Subsection (a) to the extent that the patient can be discharged from the hospital, the department may:~~

[~~(1) assist the patient in applying for disability benefits and for Medicaid if the patient is potentially eligible;~~

[~~(2) place the patient in a community setting with continuing drug treatments and with medical monitoring;~~

[~~(3) provide or ensure that the patient is provided supportive housing, rehabilitation services, and job placement, as appropriate; and~~

[~~(4) provide outpatient care at state hospitals or require a local mental health authority to provide outpatient care, as appropriate.~~

[~~(c) The department may use facility beds vacated by patients discharged through the~~

~~use of a treatment plan allowed by Subsection (a) for other appropriate uses.~~

~~[Sec. 533.046. FEDERAL FUNDING FOR MENTAL HEALTH SERVICES FOR CHILDREN AND FAMILIES. (a) The department shall enter into an interagency agreement with the Texas Department of Human Services to:~~

~~[(1) amend the eligibility requirements of the state's emergency assistance plan under Title IV–A, Social Security Act (42 U.S.C. Section 601 et seq.), to include mental health emergencies; and~~

~~[(2) prescribe the procedures the agencies will use to delegate to the department and to local mental health and mental retardation authorities the administration of mental health emergency assistance.~~

~~[(b) The interagency agreement must provide that:~~

~~[(1) the department certify to the Texas Department of Human Services the nonfederal expenditures for which the state will claim federal matching funds; and~~

~~[(2) the Texas Department of Human Services retain responsibility for making final eligibility decisions.~~

~~[(c) The department shall allocate to local mental health and mental retardation authorities 66 percent of the federal funds received under this section.~~

~~[Sec. 533.047. MANAGED CARE ORGANIZATIONS: MEDICAID PROGRAM. The department shall develop performance, operation, quality of care, marketing, and financial standards for the provision by managed care organizations of mental health and mental retardation services to Medicaid clients.~~

~~[Sec. 533.048. GUARDIANSHIP ADVISORY COMMITTEE. (a) In this section, "institution" means:~~

~~[(1) an ICF–MR; or~~

~~[(2) a state hospital, state school, or state center maintained and managed by the department.~~

~~[(b) The commissioner shall appoint a guardianship advisory committee composed of nine members, five of whom must be parents of residents of institutions.~~

~~[(c) The commissioner shall designate a member of the advisory committee to serve as presiding officer. The members of the advisory committee shall elect any other necessary officers.~~

~~[(d) The advisory committee shall meet at the call of the presiding officer.~~

~~[(e) A member of the advisory committee serves at the will of the commissioner.~~

~~[(f) A member of the advisory committee may not receive compensation for serving on the advisory committee but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the advisory committee as provided by the General Appropriations Act.~~

~~[(g) The advisory committee shall develop a plan and make specific recommendations to the department regarding methods to facilitate the appointment of relatives of residents of institutions as guardians of those residents to make decisions regarding appropriate care settings for the residents.~~

~~[Sec. 533.049. PRIVATIZATION OF STATE SCHOOL. (a) After August 31, 2004, and before September 1, 2005, the department may contract with a private service provider to operate a state school only if:~~

~~[(1) the Health and Human Services Commission determines that the private service provider will operate the state school at a cost that is at least 25 percent less than the cost to the department to operate the state school;~~

~~[(2) the Health and Human Services Commission approves the contract;~~

~~[(3) the private service provider is required under the contract to operate the school at a quality level at least equal to the quality level achieved by the department when the department operated the school, as measured by the school's most recent applicable ICF–MR survey; and~~

~~[(4) the state school, when operated under the contract, treats a population with the same characteristics and need levels as the population treated by the state school when operated by the department.~~

~~[(c) If the department contracts with a private service provider to operate a state school, the department, the Governor's Office of Budget and Planning, and the Legislative Budget Board shall identify sources of funding that must be transferred to the department to fund the contract.~~

~~[(d) The department may renew a contract under this section. The conditions listed in Subsections (a)(1)–(3) apply to the renewal of the contract.~~

~~[Sec. 533.050. PRIVATIZATION OF STATE MENTAL HOSPITAL. (a) After August 31, 2004, and before September 1, 2005, the department may contract with a private service provider to operate a state mental hospital owned by the department only if:~~

~~[(1) the Health and Human Services Commission determines that the private service provider will operate the hospital at a cost that is at least 25 percent less than the cost to the department to operate the hospital;~~

~~[(2) the Health and Human Services Commission approves the contract;~~

~~[(3) the hospital, when operated under the contract, treats a population with the same characteristics and acuity levels as the population treated at the hospital when operated by the department; and~~

~~[(4) the private service provider is required under the contract to operate the hospital at a quality level at least equal to the quality level achieved by the department when the department operated the hospital, as measured by the hospital's most recent applicable accreditation determination from the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).~~

~~[(c) If the department contracts with a private service provider to operate a state mental hospital, the department, the Governor's Office of Budget and Planning, and the Legislative Budget Board shall identify sources of funding that must be transferred to the department to fund the contract.~~

~~[(d) The department may renew a contract under this section. The conditions listed in Subsections (a)(1)–(3) apply to the renewal of the contract.~~]

Sec. 533.051. ALLOCATION OF OUTPATIENT MENTAL HEALTH SERVICES AND BEDS IN STATE HOSPITALS. (a) To ensure the appropriate and timely provision of mental health services to patients who voluntarily receive those services or who are ordered by a court to receive those services in civil or criminal proceedings, the department, in conjunction with the commission, shall plan for the proper and separate allocation of outpatient or community-based mental health services provided by secure and nonsecure outpatient facilities that provide residential care alternatives and mental health services and for the proper and separate allocation of beds in the state hospitals for the following two groups of patients:

(1) patients who are voluntarily receiving outpatient or community-based mental health services, voluntarily admitted to a state hospital under Chapter 572, admitted to a state hospital for emergency detention under Chapter 573, or ordered by a court under Chapter 574 to receive inpatient mental health services at a state hospital or outpatient mental health services from an outpatient facility that provides residential care alternatives and mental health services; and

(2) patients who are ordered to participate in an outpatient treatment program to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or committed to a state hospital or other facility to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or to receive inpatient mental health services following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(b) The plan developed by the department under Subsection (a) must include:

(1) a determination of the needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) a determination of the minimum number of beds that the state hospital system must maintain to adequately serve the two groups of patients;

(3) a statewide plan for and the allocation of sufficient funds for meeting the outpatient mental health service needs of and for the maintenance of beds by the state hospitals for the two groups of patients; and

(4) a process to address and develop, without adverse impact to local service areas, the accessibility and availability of sufficient outpatient mental health services provided to and beds provided by the state hospitals to the two groups of patients based on the success of contractual outcomes with mental health service providers and facilities under Sections 533.034 and 533.052.

(c) To assist in the development of the plan under Subsection (a), the department shall establish and meet at least monthly with an advisory panel composed of the following persons:

(1) one representative designated by the Texas Department of Criminal Justice;

(2) one representative designated by the Texas Association of Counties;

(3) two representatives designated by the Texas Council of Community Centers, including one representative of an urban local service area and one representative of a rural local service area;

(4) two representatives designated by the County Judges and Commissioners Association of Texas, including one representative who is the presiding judge of a court with jurisdiction over mental health matters;

(5) one representative designated by the Sheriffs' Association of Texas;

(6) two representatives designated by the Texas Municipal League, including one representative who is a municipal law enforcement official;

(7) one representative designated by the Texas Conference of Urban Counties;

(8) two representatives designated by the Texas Hospital Association, including one representative who is a physician;

(9) one representative designated by the Texas Catalyst for Empowerment; and

(10) four representatives designated by the *department's* [~~Department of State Health Services~~'] Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders, including:

(A) the chair of the council;

(B) one representative of the council's members who is a consumer of or advocate for mental health services;

(C) one representative of the council's members who is a consumer of or advocate for substance abuse treatment; and

(D) one representative of the council's members who is a family member of or advocate for persons with mental health and substance abuse disorders.

(d) In developing the plan under Subsection (a), the department and advisory panel shall consider:

(1) needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) the frequency of use of beds and the historical patterns of use of beds in the state hospitals and other facilities by the two groups of patients;

(3) local needs and demands for outpatient mental health services by the two groups of patients;

(4) local needs and demands for beds in the state hospitals and other facilities for the two groups of patients;

(5) the availability of outpatient mental health service providers and inpatient mental health facilities that may be contracted with to provide outpatient mental health services and beds for the two groups of patients;

(6) the differences between the two groups of patients with regard to:

(A) admission to and discharge from a state hospital or outpatient facility;

(B) rapid stabilization and discharge to the community;

(C) length of stay in a state hospital or outpatient facility;

(D) disputes arising from the determination of a patient's length of stay in a state hospital by a health maintenance organization or a managed care organization;

(E) third-party billing; and

(F) legal challenges or requirements related to the examination and treatment of the patients; and

(7) public input provided to the department or advisory panel in a form and at a time and place that is effective and appropriate and in a manner that complies with any applicable laws, including administrative rules.

(e) The department shall update the plan biennially.

~~[(f) Not later than December 31, 2013, the department, in conjunction with the advisory panel, shall develop the initial version of the plan required by Subsection (a).~~

~~[(g) Not later than August 31, 2014, the department shall:~~

~~[(1) identify standards and methodologies for the implementation of the plan required by Subsection (a); and~~

~~[(2) begin implementing the plan.~~

~~[(h) Not later than December 1, 2014, the department shall submit a report to the legislature and governor that includes the initial version of the plan, the status of the plan's implementation, and the impact of the plan on the delivery of services.]~~

(i) While the plan required by Subsection (a) is being developed and implemented, the department may not, pursuant to any rule, contract, or directive, impose a sanction, penalty, or fine on a local mental health authority for the authority's noncompliance with any methodology or standard adopted or applied by the department relating to the allocation of beds by authorities for the two groups of patients described by Subsection (a).

Sec. 533.052. CONTRACTING WITH CERTAIN MENTAL HEALTH SERVICE PROVIDERS AND FACILITIES TO PROVIDE SERVICES AND BEDS FOR CERTAIN PERSONS. The department shall make every effort, through collaboration and contractual arrangements with local mental health authorities, to contract with and use a broad base of local community outpatient mental health service providers and inpatient mental health facilities, as appropriate, to make available a sufficient and appropriately located amount of outpatient mental health services and a sufficient and appropriately located number of beds in inpatient mental health facilities, as specified in the plan developed by the department under Section 533.051, to ensure the appropriate and timely provision of mental health services to the two groups of patients described by Section 533.051(a).

Sec. 533.053. INFORMING COURTS OF COMMITMENT OPTIONS. The department shall develop and implement a procedure through which a court that has the authority to commit a person who is incompetent to stand trial or who has been acquitted by reason of insanity under Chapters 46B and 46C, Code of Criminal Procedure, is aware of all of the commitment options for the person, including jail diversion and community-based programs.

SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

Sec. 533.081. DEVELOPMENT OF FACILITY BUDGETS. The department, in budgeting for a facility, shall use uniform costs for specific types of services a facility provides unless a legitimate reason exists and is documented for the use of other costs.

Sec. 533.082. DETERMINATION OF SAVINGS IN FACILITIES. (a) The depart-

ment shall determine the degree to which the costs of operating department facilities for persons with mental illness [~~or mental retardation~~] in compliance with applicable standards are affected as populations in the facilities fluctuate.

(b) In making the determination, the department shall:

(1) assume that the current level of services and necessary state of repair of the facilities will be maintained; and

(2) include sufficient funds to allow the department to comply with the requirements of litigation and applicable standards.

(c) The department shall allocate to community-based mental health programs any savings realized in operating department facilities for persons with mental illness.

[~~(d) The department shall allocate to community-based mental retardation programs any savings realized in operating department facilities for persons with mental retardation.~~]

Sec. 533.083. CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION OF FACILITY. The department shall establish objective criteria for determining when a new facility may be needed and when a facility may be expanded, closed, or consolidated.

Sec. 533.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (a) To the extent provided by this subtitle, the department, *in coordination with the executive commissioner,* may lease, transfer, or otherwise dispose of any surplus real property *related to the provision of services under this title,* including any improvements under its management and control, or authorize the lease, transfer, or disposal of the property. Surplus property is property the *executive commissioner* [~~board~~] designates as having minimal value to the present service delivery system and projects to have minimal value to the service delivery system as described in the department's long-range plan.

(b) The proceeds from the lease, transfer, or disposal of surplus real property, including any improvements, shall be deposited to the credit of the department in the Texas capital trust fund established under Chapter 2201, Government Code. The proceeds [~~and any interest from the proceeds~~] may be appropriated only for improvements to the department's system of *mental health* facilities.

(c) A lease proposal shall be advertised at least once a week for four consecutive weeks in at least two newspapers. One newspaper must be a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location. The other newspaper must have statewide circulation. Each lease is subject to the attorney general's approval as to substance and form. The *executive commissioner* [~~board~~] shall adopt forms, rules, and contracts that, in the *executive commissioner's* [~~board's~~] best judgment, will protect the state's interests. The *executive commissioner* [~~board~~] may reject any or all bids.

(d) This section does not authorize the *executive commissioner or* department to close or consolidate a facility used to provide mental health [~~or mental retardation~~] services without first obtaining legislative approval.

(e) Notwithstanding Subsection (c), the *executive commissioner, in coordination with the* department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT. (a) The mental health community services account is an account in the general revenue fund that may be appropriated only for the provision of mental health services by or under contract with the department.

(b) The department shall deposit to the credit of the mental health community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

[~~(c) Interest earned on the mental health community services account shall be credited to the account. The account is exempt from the application of Section 403.095, Govern-~~

~~ment Code.~~]

Sec. 533.085. FACILITIES FOR INMATE AND PAROLEE CARE. (a) With the written approval of the governor, the department may contract with the Texas Department of Criminal Justice to transfer facilities to *the Texas Department of Criminal Justice* [~~that department~~] or otherwise provide facilities for:

(1) inmates with mental illness [~~or mental retardation~~] in the custody of *the Texas Department of Criminal Justice* [~~that department~~]; or

(2) persons with mental illness [~~or mental retardation~~] paroled or released under *the* [~~that department's~~] supervision *of the Texas Department of Criminal Justice.*

(b) An agency must report to the governor the agency's reasons for proposing to enter into a contract under this section and request the governor's approval.

[~~Sec. 533.086. USE OF DEPARTMENT FACILITIES BY SUBSTANCE ABUSERS. (a) The department shall annually provide the Texas Commission on Alcohol and Drug Abuse with an analysis by county of the hospitalization rates of persons with substance abuse problems. The analysis must include information indicating which admissions were for persons with only substance abuse problems and which admissions were for persons with substance abuse problems but whose primary diagnoses were other types of mental health problems.~~

[~~(b) Not later than September 1 of each even-numbered year, the department and the Texas Commission on Alcohol and Drug Abuse shall jointly estimate the number of facility beds that should be maintained for persons with substance abuse problems who cannot be treated in the community.~~]

Sec. 533.087. LEASE OF REAL PROPERTY. (a) The department, *in coordination with the executive commissioner,* may lease real property *related to the provision of services under this title,* including any improvements under the department's management and control, regardless of whether the property is surplus property. Except as provided by Subsection (c), the department, *in coordination with the executive commissioner,* may award a lease of real property only:

(1) at the prevailing market rate; and

(2) by competitive bid.

(b) The *commission* [~~department~~] shall advertise a proposal for lease at least once a week for four consecutive weeks in:

(1) a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location; and

(2) a newspaper of statewide circulation.

(c) The department, *in coordination with the executive commissioner,* may lease real property *related to the provision of services under this title* or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

(1) the *executive commissioner* [~~board~~] determines that sufficient public benefit will be derived from the lease; and

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

(C) a not-for-profit organization; or

(D) an entity related to the department by a service contract.

(d) The *executive commissioner* [~~board~~] shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e) The *executive commissioner* [~~board~~] may reject any bid.

(f) This section does not authorize the *executive commissioner or* department to close

or consolidate a facility used to provide mental health [~~or mental retardation~~] services without legislative approval.

(g) Notwithstanding Subsections (a) and (b), the *executive commissioner, in coordination with the* department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

SUBCHAPTER E. JAIL DIVERSION PROGRAM

Sec. 533.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local mental health [~~or mental retardation~~] authority may develop and may prioritize its available funding for:

(1) a system to divert members of the priority population, including those members with co-occurring substance abuse disorders, before their incarceration or other contact with the criminal justice system, to services appropriate to their needs, including:

(A) screening and assessment services; and

(B) treatment services, including:

(i) assertive community treatment services;

(ii) inpatient crisis respite services;

(iii) medication management services;

(iv) short-term residential services;

(v) shelter care services;

(vi) crisis respite residential services;

(vii) outpatient integrated mental health services;

(viii) co-occurring substance abuse treatment services;

(ix) psychiatric rehabilitation and service coordination services;

(x) continuity of care services; and

(xi) services consistent with the Texas *Correctional Office* [~~Council~~] on Offenders with *Medical or* Mental Impairments model;

(2) specialized training of local law enforcement and court personnel to identify and manage offenders or suspects who may be members of the priority population; and

(3) other model programs for offenders and suspects who may be members of the priority population, including crisis intervention training for law enforcement personnel.

(b) A local mental health [~~or mental retardation~~] authority developing a system, training, or a model program under Subsection (a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.

(c) A local mental health [~~or mental retardation~~] authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

CHAPTER 533A. POWERS AND DUTIES OF DEPARTMENT OF AGING AND DISABILITY SERVICES

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 533A.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Department facility" means a facility listed in Section 532A.001(b).

Sec. 533A.002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this title or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Sec. 533A.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a volunteer intellectual disability program in a local intellectual and developmental disability authority or a community center, the department may allocate available funds appropriated for providing volunteer intellectual disability services.

(b) The department shall develop formal policies that encourage the growth and development of volunteer intellectual disability services in local intellectual and developmental disability authorities and community centers.

Sec. 533A.004. LIENS. (a) In this section, "department facility" includes the ICF–IID component of the Rio Grande State Center.

(a–1) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a client with an intellectual disability in an amount equal to the amount of reimbursement sought.

(b) The amount of the reimbursement sought may not exceed:

(1) the amount the department is authorized to charge under Subchapter D, Chapter 593, if the client received the services in a department facility; or

(2) the amount the community center is authorized to charge under Section 534.017 if the client received the services in a community center.

(c) The lien attaches to:

(1) all nonexempt real and personal property owned or later acquired by the client or by a person legally responsible for the client's support;

(2) a judgment of a court in this state or a decision of a public agency in a proceeding brought by or on behalf of the client to recover damages for an injury for which the client was admitted to a department facility or community center; and

(3) the proceeds of a settlement of a cause of action or a claim by the client for an injury for which the client was admitted to a department facility or community center.

(d) To secure the lien, the department or community center must file written notice of the lien with the county clerk of the county in which:

(1) the client, or the person legally responsible for the client's support, owns property; or

(2) the client received or is receiving services.

(e) The notice must contain:

(1) the name and address of the client;

(2) the name and address of the person legally responsible for the client's support, if applicable;

(3) the period during which the department facility or community center provided services or a statement that services are currently being provided; and

(4) the name and location of the department facility or community center.

(f) Not later than the 31st day before the date on which the department files the notice of the lien with the county clerk, the department shall notify by certified mail the client and the person legally responsible for the client's support. The notice must contain a copy of the charges, the statutory procedures relating to filing a lien, and the procedures to contest the charges. The executive commissioner by rule shall prescribe the procedures to contest the charges.

(g) The county clerk shall record on the written notice the name of the client, the name

and address of the department facility or community center, and, if requested by the person filing the lien, the name of the person legally responsible for the client's support. The clerk shall index the notice record in the name of the client and, if requested by the person filing the lien, in the name of the person legally responsible for the client's support.

(h) The notice record must include an attachment that contains an account of the charges made by the department facility or community center and the amount due to the facility or center. The director or superintendent of the facility or center must swear to the validity of the account. The account is presumed to be correct, and in a suit to cancel the debt and discharge the lien or to foreclose on the lien, the account is sufficient evidence to authorize a court to render a judgment for the facility or center.

(i) To discharge the lien, the director or superintendent of the department facility or community center or a claims representative of the facility or center must execute and file with the county clerk of the county in which the lien notice is filed a certificate stating that the debt covered by the lien has been paid, settled, or released and authorizing the clerk to discharge the lien. The county clerk shall record a memorandum of the certificate and the date on which it is filed. The filing of the certificate and recording of the memorandum discharge the lien.

Sec. 533A.005. EASEMENTS. The department, in coordination with the executive commissioner, may grant a temporary or permanent easement or right-of-way on land held by the department that relates to services provided under this title. The department, in coordination with the executive commissioner, must grant an easement or right-of-way on terms and conditions the executive commissioner considers to be in the state's best interest.

Sec. 533A.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN. (a) The department shall report to the Texas Medical Board any allegation received by the department that a physician employed by or under contract with the department in relation to services provided under this title has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 164.051, Occupations Code. The report must be made in the manner provided by Section 154.051, Occupations Code.

(b) The department shall provide to the Texas Medical Board a copy of any report or finding relating to an investigation of an allegation reported to that board.

Sec. 533A.007. USE OF CRIMINAL HISTORY RECORD INFORMATION. (a) Subject to any applicable requirements of Chapter 250, the department, in relation to services provided under this title, or a local intellectual and developmental disability authority or community center, may deny employment or volunteer status to an applicant if:

(1) the department, authority, or community center determines that the applicant's criminal history record information indicates that the person is not qualified or suitable; or

(2) the applicant fails to provide a complete set of fingerprints if the department establishes that method of obtaining criminal history record information.

(b) The executive commissioner shall adopt rules relating to the use of information obtained under this section, including rules that prohibit an adverse personnel action based on arrest warrant or wanted persons information received by the department.

Sec. 533A.0075. EXCHANGE OF EMPLOYMENT RECORDS. The department, in relation to services provided under this title, or a local intellectual and developmental disability authority or community center, may exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority, or community center.

Sec. 533A.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY. (a) Each department facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for individuals with mental illness or an intellectual disability in the facility's or center's service area.

(b) In making the assessment, the department facility or community center shall

consider the feasibility of using an array of job opportunities that may lead to competitive employment, including sheltered employment and supported employment.

(c) Each department facility and community center shall annually submit to the department a report showing that the facility or center has complied with Subsection (a).

(d) The department shall compile information from the reports and shall make the information available to each designated provider in a service area.

(e) Each department facility and community center shall ensure that designated staff are trained to:

(1) assist clients through the Social Security Administration disability determination process;

(2) provide clients and their families information related to the Social Security Administration Work Incentive Provisions; and

(3) assist clients in accessing and utilizing the Social Security Administration Work Incentive Provisions to finance training, services, and supports needed to obtain career goals.

Sec. 533A.009. EXCHANGE OF CLIENT RECORDS. (a) Department facilities, local intellectual and developmental disability authorities, community centers, other designated providers, and subcontractors of intellectual disability services are component parts of one service delivery system within which client records may be exchanged without the client's consent.

(b) The executive commissioner shall adopt rules to carry out the purposes of this section.

Sec. 533A.0095. COLLECTION AND MAINTENANCE OF INFORMATION REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The executive commissioner by rule shall require the department to collect information and maintain current records regarding a person found not guilty of an offense by reason of insanity under Chapter 46C, Code of Criminal Procedure, who is:

(1) committed by a court for long-term placement in a residential care facility under Chapter 593 or under Chapter 46C, Code of Criminal Procedure; or

(2) ordered by a court to receive outpatient or community-based treatment and supervision.

(b) Information maintained by the department under this section must include the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

(c) The department shall file annually with the presiding officer of each house of the legislature a written report containing the name of each person described by Subsection (a), the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

Sec. 533A.010. INFORMATION RELATING TO CONDITION. (a) A person, including a hospital, nursing facility, medical society, or other organization, may provide to the department or a medical organization, hospital, or hospital committee any information, including interviews, reports, statements, or memoranda relating to a person's condition and treatment for use in a study to reduce mental illness and intellectual disabilities.

(b) The department or a medical organization, hospital, or hospital committee receiving the information may use or publish the information only to advance mental health and intellectual disability research and education in order to reduce mental illness and intellectual disabilities. A summary of the study may be released for general publication.

(c) The identity of a person whose condition or treatment is studied is confidential and may not be revealed under any circumstances. Information provided under this section and any finding or conclusion resulting from the study is privileged information.

(d) A person is not liable for damages or other relief if the person:

(1) provides information under this section;

(2) releases or publishes the findings and conclusions of the person or organization to advance mental health and intellectual disability research and education; or

(3) releases or publishes generally a summary of a study.

Sec. *533A.011* [~~533.011~~]. RETURN OF PERSON WITH *AN INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~] TO STATE OF RESIDENCE. (a) *In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.*

(a-1) The department may return a nonresident person with *an intellectual disability* [~~mental retardation~~] who is committed to a *department* facility [~~for persons with mental retardation~~] in this state to the proper agency of the person's state of residence.

(b) The department may permit the return of a resident of this state who is committed to a facility for persons with *an intellectual disability* [~~mental retardation~~] in another state.

(c) The department may enter into reciprocal agreements with the proper agencies of other states to facilitate the return of persons committed to *department* facilities [~~for persons with mental retardation~~] in this state, or *facilities for persons with an intellectual disability in* another state, to the state of their residence.

(d) The *director* [~~superintendent~~] of a department facility [~~for persons with mental retardation~~] may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a person with *an intellectual disability* [~~mental retardation~~] returned to this state.

(e) The state returning a person with *an intellectual disability* [~~mental retardation~~] to another state shall bear the expenses of returning the person.

Sec. 533A.012. COOPERATION OF STATE AGENCIES. At the department's request and in coordination with the executive commissioner, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions and that relate to services provided under this title.

Sec. 533A.015. UNANNOUNCED INSPECTIONS. The department may make any inspection of a department facility or program under the department's jurisdiction under this title without announcing the inspection.

Sec. 533A.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY SERVICE PROVIDERS. (a) This section does not apply to a "health and human services agency," as that term is defined by Section 531.001, Government Code.

(a-1) A state agency, local agency, or local intellectual and developmental disability authority that expends public money to acquire goods or services in connection with providing or coordinating the provision of intellectual disability services may satisfy the requirements of any state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with the public money in accordance with Section 533A.017 or in accordance with:

(1) Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or

(2) this section, if the entity is not covered by Subdivision (1).

(b) An agency or authority under Subsection (a-1)(2) may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

(c) Subject to Subsection (d), the agency or authority may consider all relevant factors in determining the best value, including:

(1) any installation costs;

(2) the delivery terms;

(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the agency's or authority's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the agency or authority to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;

(7) the total long-term cost to the agency or authority of acquiring the vendor's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on the agency's or authority's productivity;

(10) the acquisition price; and

(11) any other factor relevant to determining the best value for the agency or authority in the context of a particular acquisition.

(d) If a state agency to which this section applies acquires goods or services with a value that exceeds $100,000, the state agency shall consult with and receive approval from the commission before considering factors other than price and meeting specifications.

(e) The state auditor or the executive commissioner may audit the agency's or authority's acquisitions of goods and services under this section to the extent state money or federal money appropriated by the state is used to make the acquisitions.

(f) The agency or authority may adopt rules and procedures for the acquisition of goods and services under this section.

Sec. 533A.017. PARTICIPATION IN PURCHASING CONTRACTS OR GROUP PURCHASING PROGRAM. (a) This section does not apply to a "health and human services agency," as that term is defined by Section 531.001, Government Code.

(b) The executive commissioner may allow a state agency, local agency, or local intellectual and developmental disability authority that expends public money to purchase goods or services in connection with providing or coordinating the provision of intellectual disability services to purchase goods or services with the public money by participating in:

(1) a contract the executive commissioner has made to purchase goods or services; or

(2) a group purchasing program established or designated by the executive commissioner that offers discounts to providers of intellectual disability services.

Sec. *533A.018* [~~533.018~~]. *REVENUE FROM* SPECIAL OLYMPICS TEXAS *LICENSE PLATES* [~~ACCOUNT~~]. [~~(a) The Texas Department of Mental Health and Mental Retardation Special Olympics Texas account is a separate account in the general revenue fund. The account is composed of money deposited to the credit of the account under Section 502.2922, Transportation Code. Money in the account may be used only for the purposes of this section.~~

[~~(b) The department administers the account.~~] Annually, the department shall distribute the money deposited *under Section 504.621, Transportation Code,* to the credit of the account *created in the trust fund created under Section 504.6012, Transportation Code,* to Special Olympics Texas to be used only to pay for costs associated with training and with area and regional competitions of the Special Olympics Texas.

SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF INTELLECTUAL DISABILITY SERVICES

Sec. 533A.031. DEFINITIONS. In this subchapter:

(1) "Elderly resident" means a person 65 years of age or older residing in a department facility.

(2) "ICF–IID and related waiver programs" includes ICF–IID Section 1915(c) waiver

programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with an intellectual disability.

(3) "Qualified service provider" means an entity that meets requirements for service providers established by the executive commissioner.

(4) "Section 1915(c) waiver program" means a federally funded Medicaid program of the state that is authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)).

Sec. 533A.032. LONG-RANGE PLANNING. (a) The department shall have a long-range plan relating to the provision of services under this title covering at least six years that includes at least the provisions required by Sections 531.022 and 531.023, Government Code, and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons with an intellectual disability the department serves are met.

(b) In developing the plan, the department shall:

(1) solicit input from:

(A) local intellectual and developmental disability authorities;

(B) community representatives;

(C) consumers of intellectual disability services, including consumers of campus-based and community-based services, and family members of consumers of those services; and

(D) other interested persons; and

(2) consider the report developed under Subsection (c).

(c) The department shall develop a report containing information and recommendations regarding the most efficient long-term use and management of the department's campus-based facilities. The report must:

(1) project future bed requirements for state supported living centers;

(2) document the methodology used to develop the projection of future bed requirements;

(3) project maintenance costs for institutional facilities;

(4) recommend strategies to maximize the use of institutional facilities; and

(5) specify how each state supported living center will:

(A) serve and support the communities and consumers in its service area; and

(B) fulfill statewide needs for specialized services.

(d) In developing the report under Subsection (c), the department shall:

(1) conduct two public meetings, one meeting to be held at the beginning of the process and the second meeting to be held at the end of the process, to receive comments from interested parties; and

(2) consider:

(A) the medical needs of the most medically fragile of its clients with an intellectual disability;

(B) the provision of services to clients with a severe and profound intellectual disability and to persons with an intellectual disability who are medically fragile or have behavioral problems;

(C) the program and service preference information collected under Section 533A.038; and

(D) input solicited from consumers of services of state supported living centers.

(g) The department shall:

(1) attach the report required by Subsection (c) to the department's legislative appropriations request for each biennium;

(2) at the time the department presents its legislative appropriations request, present the report to the:

(A) governor;

(B) governor's budget office;

(C) lieutenant governor;

(D) speaker of the house of representatives;

(E) Legislative Budget Board; and

(F) commission; and

(3) update the department's long-range plan biennially and include the report in the plan.

Sec. 533A.0325. CONTINUUM OF SERVICES IN DEPARTMENT FACILITIES. The executive commissioner by rule shall establish criteria regarding the uses of department facilities as part of a full continuum of services under this title.

Sec. *533A.0335* [~~533.0335~~]. COMPREHENSIVE ASSESSMENT AND RESOURCE ALLOCATION PROCESS. (a) In this section:

(1) "Advisory committee" means the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 534.053, Government Code.

(2) [~~"Department" means the Department of Aging and Disability Services.~~

[~~(3)~~] "Functional need," "ICF–IID program," and "Medicaid waiver program" have the meanings assigned those terms by Section 534.001, Government Code.

(b) Subject to the availability of federal funding, the department shall develop and implement a comprehensive assessment instrument and a resource allocation process for individuals with intellectual and developmental disabilities as needed to ensure that each individual with an intellectual or developmental disability receives the type, intensity, and range of services that are both appropriate and available, based on the functional needs of that individual, if the individual receives services through one of the following:

(1) a Medicaid waiver program;

(2) the ICF–IID program; or

(3) an intermediate care facility operated by the state and providing services for individuals with intellectual and developmental disabilities.

(b–1) In developing a comprehensive assessment instrument for purposes of Subsection (b), the department shall evaluate any assessment instrument in use by the department. In addition, the department may implement an evidence-based, nationally recognized, comprehensive assessment instrument that assesses the functional needs of an individual with *an* intellectual *or* [~~and~~] developmental *disability* [~~disabilities~~] as the comprehensive assessment instrument required by Subsection (b). This subsection expires September 1, 2015.

(c) The department, in consultation with the advisory committee, shall establish a prior authorization process for requests for supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program. The process must ensure that supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program are available only to individuals for whom a more independent setting is not appropriate or available.

(d) The department shall cooperate with the advisory committee to establish the prior authorization process required by Subsection (c). This subsection expires January 1, 2024.

Sec. 533A.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES. The department may cooperate, negotiate, and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based intellectual disability

services.

Sec. 533A.0345. STATE AGENCY SERVICES STANDARDS. (a) The executive commissioner by rule shall develop model program standards for intellectual disability services for use by each state agency that provides or pays for intellectual disability services. The department shall provide the model standards to each agency that provides intellectual disability services as identified by the commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of intellectual disability services provided by or through a state agency.

(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

Sec. 533A.035. LOCAL INTELLECTUAL AND DEVELOPMENTAL DISABILITY AUTHORITIES. (a) The executive commissioner shall designate a local intellectual and developmental disability authority in one or more local service areas. The executive commissioner may delegate to the local authority the authority and responsibility of the executive commissioner, the commission, or a department of the commission related to planning, policy development, coordination, including coordination with criminal justice entities, resource allocation, and resource development for and oversight of intellectual disability services in the most appropriate and available setting to meet individual needs in that service area. The executive commissioner may designate a single entity as both the local mental health authority under Chapter 533 and the local intellectual and developmental disability authority under this chapter for a service area.

(b) The department by contract or other method of allocation, including a case-rate or capitated arrangement, may disburse to a local intellectual and developmental disability authority department federal and department state funds to be spent in the local service area for community intellectual disability services.

(c) A local intellectual and developmental disability authority, with the approval of the department, shall use the funds received under Subsection (b) to ensure intellectual disability services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

(1) assembling a network of service providers;

(2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of intellectual disability services; and

(3) procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

(d) A local intellectual and developmental disability authority shall demonstrate to the department that the services that the authority provides directly or through subcontractors and that involve state funds comply with relevant state standards.

(e) A local intellectual and developmental disability authority may serve as a provider of ICF–IID and related waiver programs only if:

(1) the local authority complies with the limitations prescribed by Section 533A.0355(d); or

(2) the ICF–IID and related waiver programs are necessary to ensure the availability of services and the local authority demonstrates to the commission that there is not a willing ICF–IID and related waiver program qualified service provider in the local authority's service area where the service is needed.

Sec. 533A.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE AREA. (a) Each local intellectual and developmental disability authority shall develop a local service area plan to maximize the authority's services by using the best and most cost-effective means of using federal, state, and local resources to meet the needs of the local community according to the relative priority of those needs. Each local intellectual and developmental disability authority shall undertake to maximize federal funding.

(b) A local service area plan must be consistent with the purposes, goals, and policies stated in Section 531.001 and the department's long-range plan developed under Section 533A.032.

(c) The department and a local intellectual and developmental disability authority shall use the local authority's local service plan as the basis for contracts between the department and the local authority and for establishing the local authority's responsibility for achieving outcomes related to the needs and characteristics of the authority's local service area.

(d) In developing the local service area plan, the local intellectual and developmental disability authority shall:

(1) solicit information regarding community needs from:

(A) representatives of the local community;

(B) consumers of community-based intellectual disability services and members of the families of those consumers;

(C) consumers of services of state supported living centers, members of families of those consumers, and members of state supported living center volunteer services councils, if a state supported living center is located in the local service area of the local authority; and

(D) other interested persons; and

(2) consider:

(A) criteria for assuring accountability for, cost-effectiveness of, and relative value of service delivery options;

(B) goals to ensure a client with an intellectual disability is placed in the least restrictive environment appropriate to the person's care;

(C) opportunities for innovation to ensure that the local authority is communicating to all potential and incoming consumers about the availability of services of state supported living centers for persons with an intellectual disability in the local service area of the local authority;

(D) goals to divert consumers of services from the criminal justice system; and

(E) opportunities for innovation in services and service delivery.

(e) The department and the local intellectual and developmental disability authority by contract shall enter into a performance agreement that specifies required standard outcomes for the programs administered by the local authority. Performance related to the specified outcomes must be verifiable by the department. The performance agreement must include measures related to the outputs, costs, and units of service delivered. Information regarding the outputs, costs, and units of service delivered shall be recorded in the local authority's automated data systems, and reports regarding the outputs, costs, and units of service delivered shall be submitted to the department at least annually as provided by department rule.

(f) The department and the local intellectual and developmental disability authority shall provide an opportunity for community centers and advocacy groups to provide information or assistance in developing the specified performance outcomes under Subsection (e).

Sec. *533A.0355* [~~533.0355~~]. LOCAL *INTELLECTUAL AND DEVELOPMENTAL DISABILITY* [~~MENTAL RETARDATION~~] AUTHORITY RESPONSIBILITIES. (a) The executive commissioner shall adopt rules establishing the roles and responsibilities of local *intellectual and developmental disability* [~~mental retardation~~] authorities.

(b) In adopting rules under this section, the executive commissioner must include rules regarding the following local *intellectual and developmental disability* [~~mental retardation~~] authority responsibilities:

(1) access;

(2) intake;

(3) eligibility functions;

(4) enrollment, initial person-centered assessment, and service authorization;

(5) utilization management;

(6) safety net functions, including crisis management services and assistance in accessing facility-based care;

(7) service coordination functions;

(8) provision and oversight of state general revenue services;

(9) local planning functions, including stakeholder involvement, technical assistance and training, and provider complaint and resolution processes; and

(10) processes to assure accountability in performance, compliance, and monitoring.

(c) In determining eligibility under Subsection (b)(3), a local *intellectual and developmental disability* [~~mental retardation~~] authority must offer a state *supported living center* [~~school~~] as an option among the residential services and other community living options available to an individual who is eligible for those services and who meets the department's criteria for state *supported living center* [~~school~~] admission, regardless of whether other residential services are available to the individual.

(d) In establishing a local *intellectual and developmental disability* [~~mental retardation~~] authority's role as a qualified service provider of *ICF-IID* [~~ICF-MR~~] and related waiver programs under Section *533A.035(e)* [~~533.035(e-1)~~], the executive commissioner shall require the local *intellectual and developmental disability* [~~mental retardation~~] authority to:

(1) base the local authority's provider capacity on the local authority's August 2004 enrollment levels for the waiver programs the local authority operates and, if the local authority's enrollment levels exceed those levels, to reduce the levels by attrition; and

(2) base any increase in the local authority's provider capacity on:

(A) the local authority's state-mandated conversion from an *ICF-IID* [~~ICF-MR~~] program to a Section 1915(c) waiver program allowing for a permanent increase in the local authority's provider capacity in accordance with the number of persons who choose the local authority as their provider;

(B) the local authority's voluntary conversion from an *ICF-IID* [~~ICF-MR~~] program to a Section 1915(c) waiver program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider;

(C) the local authority's refinancing from services funded solely by state general revenue to a Medicaid program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider; or

(D) other extenuating circumstances that:

(i) are monitored and approved by the *department* [~~Department of Aging and Disability Services~~];

(ii) do not include increases that unnecessarily promote the local authority's provider role over its role as a local *intellectual and developmental disability* [~~mental retardation~~] authority; and

(iii) may include increases necessary to accommodate a family-specific or consumer-specific circumstance and choice.

(e) Any increase based on extenuating circumstances under Subsection (d)(2)(D) is considered a temporary increase in the local *intellectual and developmental disability* [~~mental retardation~~] authority's provider capacity, to be reduced by attrition.

(f) At least biennially, the *department* [~~Department of Aging and Disability Services~~] shall review and determine the local *intellectual and developmental disability* [~~mental retardation~~] authority's status as a qualified service provider in accordance with criteria

that includes the consideration of the local authority's ability to assure the availability of services in its area, including:

(1) program stability and viability;

(2) the number of other qualified service providers in the area; and

(3) the geographical area in which the local authority is located.

(g) The *department* [~~Department of Aging and Disability Services~~] shall ensure that local services delivered further the following goals:

(1) to provide individuals with the information, opportunities, and support to make informed decisions regarding the services for which the individual is eligible;

(2) to respect the rights, needs, and preferences of an individual receiving services; and

(3) to integrate individuals with *intellectual* [~~mental retardation~~] and developmental disabilities into the community in accordance with relevant independence initiatives and permanency planning laws.

(h) The *department* [~~Department of Aging and Disability Services~~] shall ensure that local *intellectual and developmental disability* [~~mental retardation~~] authorities are informing and counseling individuals and their legally authorized representatives, if applicable, about all program and service options for which the individuals are eligible in accordance with Section *533A.038(d)* [~~533.038(d)~~], including options such as the availability and types of *ICF–IID* [~~ICF–MR~~] placements for which an individual may be eligible while the individual is on a department interest list or other waiting list for other services.

Sec. *533A.03551* [~~533.03551~~]. FLEXIBLE, LOW–COST HOUSING OPTIONS. (a) To the extent permitted under federal law and regulations, the executive commissioner shall adopt or amend rules as necessary to allow for the development of additional housing supports for individuals with disabilities, including individuals with intellectual and developmental disabilities, in urban and rural areas, including:

(1) a selection of community-based housing options that comprise a continuum of integration, varying from most to least restrictive, that permits individuals to select the most integrated and least restrictive setting appropriate to the individual's needs and preferences;

(2) provider-owned and non-provider-owned residential settings;

(3) assistance with living more independently; and

(4) rental properties with on-site supports.

(b) The *department* [~~Department of Aging and Disability Services~~], in cooperation with the Texas Department of Housing and Community Affairs, the Department of Agriculture, the Texas State Affordable Housing Corporation, and the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 534.053, Government Code, shall coordinate with federal, state, and local public housing entities as necessary to expand opportunities for accessible, affordable, and integrated housing to meet the complex needs of individuals with disabilities, including individuals with intellectual and developmental disabilities.

(c) The *department* [~~Department of Aging and Disability Services~~] shall develop a process to receive input from statewide stakeholders to ensure the most comprehensive review of opportunities and options for housing services described by this section.

Sec. *533A.03552* [~~533.03552~~]. BEHAVIORAL SUPPORTS FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES AT RISK OF INSTITUTIONALIZATION; INTERVENTION TEAMS. (a) [~~In this section, "department" means the Department of Aging and Disability Services.~~

[~~(b)~~] Subject to the availability of federal funding, the department shall develop and implement specialized training for providers, family members, caregivers, and first responders providing direct services and supports to individuals with intellectual and

developmental disabilities and behavioral health needs who are at risk of institutionalization.

(b) [~~(c)~~] Subject to the availability of federal funding, the department shall establish one or more behavioral health intervention teams to provide services and supports to individuals with intellectual and developmental disabilities and behavioral health needs who are at risk of institutionalization. An intervention team may include a:

(1) psychiatrist or psychologist;

(2) physician;

(3) registered nurse;

(4) pharmacist or representative of a pharmacy;

(5) behavior analyst;

(6) social worker;

(7) crisis coordinator;

(8) peer specialist; and

(9) family partner.

(c) [~~(d)~~] In providing services and supports, a behavioral health intervention team established by the department shall:

(1) use the team's best efforts to ensure that an individual remains in the community and avoids institutionalization;

(2) focus on stabilizing the individual and assessing the individual for intellectual, medical, psychiatric, psychological, and other needs;

(3) provide support to the individual's family members and other caregivers;

(4) provide intensive behavioral assessment and training to assist the individual in establishing positive behaviors and continuing to live in the community; and

(5) provide clinical and other referrals.

(d) [~~(e)~~] The department shall ensure that members of a behavioral health intervention team established under this section receive training on trauma-informed care, which is an approach to providing care to individuals with behavioral health needs based on awareness that a history of trauma or the presence of trauma symptoms may create the behavioral health needs of the individual.

Sec. 533A.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS. (a) The department may provide intellectual disability services through halfway houses, sheltered workshops, community centers, and other intellectual disability services programs.

(b) The department may operate or contract for the provision of part or all of the sheltered workshop services and may contract for the sale of goods produced and services provided by a sheltered workshop program. The goods and services may be sold for cash or on credit.

(c) An operating fund may be established for each sheltered workshop the department operates. Each operating fund must be in a national or state bank that is a member of the Federal Deposit Insurance Corporation.

(d) Money derived from gifts or grants received for sheltered workshop purposes and the proceeds from the sale of sheltered workshop goods and services shall be deposited to the credit of the operating fund. The money in the fund may be spent only in the operation of the sheltered workshop to:

(1) purchase supplies, materials, services, and equipment;

(2) pay salaries of and wages to participants and employees;

(3) construct, maintain, repair, and renovate facilities and equipment; and

(4) establish and maintain a petty cash fund of not more than $100.

(e) Money in an operating fund that is used to pay salaries of and wages to participants

in the sheltered workshop program is money the department holds in trust for the participants' benefit.

(f) This section does not affect the authority or jurisdiction of a community center as prescribed by Chapter 534.

Sec. *533A.038* [~~533.038~~]. AND SERVICES FOR CLIENTS WITH *AN INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~]. (a) *In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.*

(a-1) The department may designate all or any part of a department facility as a special facility for the diagnosis, special training, education, supervision, treatment, *or* care[~~, or control~~] of clients with *an intellectual disability* [~~mental retardation~~].

(b) The department may specify the facility in which a client with *an intellectual disability* [~~mental retardation~~] under the department's jurisdiction is placed.

(c) The department may maintain day classes at a department facility for the convenience and benefit of clients with *an intellectual disability* [~~mental retardation~~] of the community in which the facility is located and who are not capable of enrollment in a public school system's regular or special classes.

(d) A person with *an intellectual disability* [~~mental retardation~~], or a person's legally authorized representative, seeking residential services shall receive a clear explanation of programs and services for which the person is determined to be eligible, including state *supported living centers* [~~schools~~], community *ICF-IID* [~~ICF-MR~~] programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services. The preferred programs and services chosen by the person or the person's legally authorized representative shall be documented in the person's record. If the preferred programs or services are not available, the person or the person's legally authorized representative shall be given assistance in gaining access to alternative services and the selected waiting list.

(e) The department shall ensure that the information regarding program and service preferences collected under Subsection (d) is documented and maintained in a manner that permits the department to access and use the information for planning activities conducted under Section *533A.032* [~~533.032~~].

(f) The department may spend money appropriated for the state *supported living center* [~~school~~] system only in accordance with limitations imposed by the General Appropriations Act.

(g) In addition to the explanation required under Subsection (d), the department shall ensure that each person inquiring about residential services receives:

(1) a pamphlet or similar informational material explaining that any programs and services for which the person is determined to be eligible, including state supported living centers, community *ICF-IID* [~~ICF-MR~~] programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services, may be an option available to an individual who is eligible for those services; and

(2) information relating to whether appropriate residential services are available in each program and service for which the person is determined to be eligible, including state supported living centers, community *ICF-IID* [~~ICF-MR~~] programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services located nearest to the residence of the proposed resident.

Sec. 533A.040. SERVICES FOR CHILDREN AND YOUTH. The department shall ensure the development of programs and the expansion of services at the community level for children with an intellectual disability, or with a dual diagnosis of an intellectual disability and mental illness, and for their families. The department shall:

(1) prepare and review budgets for services for children;

(2) develop departmental policies relating to children's programs and service delivery; and

(3) increase interagency coordination activities to enhance the provision of services for children.

Sec. 533A.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY TRAINING. (a) The executive commissioner, the Texas Juvenile Justice Department, and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the department, the Texas Juvenile Justice Department, and the Texas Education Agency who are involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families under this title. The memorandum must:

(1) outline the responsibility of each agency in coordinating and developing a plan for interagency training on individualized assessment and effective intervention and treatment services for children and dysfunctional families; and

(2) provide for the establishment of an interagency task force to:

(A) develop a training program to include identified competencies, content, and hours for completion of the training with at least 20 hours of training required each year until the program is completed;

(B) design a plan for implementing the program, including regional site selection, frequency of training, and selection of experienced clinical public and private professionals or consultants to lead the training; and

(C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals.

(b) The task force consists of:

(1) one clinical professional and one training staff member from each agency, appointed by that agency; and

(2) 10 private sector clinical professionals with expertise in dealing with troubled children, youth, and dysfunctional families, two of whom are appointed by each agency.

(c) The task force shall meet at the call of the department.

(d) The commission shall act as the lead agency in coordinating the development and implementation of the memorandum.

(e) The executive commissioner and the agencies shall review and by rule revise the memorandum not later than August each year.

Sec. 533A.042. EVALUATION OF ELDERLY RESIDENTS. (a) The department shall evaluate each elderly resident at least annually to determine if the resident can be appropriately served in a less restrictive setting.

(b) The department shall consider the proximity to the resident of family, friends, and advocates concerned with the resident's well-being in determining whether the resident should be moved from a department facility or to a different department facility. The department shall recognize that a nursing facility may not be able to meet the special needs of an elderly resident.

(c) In evaluating an elderly resident under this section and to ensure appropriate placement, the department shall identify the special needs of the resident, the types of services that will best meet those needs, and the type of facility that will best provide those services.

(d) The appropriate interdisciplinary team shall conduct the evaluation of an elderly resident of a department facility.

(e) The department shall attempt to place an elderly resident in a less restrictive setting if the department determines that the resident can be appropriately served in that setting. The department shall coordinate the attempt with the local intellectual and developmental disability authority.

(f) A local intellectual and developmental disability authority shall provide continuing care for an elderly resident placed in the authority's service area under this section.

(g) The local intellectual and developmental disability authority shall have the right of access to all residents and records of residents who request continuing care services.

Sec. 533A.043. PROPOSALS FOR GERIATRIC CARE. (a) The department shall solicit proposals from community providers to operate community residential programs for elderly residents at least every two years.

(b) The department shall require each provider to:

(1) offer adequate assurances of ability to:

(A) provide the required services;

(B) meet department standards; and

(C) safeguard the safety and well-being of each resident; and

(2) sign a memorandum of agreement with the local intellectual and developmental disability authority outlining the responsibilities for continuity of care and monitoring, if the provider is not the local authority.

(c) The department may fund a proposal through a contract if the provider agrees to meet the requirements prescribed by Subsection (b) and agrees to provide the services at a cost that is equal to or less than the cost to the department to provide the services.

(d) The appropriate local intellectual and developmental disability authority shall monitor the services provided to a resident placed in a program funded under this section. The department may monitor any service for which it contracts.

SUBCHAPTER C. POWERS AND DUTIES RELATING TO *ICF-IID* [~~ICF-MR~~] PROGRAM

Sec. *533A.062* [~~533.062~~]. PLAN ON LONG-TERM CARE FOR PERSONS WITH *AN INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~]. (a) The department shall biennially develop a proposed plan on long-term care for persons with *an intellectual disability* [~~mental retardation~~].

(b) The proposed plan must specify the capacity of the HCS waiver program for persons with *an intellectual disability* [~~mental retardation~~] and the number and levels of new *ICF-IID* [~~ICF-MR~~] beds to be authorized in each region. In developing the proposed plan, the department shall consider:

(1) the needs of the population to be served;

(2) projected appropriation amounts for the biennium; and

(3) the requirements of applicable federal law.

(c) Each proposed plan shall cover the subsequent fiscal biennium. The department shall conduct a public hearing on the proposed plan. Not later than July 1 of each even-numbered year, the department shall submit the plan to the *commission* [~~Health and Human Services Commission~~] for approval.

(d) The *commission* [~~Health and Human Services Commission~~] may modify the proposed plan as necessary before its final approval. [~~In determining the appropriate number of ICF-MR facilities for persons with a related condition, the department and the Health and Human Services Commission shall consult with the Texas Department of Human Services.~~]

(e) The *commission* [~~Health and Human Services Commission~~] shall submit the proposed plan as part of the consolidated health and human services budget recommendation required under Section *531.026, Government Code* [~~13, Article 4413(502), Revised Statutes~~].

(f) After legislative action on the appropriation for long-term care services for persons with *an intellectual disability* [~~mental retardation~~], the *commission* [~~Health and Human Services Commission~~] shall adjust the plan to ensure that the number of *ICF-IID* [~~ICF-MR~~] beds licensed or approved as meeting license requirements and the capacity of the HCS waiver program are within appropriated funding amounts.

(g) After any necessary adjustments, the *commission* [~~Health and Human Services Commission~~] shall approve the final biennial plan and publish the plan in the Texas Register.

(h) The department may submit proposed amendments to the plan to the *commission* [~~Health and Human Services Commission~~].

(i) In this section, "HCS waiver program" means services under the state Medicaid home and community-based services waiver program for persons with *an intellectual disability* [~~mental retardation~~] adopted in accordance with 42 U.S.C. Section 1396n(c).

[~~Sec. 533.063. REVIEW OF ICF-MR RULES. (a) The department and the Texas Department of Human Services shall meet as necessary to discuss proposed changes in the rules or the interpretation of the rules that govern the ICF-MR program.~~

[~~(b) The departments shall jointly adopt a written policy interpretation letter that describes the proposed change and shall make a copy of the letter available to providers.~~

[~~Sec. 533.065. ICF-MR APPLICATION CONSOLIDATION LIST. (a) The department shall maintain a consolidated list of applications for certification for participation in the ICF-MR program.~~

[~~(b) The department shall list the applications in descending order using the date on which the department received the completed application.~~

[~~(c) The department shall approve applications in the order in which the applications are listed.~~

[~~(d) The department shall notify the Texas Department of Human Services of each application for a license or for compliance with licensing standards the department approves.~~]

Sec. *533A.066* [~~533.066~~]. INFORMATION RELATING TO *ICF-IID* [~~ICF-MR~~] PROGRAM. (a) At least annually, the department [~~and the Texas Department of Human Services~~] shall [~~jointly~~] sponsor a conference on the *ICF-IID* [~~ICF-MR~~] program to:

(1) assist providers in understanding survey rules;

(2) review deficiencies commonly found in *ICF-IID* [~~ICF-MR~~] facilities; and

(3) inform providers of any recent changes in the rules or in the interpretation of the rules relating to the *ICF-IID* [~~ICF-MR~~] program.

(b) The *department* [~~departments~~] also may use any other method to provide necessary information to providers, including publications.

SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

Sec. 533A.081. DEVELOPMENT OF FACILITY BUDGETS. The department, in budgeting for a facility, shall use uniform costs for specific types of services a facility provides unless a legitimate reason exists and is documented for the use of other costs.

Sec. 533A.082. DETERMINATION OF SAVINGS IN FACILITIES. (a) The department shall determine the degree to which the costs of operating department facilities for persons with an intellectual disability in compliance with applicable standards are affected as populations in the facilities fluctuate.

(b) In making the determination, the department shall:

(1) assume that the current level of services and necessary state of repair of the facilities will be maintained; and

(2) include sufficient funds to allow the department to comply with the requirements of litigation and applicable standards.

(c) The department shall allocate to community-based intellectual disability programs any savings realized in operating department facilities for persons with an intellectual disability.

Sec. 533A.083. CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION

OF FACILITY. The department shall establish objective criteria for determining when a new facility may be needed and when a state supported living center may be expanded, closed, or consolidated.

Sec. 533A.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (a) To the extent provided by this subtitle, the department, in coordination with the executive commissioner, may lease, transfer, or otherwise dispose of any surplus real property related to the provision of services under this title, including any improvements under its management and control, or authorize the lease, transfer, or disposal of the property. Surplus property is property the executive commissioner designates as having minimal value to the present service delivery system and projects to have minimal value to the service delivery system as described in the department's long-range plan.

(b) The proceeds from the lease, transfer, or disposal of surplus real property, including any improvements, shall be deposited to the credit of the department in the Texas capital trust fund established under Chapter 2201, Government Code. The proceeds may be appropriated only for improvements to the department's system of intellectual disability facilities.

(c) A lease proposal shall be advertised at least once a week for four consecutive weeks in at least two newspapers. One newspaper must be a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location. The other newspaper must have statewide circulation. Each lease is subject to the attorney general's approval as to substance and form. The executive commissioner shall adopt forms, rules, and contracts that, in the executive commissioner's best judgment, will protect the state's interests. The executive commissioner may reject any or all bids.

(d) This section does not authorize the executive commissioner or department to close or consolidate a state supported living center without first obtaining legislative approval.

(e) Notwithstanding Subsection (c), the executive commissioner, in coordination with the department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Sec. *533A.0846* [~~533.0846~~]. *INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~] COMMUNITY SERVICES ACCOUNT. (a) The *intellectual disability* [~~mental retardation~~] community services account is an account in the general revenue fund that may be appropriated only for the provision of *intellectual disability* [~~mental retardation~~] services by or under contract with the department.

(b) The department shall deposit to the credit of the *intellectual disability* [~~mental retardation~~] community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

[~~(c) Interest earned on the mental retardation community services account shall be credited to the account. The account is exempt from the application of Section 403.095, Government Code.~~]

Sec. 533A.085. FACILITIES FOR INMATE AND PAROLEE CARE. (a) With the written approval of the governor, the department may contract with the Texas Department of Criminal Justice to transfer facilities to the Texas Department of Criminal Justice or otherwise provide facilities for:

(1) inmates with an intellectual disability in the custody of the Texas Department of Criminal Justice; or

(2) persons with an intellectual disability paroled or released under the supervision of the Texas Department of Criminal Justice.

(b) An agency must report to the governor the agency's reasons for proposing to enter into a contract under this section and request the governor's approval.

Sec. 533A.087. LEASE OF REAL PROPERTY. (a) The department, in coordination with the executive commissioner, may lease real property related to the provision of ser-

vices under this title, including any improvements under the department's management and control, regardless of whether the property is surplus property. Except as provided by Subsection (c), the department, in coordination with the executive commissioner, may award a lease of real property only:

(1) at the prevailing market rate; and

(2) by competitive bid.

(b) The commission shall advertise a proposal for lease at least once a week for four consecutive weeks in:

(1) a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location; and

(2) a newspaper of statewide circulation.

(c) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

(1) the executive commissioner determines that sufficient public benefit will be derived from the lease; and

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

(C) a not-for-profit organization; or

(D) an entity related to the department by a service contract.

(d) The executive commissioner shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e) The executive commissioner may reject any bid.

(f) This section does not authorize the executive commissioner or department to close or consolidate a facility used to provide intellectual disability services without legislative approval.

(g) Notwithstanding Subsections (a) and (b), the executive commissioner, in coordination with the department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

SUBCHAPTER E. JAIL DIVERSION PROGRAM

Sec. 533A.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local intellectual and developmental disability authority may develop and may prioritize its available funding for:

(1) a system to divert members of the priority population, including those members with co-occurring substance abuse disorders, before their incarceration or other contact with the criminal justice system, to services appropriate to their needs, including:

(A) screening and assessment services; and

(B) treatment services, including:

(i) short-term residential services;

(ii) crisis respite residential services; and

(iii) continuity of care services;

(2) specialized training of local law enforcement and court personnel to identify and manage offenders or suspects who may be members of the priority population; and

(3) other model programs for offenders and suspects who may be members of the priority population, including crisis intervention training for law enforcement personnel.

(b) A local intellectual and developmental disability authority developing a system, training, or a model program under Subsection (a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.

(c) A local intellectual and developmental disability authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

SECTION 3.1336. Chapter 534, Health and Safety Code, is amended to read as follows:

CHAPTER 534. COMMUNITY SERVICES

SUBCHAPTER A. COMMUNITY CENTERS

Sec. 534.0001. DEFINITIONS. In this subchapter:

(1) "Commissioner" means:

(A) the commissioner of state health services in relation to:

(i) a community mental health center; or

(ii) the mental health services component of a community mental health and intellectual disability center; and

(B) the commissioner of aging and disability services in relation to:

(i) a community intellectual disability center; or

(ii) the intellectual disability services component of a community mental health and intellectual disability center.

(2) "Department" means:

(A) the Department of State Health Services in relation to:

(i) a community mental health center; or

(ii) the mental health services component of a community mental health and intellectual disability center; and

(B) the Department of Aging and Disability Services in relation to:

(i) a community intellectual disability center; or

(ii) the intellectual disability services component of a community mental health and intellectual disability center.

Sec. 534.001. ESTABLISHMENT. (a) A county, municipality, hospital district, *or* school district, or an organizational combination of two or more of those local agencies, may establish and operate a community center.

(b) In accordance with this subtitle, a community center may be:

(1) a community mental health center that provides mental health services;

(2) a community *intellectual disability* [~~mental retardation~~] center that provides *intellectual disability* [~~mental retardation~~] services; or

(3) a community mental health and *intellectual disability* [~~mental retardation~~] center that provides mental health and *intellectual disability* [~~mental retardation~~] services.

(c) A community center is:

(1) an agency of the state, a governmental unit, and a unit of local government, as defined and specified by Chapters 101 and 102, Civil Practice and Remedies Code;

(2) a local government, as defined by Section 791.003, Government Code;

(3) a local government for the purposes of Chapter 2259, Government Code; and

(4) a political subdivision for the purposes of Chapter 172, Local Government Code.

(d) A community center may be established only if:

(1) the proposed center submits *a copy of the contract between the participating local agencies, if applicable,* to:

(A) the *Department of State Health Services for a proposed center that will provide mental health services;*

(B) the Department of Aging and Disability Services for a proposed center that will provide intellectual disability services; or

(C) both departments if the proposed center will provide mental health and intellectual disability services [~~department a copy of the contract between the participating local agencies, if applicable~~];

(2) *each appropriate* [~~the~~] department approves the proposed center's plan to develop and make available to the region's residents an effective mental health or *intellectual disability* [~~mental retardation~~] program, or both, through a community center that is appropriately structured to include the financial, physical, and personnel resources necessary to meet the region's needs; and

(3) *each* [~~the~~] department *from which the proposed center seeks approval* determines that the center can appropriately, effectively, and efficiently provide those services in the region.

(e) Except as provided by this section, a community center operating under this subchapter may operate only for the purposes and perform only the functions defined in the center's plan. The executive commissioner by rule shall specify the elements that must be included in a plan and shall prescribe the procedure for submitting, approving, and modifying a center's plan. In addition to the services described in a center's plan, the center may provide other health and human services and supports as provided by a contract with or a grant received from a local, state, or federal agency.

(f) Each function performed by a community center under this title is a governmental function if the function is required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power. Notwithstanding any other law, a community center is subject to Chapter 554, Government Code.

(g) An entity is, for the purpose of operating a psychiatric center, a governmental unit and a unit of local government under Chapter 101, Civil Practice and Remedies Code, and a local government under Chapter 102, Civil Practice and Remedies Code, if the entity:

(1) is not operated to make a profit;

(2) is created through an intergovernmental agreement between a community mental health center and any other governmental unit; and

(3) contracts with the community mental health center and any other governmental unit that created it to operate a psychiatric center.

Sec. 534.0015. PURPOSE AND POLICY. (a) A community center created under this subchapter is intended to be a vital component in a continuum of services for persons in this state *with mental illness or an intellectual disability* [~~who are mentally ill or mentally retarded~~].

(b) It is the policy of this state that community centers strive to develop services for persons *with mental illness or an intellectual disability* [~~who are mentally ill or mentally retarded~~], and may provide requested services to persons with developmental disabilities or with chemical dependencies, that are effective alternatives to treatment in a large residential facility.

Sec. 534.002. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY ONE LO-

CAL AGENCY. The board of trustees of a community center established by one local agency is composed of:

(1) the members of the local agency's governing body; or

(2) not fewer than five or more than nine qualified voters who reside in the region to be served by the center and who are appointed by the local agency's governing body.

Sec. 534.003. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY AT LEAST TWO LOCAL AGENCIES. (a) The board of trustees of a community center established by an organizational combination of local agencies is composed of not fewer than five or more than 13 members.

(b) The governing bodies of the local agencies shall appoint the board members either from among the membership of the governing bodies or from among the qualified voters who reside in the region to be served by the center.

(c) When the center is established, the governing bodies shall enter into a contract that stipulates the number of board members and the group from which the members are chosen. They may renegotiate or amend the contract as necessary to change the:

(1) method of choosing the members; or

(2) membership of the board of trustees to more accurately reflect the ethnic and geographic diversity of the local service area.

Sec. 534.004. PROCEDURES RELATING TO BOARD OF TRUSTEES MEMBERSHIP. (a) The local agency or organizational combination of local agencies that establishes a community center shall prescribe:

(1) the application procedure for a position on the board of trustees;

(2) the procedure and criteria for making appointments to the board of trustees;

(3) the procedure for posting notice of and filling a vacancy on the board of trustees; and

(4) the grounds and procedure for removing a member of the board of trustees.

(b) The local agency or organizational combination of local agencies that appoints the board of trustees shall, in appointing the members, attempt to reflect the ethnic and geographic diversity of the local service area the community center serves. The local agency or organizational combination shall include on the board of trustees one or more persons otherwise qualified under this chapter who are consumers of the types of services the center provides or who are family members of consumers of the types of services the center provides.

Sec. 534.005. TERMS; VACANCIES. (a) Appointed members of the board of trustees who are not members of a local agency's governing body serve staggered two-year terms. In appointing the initial members, the appointing authority shall designate not less than one-third or more than one-half of the members to serve one-year terms and shall designate the remaining members to serve two-year terms.

(b) A vacancy on a board of trustees composed of qualified voters is filled by appointment for the remainder of the unexpired term.

Sec. 534.006. TRAINING. (a) The *executive commissioner* [~~board~~] by rule shall establish:

(1) an annual training program for members of a board of trustees administered by the professional staff of that community center, including the center's legal counsel; and

(2) an advisory committee to develop training guidelines that includes representatives of advocates for persons with mental illness or *an intellectual disability* [~~mental retardation~~] and representatives of boards of trustees.

(b) Before a member of a board of trustees may assume office, the member shall attend at least one training session administered by that center's professional staff to receive information relating to:

(1) the enabling legislation that created the community center;

(2) the programs the community center operates;

(3) the community center's budget for that program year;

(4) the results of the most recent formal audit of the community center;

(5) the requirements of Chapter 551, Government Code, and Chapter 552, Government Code;

(6) the requirements of conflict of interest laws and other laws relating to public officials; and

(7) any ethics policies adopted by the community center.

Sec. 534.0065. QUALIFICATIONS; CONFLICT OF INTEREST; REMOVAL. (a) As a local public official, a member of the board of trustees of a community center shall uphold the member's position of public trust by meeting and maintaining the applicable qualifications for membership and by complying with the applicable requirements relating to conflicts of interest.

(b) A person is not eligible for appointment as a member of a board of trustees if the person or the person's spouse:

(1) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the community center by contract or other method; or

(2) uses or receives a substantial amount of tangible goods or funds from the community center, other than:

(A) compensation or reimbursement authorized by law for board of trustees membership, attendance, or expenses; or

(B) as a consumer or as a family member of a client or patient receiving services from the community center.

(c) The primary residence of a member of the board of trustees must be in the local service area the member represents.

(d) A member of the board of trustees is subject to Chapter 171, Local Government Code.

(e) A member of the board of trustees may not:

(1) refer for services a client or patient to a business entity owned or controlled by a member of the board of trustees, unless the business entity is the only business entity that provides the needed services within the jurisdiction of the community center;

(2) use a community center facility in the conduct of a business entity owned or controlled by that member;

(3) solicit, accept, or agree to accept from another person or business entity a benefit in return for the member's decision, opinion, recommendation, vote, or other exercise of discretion as a local public official or for a violation of a duty imposed by law;

(4) receive any benefit for the referral of a client or a patient to the community center or to another business entity;

(5) appoint, vote for, or confirm the appointment of a person to a paid office or position with the community center if the person is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree; or

(6) solicit or receive a political contribution from a supplier to or contractor with the community center.

(f) Not later than the date on which a member of the board of trustees takes office by appointment or reappointment and not later than the anniversary of that date, each member shall annually execute and file with the community center an affidavit acknowledging that the member has read the requirements for qualification, conflict of interest, and removal prescribed by this chapter.

(g) In addition to any grounds for removal adopted under Section 534.004(a), it is a ground for removal of a member of a board of trustees if the member:

(1) violates Chapter 171, Local Government Code;

(2) is not eligible for appointment to the board of trustees at the time of appointment as provided by Subsections (b) and (c);

(3) does not maintain during service on the board of trustees the qualifications required by Subsections (b) and (c);

(4) violates a provision of Subsection (e);

(5) violates a provision of Section 534.0115; or

(6) does not execute the affidavit required by Subsection (f).

(h) If a board of trustees is composed of members of the governing body of a local agency or organizational combination of local agencies, this section applies only to the qualifications for and removal from membership on the board of trustees.

Sec. 534.007. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES; OFFENSE. (a) A former officer or employee of a community center who ceases service or employment with the center may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for salary group 17, Schedule A, or salary group 9, Schedule B, of the position classification salary schedule; or

(2) a former officer or employee who is employed by a state agency or another community center.

(c) Subsection (a) does not apply to a proceeding related to policy development that was concluded before the officer's or employee's service or employment ceased.

(d) A former officer or employee of a community center commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

(e) In this section:

(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, proceeding related to the development of policy, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

Sec. 534.008. ADMINISTRATION BY BOARD. (a) The board of trustees is responsible for the effective administration of the community center.

(b) The board of trustees shall make policies that are consistent with the *applicable* [~~department's~~] rules and standards *of each appropriate department.*

Sec. 534.009. MEETINGS. (a) The board of trustees shall adopt rules for the holding of regular and special meetings.

(b) Board meetings are open to the public to the extent required by and in accordance with Chapter 551, Government Code.

(c) The board of trustees shall keep a record of its proceedings in accordance with Chapter 551, Government Code. The record is open for public inspection in accordance with that law.

(d) The board of trustees shall send to *each appropriate* [~~the~~] department and each lo-

cal agency that appoints the members a copy of the approved minutes of board of trustees meetings by:

(1) mailing a copy appropriately addressed and with the necessary postage paid using the United States *Postal Service* [~~postal service~~]; or

(2) another method agreed to by the board of trustees and the local agency.

Sec. 534.010. EXECUTIVE DIRECTOR. (a) The board of trustees shall appoint an executive director for the community center.

(b) The board of trustees shall:

(1) adopt a written policy governing the powers that may be delegated to the executive director; and

(2) annually report to each local agency that appoints the members the executive director's total compensation and benefits.

Sec. 534.011. PERSONNEL. (a) The executive director, in accordance with the policies of the board of trustees, shall employ and train personnel to administer the community center's programs and services. The community center may recruit those personnel and contract for recruiting and training purposes.

(b) The board of trustees shall provide employees of the community center with appropriate rights, privileges, and benefits.

(c) The board of trustees may provide workers' compensation benefits.

[~~(d) The board of trustees shall prescribe the number of employees and their salaries. The board of trustees may choose to set salaries and benefits in compliance with a market analysis or internal salary study. If an internal salary study is used, the board of trustees shall conduct the study in accordance with the guidelines established by the commissioner.~~

[~~(e) Instead of using a market analysis or internal salary study to establish salaries and benefits, the board of trustees may use the state position classification plan and the General Appropriations Act to determine the appropriate classification and relative compensation of officers and employees. The board of trustees may pay salaries in amounts less than those provided by the General Appropriations Act. For a position not on the classification plan, the board of trustees shall set the compensation according to guidelines adopted by the commissioner. The board of trustees may petition the department for approval to exclude a position from the position classification plan and to provide a stated salary for that position that exceeds the amount prescribed by the General Appropriations Act for the classified position.~~

[~~(f) During a management audit of a community center, the department is entitled to confirm the method the center used to determine salaries and benefits.~~]

Sec. 534.0115. NEPOTISM. (a) The board of trustees or executive director may not hire as a paid officer or employee of the community center a person who is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree.

(b) An officer or employee who is related to a member of the board of trustees in a prohibited manner may continue to be employed if the person began the employment not later than the 31st day before the date on which the member was appointed.

(c) The officer or employee or the member of the board of trustees shall resign if the officer or employee began the employment later than the 31st day before the date on which the member was appointed.

(d) If an officer or employee is permitted to remain in employment under Subsection (b), the related member of the board of trustees may not participate in the deliberation of or voting on an issue that is specifically applicable to the officer or employee unless the issue affects an entire class or category of employees.

Sec. 534.012. ADVISORY COMMITTEES. (a) The board of trustees may appoint committees, including medical committees, to advise the board of trustees on matters relating to mental health and *intellectual disability* [~~mental retardation~~] services.

(b) Each committee must be composed of at least three members.

(c) The appointment of a committee does not relieve the board of trustees of the final responsibility and accountability as provided by this subtitle.

Sec. 534.013. COOPERATION OF *DEPARTMENTS* [~~DEPARTMENT~~]. *Each appropriate* [~~The~~] department shall provide assistance, advice, and consultation to local agencies, boards of trustees, and executive directors in the planning, development, and operation of a community center.

Sec. 534.014. BUDGET; REQUEST FOR FUNDS. (a) Each community center shall annually provide to each local agency that appoints members to the board of trustees a copy of the center's:

(1) approved fiscal year operating budget;

(2) most recent annual financial audit; and

(3) staff salaries by position.

(b) The board of trustees shall annually submit to each local agency that appoints the members a request for funds or in-kind assistance to support the center.

Sec. 534.015. PROVISION OF SERVICES. (a) The board of trustees may adopt rules to regulate the administration of mental health or *intellectual disability* [~~mental retardation~~] services by a community center. The rules must be consistent with the purposes, policies, principles, and standards prescribed by this subtitle.

(b) The board of trustees may contract with a local agency or a qualified person or organization to provide a portion of the mental health or *intellectual disability* [~~mental retardation~~] services.

(c) With the *approval of each appropriate commissioner* [~~commissioner's approval~~], the board of trustees may contract with the governing body of another county or municipality to provide mental health and *intellectual disability* [~~mental retardation~~] services to residents of that county or municipality.

(d) A community center may provide services to a person who voluntarily seeks assistance or who has been committed to that center.

Sec. 534.0155. FOR WHOM SERVICES MAY BE PROVIDED. (a) This subtitle does not prevent a community center from providing services to:

(1) a person with a chemical dependency;

(2) [~~,to~~] a person with a developmental disability;[~~,~~] or

(3) [~~to~~] a person *younger than four years of age who is eligible for early childhood intervention services* [~~with a mental disability, as defined by Section 535.001~~].

(b) A community center may provide those services by contracting with a public or private agency in addition to the *appropriate* department.

Sec. 534.016. SCREENING AND CONTINUING CARE SERVICES. (a) A community center shall provide screening services for:

(1) a person who requests voluntary admission to a *Department of State Health Services* [~~department~~] facility for persons with mental illness; *and*

(2) [~~and for~~] a person for whom proceedings for involuntary commitment to a *Department of State Health Services or Department of Aging and Disability Services* [~~department~~] facility *for persons with mental illness or an intellectual disability* have been initiated.

(b) A community center shall provide continuing mental health and physical care services for a person referred to the center by a *Department of State Health Services* [~~department~~] facility and for whom the facility superintendent has recommended a continuing care plan.

(c) Services provided under this section must be consistent with the *applicable* [~~department's~~] rules and standards *of each appropriate department*.

(d) The *appropriate* commissioner may designate a facility other than the community center to provide the screening or continuing care services if:

(1) local conditions indicate that the other facility can provide the services more economically and effectively; or

(2) the commissioner determines that local conditions may impose an undue burden on the community center.

Sec. 534.017. FEES FOR SERVICES. (a) A community center shall charge reasonable fees for services the center provides, unless prohibited by other service contracts or law.

(b) The community center may not deny services to a person because of inability to pay for the services.

(c) The community center has the same rights, privileges, and powers for collecting fees for treating patients *or* [~~and~~] clients that *each appropriate* [~~the~~] department has by law.

(d) The county or district attorney of the county in which the community center is located shall represent the center in collecting fees when the center's executive director requests the assistance.

Sec. 534.0175. TRUST EXEMPTION. (a) If a *patient or* client is the beneficiary of a trust that has an aggregate principal of $250,000 or less, the corpus or income of the trust is not considered to be the property of the *patient or* client or the *patient's or* client's estate and is not liable for the *patient's or* client's support. If the aggregate principal of the trust exceeds $250,000, only the portion of the corpus of the trust that exceeds that amount and the income attributable to that portion are considered to be the property of the *patient or* client or the *patient's or* client's estate and are liable for the *patient's or* client's support.

(b) To qualify for the exemption provided by Subsection (a), the trust and the trustee must comply with the requirements prescribed by Sections 552.018 and 593.081.

Sec. 534.018. GIFTS AND GRANTS. A community center may accept gifts and grants of money, personal property, and real property to use in providing the center's programs and services.

Sec. 534.019. CONTRIBUTION BY LOCAL AGENCY. A participating local agency may contribute land, buildings, facilities, other real and personal property, personnel, and funds to administer the community center's programs and services.

Sec. 534.020. ACQUISITION AND CONSTRUCTION OF PROPERTY AND FACILITIES BY COMMUNITY CENTER. (a) A community center may purchase or lease-purchase real and personal property and may construct buildings and facilities.

(b) The board of trustees shall require that an appraiser certified by the Texas Appraiser Licensing and Certification Board conduct an independent appraisal of real estate the community center intends to purchase. The board of trustees may waive this requirement if the purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the preceding two years. A community center may not purchase or lease-purchase property for an amount that is greater than the property's appraised value unless:

(1) the purchase or lease-purchase of that property at that price is necessary;

(2) the board of trustees documents in the official minutes the reasons why the purchase or lease-purchase is necessary at that price; and

(3) a majority of the board approves the transaction.

(c) The board of trustees shall establish in accordance with relevant [~~department~~] rules *of each appropriate department* competitive bidding procedures and practices for capital purchases and for purchases involving department funds or required local matching funds.

Sec. 534.021. APPROVAL AND NOTIFICATION REQUIREMENTS. (a) A community center must receive from *each appropriate* [~~the~~] department prior written approval to acquire real property, including a building, if the acquisition involves the use of [~~department~~] funds *of that department* or local funds required to match *funds of that*

department [~~funds~~]. In addition, for acquisition of nonresidential property, the community center must notify each local agency that appoints members to the board of trustees not later than the 31st day before it enters into a binding obligation to acquire the property.

(b) A community center must notify *each appropriate* [~~the~~] department and each local agency that appoints members to the board of trustees not later than the 31st day before it enters into a binding obligation to acquire real property, including a building, if the acquisition does not involve the use of [~~department~~] funds *of that department* or local funds required to match *funds of that* department [~~funds~~]. *Each appropriate* [~~The~~] commissioner, on request, may waive the 30–day requirement on a case-by-case basis.

(c) The *executive commissioner* [~~board~~] shall adopt rules relating to the approval and notification process.

Sec. 534.022. FINANCING OF PROPERTY AND IMPROVEMENTS. (a) To acquire or to refinance the acquisition of real and personal property, to construct improvements to property, or to finance all or part of a payment owed or to be owed on a credit agreement, a community center may contract in accordance with Subchapter A, Chapter 271, Local Government Code, or issue, execute, refinance, or refund bonds, notes, obligations, or contracts. The community center may secure the payment of the bonds, notes, obligations, or contracts with a security interest in or pledge of its revenues or by granting a mortgage on any of its properties.

(a–1) For purposes of Subsection (a), "revenues" includes the following, as those terms are defined by Section 9.102, Business & Commerce Code:

(1) an account;

(2) a chattel paper;

(3) a commercial tort claim;

(4) a deposit account;

(5) a document;

(6) a general intangible;

(7) a health care insurance receivable;

(8) an instrument;

(9) investment property;

(10) a letter-of-credit right; and

(11) proceeds.

(b) Except as provided by Subsection (f), the community center shall issue the bonds, notes, or obligations in accordance with Chapters 1201 and 1371, Government Code. The attorney general must approve before issuance:

(1) notes issued in the form of public securities, as that term is defined by Section 1201.002, Government Code;

(2) obligations, as that term is defined by Section 1371.001, Government Code; and

(3) bonds.

(c) A limitation prescribed in Subchapter A, Chapter 271, Local Government Code, relating to real property and the construction of improvements to real property, does not apply to a community center.

(e) A county or municipality acting alone or two or more counties or municipalities acting jointly pursuant to interlocal contract may create a public facility corporation to act on behalf of one or more community centers pursuant to Chapter 303, Local Government Code. Such counties or municipalities may exercise the powers of a sponsor under that chapter, and any such corporation may exercise the powers of a corporation under that chapter (including but not limited to the power to issue bonds). The corporation may exercise its powers on behalf of community centers in such manner as may be prescribed by the articles and bylaws of the corporation, provided that in no event shall

one community center ever be liable to pay the debts or obligation or be liable for the acts, actions, or undertakings of another community center.

(f) The board of trustees of a community center may authorize the issuance of an anticipation note in the same manner, using the same procedure, and with the same rights under which an eligible school district may authorize issuance under Chapter 1431, Government Code, except that anticipation notes issued for the purposes described by Section 1431.004(a)(2), Government Code, may not, in the fiscal year in which the attorney general approves the notes for a community center, exceed 50 percent of the revenue anticipated to be collected in that year.

Sec. 534.023. SALE OF REAL PROPERTY ACQUIRED SOLELY THROUGH PRIVATE GIFT OR GRANT. (a) Except as provided by Subsection (d), a community center may sell center real property, including a building, without the approval of *each appropriate* [~~the~~] department or any local agency that appoints members to the board of trustees, only if the real property was acquired solely through a gift or grant of money or real property from a private entity, including an individual.

(b) A community center that acquires real property by gift or grant shall, on the date the center acquires the gift or grant, notify the private entity providing the gift or grant that:

(1) the center may subsequently sell the real property; and

(2) the sale is subject to the provisions of this section.

(c) Except as provided by Subsection (d), real property sold under Subsection (a) must be sold for the property's fair market value.

(d) Real property sold under Subsection (a) may be sold for less than fair market value only if the board of trustees adopts a resolution stating:

(1) the public purpose that will be achieved by the sale; and

(2) the conditions and circumstances for the sale, including conditions to accomplish and maintain the public purpose.

(e) A community center must notify *each appropriate* [~~the~~] department and each local agency that appoints members to the board of trustees not later than the 31st day before the date the center enters into a binding obligation to sell real property under this section. *Each appropriate* [~~The~~] commissioner, on request, may waive the 30–day notice requirement on a case-by-case basis.

(f) The *executive commissioner* [~~board~~] shall adopt rules relating to the notification process.

(g) A community center may use proceeds received from a sale of real property under this section only for a purpose authorized by this subchapter or for a public purpose authorized for a community center by state or federal law.

Sec. 534.031. SURPLUS PERSONAL PROPERTY. The *executive commissioner, in coordination with the appropriate* department, may transfer, with or without reimbursement, ownership and possession of surplus personal property under *that* [~~the~~] department's control or jurisdiction to a community center for use in providing mental health or *intellectual disability* [~~mental retardation~~] services, *as appropriate.*

Sec. 534.032. RESEARCH. A community center may engage in research and may contract for that purpose.

Sec. 534.033. LIMITATION ON DEPARTMENT CONTROL AND REVIEW. (a) It is the intent of the legislature that *each* [~~the~~] department limit its control over, and routine reviews of, community center programs to those programs that:

(1) use [~~department~~] funds *from that department* or use required local funds that are matched with [~~department~~] funds *from that department*;

(2) provide core or required services;

(3) provide services to former clients or patients of a [~~department~~] facility *of that department*; or

(4) are affected by litigation in which *that* [~~the~~] department is a defendant.

(b) *Each appropriate* [~~The~~] department may review any community center program if the department has reason to suspect that a violation of a department rule has occurred or if the department receives an allegation of patient or client abuse.

(c) *Each appropriate* [~~The~~] department may determine whether a particular program uses [~~department~~] funds *from that department* or uses required local matching funds.

Sec. 534.035. REVIEW, AUDIT, AND APPEAL PROCEDURES. (a) The *executive commissioner* [~~department~~] by rule shall establish review, audit, and appeal procedures for community centers. The procedures must ensure that reviews and audits are conducted in sufficient quantity and type to provide reasonable assurance that a community center has adequate and appropriate fiscal controls.

(b) In a community center plan approved under Section 534.001, the center must agree to comply with the review and audit procedures established under this section.

(c) If, by a date prescribed by *each appropriate* [~~the~~] commissioner, the community center fails to respond to a deficiency identified in a review or audit to the satisfaction of *that* [~~the~~] commissioner, *that* [~~the~~] department may sanction the center in accordance with *department* [~~board~~] rules.

Sec. 534.036. FINANCIAL AUDIT. (a) The *executive commissioner* [~~department~~] shall prescribe procedures for financial audits of community centers. The *executive commissioner* [~~department~~] shall develop the procedures with the assistance of the state agencies and departments that contract with community centers. The *executive commissioner* [~~department~~] shall coordinate with each of those state agencies and departments to incorporate each agency's financial and compliance requirements for a community center into a single audit that meets the requirements of Section 534.068 *or 534.121, as appropriate*. Before prescribing or amending the procedures, the *executive commissioner* [~~department~~] shall set a deadline for those state agencies and departments to submit to the *executive commissioner* [~~department~~] proposals relating to the financial audit procedures. The procedures must be consistent with any requirements connected with federal funding received by the community center. [~~The department may not implement the procedures without the approval of the Health and Human Services Commission.~~]

(b) Each state agency or department that contracts with a community center shall comply with the procedures developed under this section.

(c) The *executive commissioner* [~~department~~] shall develop protocols for a state agency or department to conduct additional financial audit activities of a community center. [~~A state agency or department may not conduct additional financial audit activities of a community center without the approval of the Health and Human Services Commission.~~]

Sec. 534.037. PROGRAM AUDIT. (a) The *executive commissioner* [~~department~~] shall coordinate with each state agency or department that contracts with a community center to prescribe procedures based on risk assessment for coordinated program audits of the activities of a community center. [~~The department may not implement the procedures without the approval of the Health and Human Services Commission.~~] The procedures must be consistent with any requirements connected with federal funding received by the community center.

(b) A program audit of a community center must be performed in accordance with procedures developed under this section.

(c) This section does not prohibit a state agency or department or an entity providing funding to a community center from investigating a complaint against or performing additional contract monitoring of a community center.

(d) A program audit under this section must evaluate:

(1) the extent to which the community center is achieving the desired results or benefits established by the legislature or by a state agency or department;

(2) the effectiveness of the community center's organizations, programs, activities, or functions; and

(3) whether the community center is in compliance with applicable laws.

Sec. 534.038. APPOINTMENT OF MANAGER OR MANAGEMENT TEAM. (a) *Each appropriate* [~~The~~] commissioner may appoint a manager or management team to manage and operate a community center if the commissioner finds that the center or an officer or employee of the center:

(1) intentionally, recklessly, or negligently failed to discharge the center's duties under a contract with *that* [~~the~~] department;

(2) misused state or federal money;

(3) engaged in a fraudulent act, transaction, practice, or course of business;

(4) endangers or may endanger the life, health, or safety of a person served by the center;

(5) failed to keep fiscal records or maintain proper control over center assets as prescribed by Chapter 783, Government Code;

(6) failed to respond to a deficiency in a review or audit;

(7) substantially failed to operate within the functions and purposes defined in the center's plan; or

(8) otherwise substantially failed to comply with this subchapter or *rules of that* department [~~rules~~].

(b) *Each appropriate* [~~The~~] department shall give written notification to the center and local agency or combination of agencies responsible for making appointments to the local board of trustees regarding:

(1) the appointment of the manager or management team; and

(2) the circumstances on which the appointment is based.

(c) *Each appropriate* [~~The~~] commissioner may require the center to pay costs incurred by the manager or management team.

(d) The center may appeal *a* [~~the~~] commissioner's decision to appoint a manager or management team as prescribed by *rules of that department* [~~board rule~~]. The filing of a notice of appeal stays the appointment unless the commissioner based the appointment on a finding under Subsection (a)(2) or (4).

Sec. 534.039. POWERS AND DUTIES OF MANAGEMENT TEAM. (a) As *each appropriate* [~~the~~] commissioner determines for each appointment, a manager or management team appointed under Section 534.038 may:

(1) evaluate, redesign, modify, administer, supervise, or monitor a procedure, operation, or the management of a community center;

(2) hire, supervise, discipline, reassign, or terminate the employment of a center employee;

(3) reallocate a resource and manage an asset of the center;

(4) provide technical assistance to an officer or employee of the center;

(5) require or provide staff development;

(6) require that a financial transaction, expenditure, or contract for goods and services must be approved by the manager or management team;

(7) redesign, modify, or terminate a center program or service;

(8) direct the executive director, local board of trustees, chief financial officer, or a fiscal or program officer of the center to take an action;

(9) exercise a power or duty of an officer or employee of the center; or

(10) make a recommendation to the local agency or combination of agencies responsible for appointments to the local board of trustees regarding the removal of a center trustee.

(b) The manager or management team shall supervise the exercise of a power or duty by the local board of trustees.

(c) The manager or management team shall report monthly to *each appropriate* [~~the~~] commissioner and local board of trustees on actions taken.

(d) A manager or management team appointed under this section may not use an asset or money contributed by a county, municipality, or other local funding entity without the approval of the county, municipality, or entity.

Sec. 534.040. RESTORING MANAGEMENT TO CENTER. (a) Each month, *each appropriate* [~~the~~] commissioner shall evaluate the performance of a community center managed by a manager or team appointed under Section 534.038 to determine the feasibility of restoring the center's management and operation to a local board of trustees.

(b) The authority of the manager or management team continues until *each appropriate* [~~the~~] commissioner determines that the relevant factors listed under Section 534.038(a) no longer apply.

(c) Following a determination under Subsection (b), *each appropriate* [~~the~~] commissioner shall terminate the authority of the manager or management team and restore authority to manage and operate the center to the center's authorized officers and employees.

SUBCHAPTER B. COMMUNITY–BASED *MENTAL HEALTH* SERVICES

Sec. 534.051. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

Sec. 534.052. RULES AND STANDARDS. (a) The *executive commissioner* [~~board~~] shall adopt rules, including standards, the *executive commissioner* [~~board~~] considers necessary and appropriate to ensure the adequate provision of community-based mental health [~~and mental retardation~~] services through a local mental health [~~or mental retardation~~] authority under this subchapter.

(b) The department shall send a copy of the rules to each local mental health [~~or mental retardation~~] authority or other provider receiving contract funds as a local mental health [~~or mental retardation~~] authority or designated provider.

Sec. 534.053. REQUIRED COMMUNITY–BASED *MENTAL HEALTH* SERVICES. (a) The department shall ensure that, at a minimum, the following services are available in each service area:

(1) 24–hour emergency screening and rapid crisis stabilization services;

(2) community-based crisis residential services or hospitalization;

(3) community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation services;

(4) [~~family support services, including respite care;~~

[~~(5) case management services;~~

[~~(6)~~] medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and

(5) [~~(7)~~] psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

(b) The department shall arrange for appropriate community-based services[~~, including the assignment of a case manager,~~] to be available in each service area for each person discharged from a department facility who is in need of care.

(c) To the extent that resources are available, the department shall:

(1) ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area;

(2) emphasize early intervention services for children, including adolescents, who

meet the department's definition of being at high risk of developing severe emotional disturbances or severe mental illnesses; and

(3) ensure that services listed in this section are available for defendants required to submit to mental health treatment under Article 17.032 or Section 5(a) or 11(d), Article 42.12, Code of Criminal Procedure.

Sec. 534.0535. JOINT DISCHARGE PLANNING. (a) The *executive commissioner* [~~board~~] shall adopt, and the department shall enforce, rules that require continuity of services and planning for patient [~~or client~~] care between department facilities and local mental health [~~or mental retardation~~] authorities.

(b) At a minimum, the rules must require joint discharge planning between a department facility and a local mental health [~~or mental retardation~~] authority before a facility discharges a patient [~~or client~~] or places the patient [~~or client~~] on an extended furlough with an intent to discharge.

(c) The local mental health [~~or mental retardation~~] authority shall plan with the department facility and determine the appropriate community services for the patient [~~or client~~].

(d) The local mental health [~~or mental retardation~~] authority shall arrange for the provision of the services if department funds are to be used and may subcontract with or make a referral to a local agency or entity.

Sec. 534.054. DESIGNATION OF PROVIDER. (a) The department shall identify and contract with a local mental health [~~or mental retardation~~] authority for each service area to ensure that services are provided to patient [~~and client~~] populations determined by the department. A local mental health [~~or mental retardation~~] authority shall ensure that services to address the needs of priority populations are provided as required by the department and shall comply with the rules and standards adopted under Section 534.052.

(c) The department may contract with a local agency or a private provider or organization to act as a designated provider of a service if the department:

(1) cannot negotiate a contract with a local mental health [~~or mental retardation~~] authority to ensure that a specific required service for priority populations is available in that service area; or

(2) determines that a local mental health [~~or mental retardation~~] authority does not have the capacity to ensure the availability of that service.

Sec. 534.055. CONTRACTS FOR CERTAIN COMMUNITY SERVICES. (a) [~~A mental health or mental retardation authority and a private provider shall use a contract designed by the department as a model contract for the provision of services at the community level for persons with mental retardation or mental illness, including residential services, if the contract involves the use of state funds or funds for which the state has oversight responsibility.~~

[~~(b) The department shall design one or more model contracts and shall retain copies of each model contract in the central office of the department.~~

[~~(c) A model contract must:~~

[~~(1) require that the services provided by the private provider be based on the patient's or client's individual treatment plan;~~

[~~(2) provide that a community-based residential facility that is a family home as defined in Chapter 123, Human Resources Code may house only a person with a disability as defined in Section 123.002, Human Resources Code;~~

[~~(3) prohibit the use of the facility for purposes such as restitution centers, homes for substance abusers, or halfway houses; and~~

[~~(4) outline a dispute resolution procedure.~~

[~~(d)~~] The *executive commissioner* [~~department~~] shall design a competitive procurement or similar system that a mental health [~~or mental retardation~~] authority shall use in

awarding an initial contract *for the provision of services at the community level for persons with mental illness, including residential services, if the contract involves the use of state money or money for which the state has oversight responsibility* [~~under this section~~].

(b) [~~(e)~~] The system must require that each *local* mental health [~~or mental retardation~~] authority:

(1) ensure public participation in the authority's decisions regarding whether to provide or to contract for a service;

(2) make a reasonable effort to give notice of the intent to contract for services to each potential private provider in the local service area of the authority; and

(3) review each submitted proposal and award the contract to the applicant that the authority determines has made the lowest and best bid to provide the needed services.

(c) [~~(f)~~] Each *local* mental health [~~or mental retardation~~] authority, in determining the lowest and best bid, shall consider any relevant information included in the authority's request for bid proposals, including:

(1) price;

(2) the ability of the bidder to perform the contract and to provide the required services;

(3) whether the bidder can perform the contract or provide the services within the period required, without delay or interference;

(4) the bidder's history of compliance with the laws relating to the bidder's business operations and the affected services and whether the bidder is currently in compliance;

(5) whether the bidder's financial resources are sufficient to perform the contract and to provide the services;

(6) whether necessary or desirable support and ancillary services are available to the bidder;

(7) the character, responsibility, integrity, reputation, and experience of the bidder;

(8) the quality of the facilities and equipment available to or proposed by the bidder;

(9) the ability of the bidder to provide continuity of services; and

(10) the ability of the bidder to meet all applicable written departmental policies, principles, and regulations.

Sec. 534.056. COORDINATION OF ACTIVITIES. A local mental health [~~or mental retardation~~] authority shall coordinate its activities with the activities of other appropriate agencies that provide care and treatment for persons with drug or alcohol problems.

Sec. 534.058. STANDARDS OF CARE. (a) The *executive commissioner* [~~department~~] shall develop standards of care for the services provided by a local mental health [~~or mental retardation~~] authority and its subcontractors under this subchapter.

(b) The standards must be designed to ensure that the quality of the community-based *mental health* services is consistent with the quality of care available in department facilities.

(c) In conjunction with local mental health [~~or mental retardation~~] authorities, the *executive commissioner* [~~department~~] shall review the standards biennially to determine if each standard is necessary to ensure the quality of care.

Sec. 534.059. CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES. (a) The department shall evaluate a local mental health [~~or mental retardation~~] authority's compliance with its contract to ensure the provision of specific services to priority populations.

(b) If, by a date set by the commissioner, a local mental health [~~or mental retardation~~] authority fails to comply with its contract to ensure the provision of services to the satis-

faction of the commissioner, the department may impose a sanction as provided by the applicable contract rule until the dispute is resolved. The department shall notify the authority in writing of the department's decision to impose a sanction.

(c) A local mental health [~~or mental retardation~~] authority may appeal the department's decision to impose a sanction on the authority. The *executive commissioner* [~~board~~] by rule shall prescribe the appeal procedure.

(d) The filing of a notice of appeal stays the imposition of the department's decision to impose a sanction except when an act or omission by a local mental health [~~or mental retardation~~] authority is endangering or may endanger the life, health, welfare, or safety of a person.

(e) While an appeal under this section is pending, the department may limit general revenue allocations to a local mental health [~~or mental retardation~~] authority to monthly distributions.

Sec. 534.060. PROGRAM AND SERVICE MONITORING AND REVIEW OF LOCAL AUTHORITIES. (a) The department shall develop mechanisms for monitoring the services provided by a local mental health [~~or mental retardation~~] authority.

(b) The department shall review the program quality and program performance results of a local mental health [~~or mental retardation~~] authority in accordance with a risk assessment and evaluation system appropriate to the authority's contract requirements. The department may determine the scope of the review.

(c) A contract between a local mental health [~~or mental retardation~~] authority and the department must authorize the department to have unrestricted access to all facilities, records, data, and other information under the control of the authority as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with department funds.

Sec. 534.0601. COORDINATED PROGRAM AUDITS OF LOCAL AUTHORITIES. (a) The *executive commissioner* [~~department~~] shall coordinate with each agency or department of the state that contracts with a local mental health [~~or mental retardation~~] authority to prescribe procedures for a coordinated program audit of the authority. The procedures must be:

(1) consistent with the requirements for the receipt of federal funding by the authority; and

(2) based on risk assessment.

(b) A program audit must evaluate:

(1) the extent to which a local mental health [~~or mental retardation~~] authority is achieving the results or benefits established by an agency or department of the state or by the legislature;

(2) the effectiveness of the authority's organization, program, activities, or functions; and

(3) the authority's compliance with law.

(c) A program audit of a local mental health [~~or mental retardation~~] authority must be performed in accordance with the procedures prescribed under this section.

(d) The department may not implement a procedure for a program audit under this section without the approval of the *executive commissioner* [~~Health and Human Services Commission~~].

(e) This section does not prohibit an agency, department, or other entity providing funding to a local mental health [~~or mental retardation~~] authority from investigating a complaint against the authority or performing additional contract monitoring of the authority.

Sec. 534.0602. FINANCIAL AUDITS OF LOCAL AUTHORITIES. (a) The *executive commissioner* [~~department~~] shall prescribe procedures for a financial audit of a local mental health [~~or mental retardation~~] authority. The procedures must be consistent with requirements for the receipt of federal funding by the authority.

(b) The *executive commissioner* [~~department~~] shall develop the procedures with the assistance of each agency or department of the state that contracts with a local mental health [~~or mental retardation~~] authority. The *executive commissioner* [~~department~~] shall incorporate each agency's or department's financial or compliance requirements for an authority into a single audit that meets the requirements of Section 534.068.

(c) Before prescribing or amending a procedure under this section, the *executive commissioner* [~~department~~] must set a deadline for agencies and departments of the state that contract with local mental health [~~and mental retardation~~] authorities to submit proposals relating to the procedure.

(d) An agency or department of the state that contracts with a local mental health [~~or mental retardation~~] authority must comply with a procedure developed under this section.

(e) The department may not implement a procedure under this section without the approval of the *executive commissioner* [~~Health and Human Services Commission~~].

Sec. 534.0603. ADDITIONAL FINANCIAL AUDIT ACTIVITY. (a) The *executive commissioner* [~~department~~] shall develop protocols for an agency or department of the state to conduct additional financial audit activities of a local mental health [~~or mental retardation~~] authority.

(b) An agency or department of the state may not conduct additional financial audit activities relating to a local mental health [~~or mental retardation~~] authority without the approval of the *executive commissioner* [~~Health and Human Services Commission~~].

(c) This section, and a protocol developed under this section, do not apply to an audit conducted under Chapter 321, Government Code.

Sec. 534.061. PROGRAM AND SERVICE MONITORING AND REVIEW OF CERTAIN COMMUNITY SERVICES. (a) [~~The department shall develop mechanisms for periodically monitoring the services of a provider who contracts with a local mental health or mental retardation authority to provide services for persons with mental retardation or mental illness at the community level, including residential services, if state funds or funds for which the state has oversight responsibility are used to pay for at least part of the services.~~

[~~(b)~~] The local mental health [~~or mental retardation~~] authority shall monitor the services *of a provider who contracts with the authority to provide services for persons with mental illness* to ensure that the provider is delivering the services in a manner consistent with the provider's contract.

(b) [~~(c)~~] Each provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the local mental health [~~or mental retardation~~] authority or the authority's designee and the department or the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract.

(c) [~~(d)~~] The department may withdraw funding from a local mental health [~~or mental retardation~~] authority that fails to cancel a contract with a provider involving the use of state funds or funds for which the state has oversight responsibility if:

(1) the provider is not fulfilling its contractual obligations; and

(2) the authority has not taken appropriate action to remedy the problem in accordance with *department* [~~board~~] rules.

(d) [~~(e)~~] The *executive commissioner* [~~board~~] by rule shall prescribe procedures a local mental health [~~or mental retardation~~] authority must follow in remedying a problem with a provider.

Sec. 534.063. PEER REVIEW ORGANIZATION. The department shall assist a local mental health [~~or mental retardation~~] authority in developing a peer review organization to provide self-assessment of programs and to supplement department reviews

under Section 534.060.

Sec. 534.064. CONTRACT RENEWAL. The *executive* commissioner may refuse to renew a contract with a local mental health [~~or mental retardation~~] authority and may select other agencies, entities, or organizations to be the local mental health [~~or mental retardation~~] authority if the department's evaluation of the authority's performance *under Section 534.059* indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

Sec. 534.065. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY SERVICES. (a) A *local* mental health [~~or mental retardation~~] authority shall review a contract scheduled for renewal that:

(1) is between the authority and a private provider;

(2) is for the provision of mental health [~~or mental retardation~~] services at the community level, including residential services; and

(3) involves the use of state funds or funds for which the state has oversight responsibility.

(b) The *local* mental health [~~or mental retardation~~] authority may renew the contract only if the contract meets the criteria provided by Section 533.016.

(c) The *local* mental health [~~or mental retardation~~] authority and private provider shall negotiate a contract renewal at *arm's* [~~arms~~] length and in good faith.

(d) This section applies to a contract renewal regardless of the date on which the original contract was initially executed.

Sec. 534.066. LOCAL MATCH REQUIREMENT. (a) The department shall include in a contract with a local mental health [~~or mental retardation~~] authority a requirement that some or all of the state funds the authority receives be matched by local support in an amount or proportion jointly agreed to by the department and the authority's board of trustees and based on the authority's financial capability and its overall commitment to other mental health [~~or mental retardation~~] programs, as appropriate.

(b) [~~The department shall establish, for community services divisions of department facilities that provide community-based services required under this subchapter, a local match requirement that is consistent with the requirements applied to other local mental health or mental retardation authorities.~~

[~~(c)~~] Patient fee income, third-party insurance income, services and facilities contributed by the local mental health [~~or mental retardation~~] authority, contributions by a county or municipality, and other locally generated contributions, including local tax funds, may be counted when calculating the local support for a local mental health [~~or mental retardation~~] authority. The department may disallow or reduce the value of services claimed as support.

Sec. 534.067. FEE COLLECTION POLICY. The *executive commissioner* [~~department~~] shall establish a uniform fee collection policy for all local mental health [~~or mental retardation~~] authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

Sec. 534.0675. NOTICE OF DENIAL, REDUCTION, OR TERMINATION OF SERVICES. The *executive commissioner* [~~board~~] by rule, in cooperation with local mental health [~~and mental retardation~~] authorities, consumers, consumer advocates, and service providers, shall establish a uniform procedure that each local mental health [~~or mental retardation~~] authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal those decisions.

Sec. 534.068. AUDITS. (a) As a condition to receiving funds under this subtitle, a local mental health [~~and mental retardation~~] authority other than a state facility designated as an authority must annually submit to the department a financial and compliance audit prepared by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. To ensure the highest degree of independence and quality, the local mental health [~~or mental retardation~~] authority shall

use an invitation-for-proposal process as prescribed by the *executive commissioner* [~~department~~] to select the auditor.

(a–1) The audit required under Subsection (a) may be published electronically on *the local mental health* [~~an~~] authority's Internet website. An authority that electronically publishes an audit under this subsection shall notify the department that the audit is available on the authority's Internet website on or before the date the audit is due.

(b) The audit must meet the minimum requirements as shall be, and be in the form and in the number of copies as may be, prescribed by the *executive commissioner* [~~department~~], subject to review and comment by the state auditor.

(c) The local mental health [~~or mental retardation~~] authority shall file the required number of copies of the audit report with the department by the date prescribed by the *executive commissioner* [~~department~~]. From the copies filed with the department, copies of the report shall be submitted to the governor and Legislative Budget Board.

(d) The local mental health [~~or mental retardation~~] authority shall either approve or refuse to approve the audit report. If the authority refuses to approve the report, the authority shall include with the department's copies a statement detailing the reasons for refusal.

(e) The commissioner and state auditor have access to all vouchers, receipts, journals, or other records the commissioner or auditor considers necessary to review and analyze the audit report.

(f) The department shall annually submit to the governor, Legislative Budget Board, and Legislative Audit Committee a summary of the significant findings identified during the department's reviews of fiscal audit activities.

(g) The report required under Subsection (f) may be published electronically on the department's Internet website. The department shall notify each entity entitled to receive a copy of the report that the report is available on the department's Internet website on or before the date the report is due.

Sec. 534.069. CRITERIA FOR PROVIDING FUNDS FOR START–UP COSTS. (a) The *executive commissioner* [~~board~~] by rule shall develop criteria to regulate the provision of payment to a private provider for start-up costs associated with the development of residential and other community services for persons with mental illness [~~or mental retardation~~].

(b) The criteria shall provide that start-up funds be awarded only as a last resort and shall include provisions relating to:

(1) the purposes for which start-up funds may be used;

(2) the ownership of capital property and equipment obtained by the use of start-up funds; and

(3) the obligation of the private provider to repay the start-up funds awarded by the department by direct repayment or by providing services for a period agreed to by the parties.

Sec. 534.070. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each *local* mental health [~~or mental retardation~~] authority that receives prospective payment funds shall submit to the department a quarterly report that clearly identifies how the provider or program used the funds during the preceding fiscal quarter.

(b) The *executive commissioner* [~~board~~] by rule shall prescribe the form of the report, the specific information that must be included in the report, and the deadlines for submitting the report.

(c) The department may not provide prospective payment funds to a *local* mental health [~~or mental retardation~~] authority that fails to submit the quarterly reports required by this section.

(d) In this section, "prospective payment funds" means money the department prospectively provides to a *local* mental health [~~or mental retardation~~] authority to provide community services to certain persons with [~~mental retardation or~~] mental

illness.

Sec. 534.071. ADVISORY COMMITTEE. A local mental health [~~or mental retardation~~] authority may appoint a committee to advise its governing board on a matter relating to the oversight and provision of mental health [~~and mental retardation~~] services. The appointment of a committee does not relieve the authority's governing board of a responsibility prescribed by this subtitle.

SUBCHAPTER B-1. COMMUNITY-BASED INTELLECTUAL DISABILITY SERVICES

Sec. 534.101. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Department facility" means a state supported living center, including the ICF-IID component of the Rio Grande State Center.

Sec. 534.102. RULES AND STANDARDS. (a) The executive commissioner shall adopt rules, including standards, the executive commissioner considers necessary and appropriate to ensure the adequate provision of community-based intellectual disability services through a local intellectual and developmental disability authority under this subchapter.

(b) The department shall send a copy of the rules to each local intellectual and developmental disability authority or other provider receiving contract funds as a local intellectual and developmental disability authority or designated provider.

Sec. 534.103. REQUIRED COMMUNITY-BASED INTELLECTUAL DISABILITY SERVICES. (a) The department shall ensure that, at a minimum, the following services are available in each service area:

(1) community-based assessments, including diagnosis and evaluation services;

(2) respite care; and

(3) case management services.

(b) The department shall arrange for appropriate community-based services, including the assignment of a case manager, to be available in each service area for each person discharged from a department facility who is in need of care.

(c) To the extent that resources are available, the department shall ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area.

Sec. 534.104. JOINT DISCHARGE PLANNING. (a) The executive commissioner shall adopt, and the department shall enforce, rules that require continuity of services and planning for client care between department facilities and local intellectual and developmental disability authorities.

(b) At a minimum, the rules must require joint discharge planning between a department facility and a local intellectual and developmental disability authority before a facility discharges a client or places the client on an extended furlough with an intent to discharge.

(c) The local intellectual and developmental disability authority shall plan with the department facility and determine the appropriate community services for the client.

(d) The local intellectual and developmental disability authority shall arrange for the provision of the services if department funds are to be used and may subcontract with or make a referral to a local agency or entity.

Sec. 534.105. DESIGNATION OF PROVIDER. (a) The department shall identify and contract with a local intellectual and developmental disability authority for each service area to ensure that services are provided to client populations determined by the department. A local intellectual and developmental disability authority shall ensure that

services to address the needs of priority populations are provided as required by the department and shall comply with the rules and standards adopted under Section 534.102.

(b) The department may contract with a local agency or a private provider or organization to act as a designated provider of a service if the department:

(1) cannot negotiate a contract with a local intellectual and developmental disability authority to ensure that a specific required service for priority populations is available in that service area; or

(2) determines that a local intellectual and developmental disability authority does not have the capacity to ensure the availability of that service.

Sec. 534.106. CONTRACTS FOR CERTAIN COMMUNITY SERVICES. (a) The executive commissioner shall design a competitive procurement or similar system that an intellectual and developmental disability authority shall use in awarding an initial contract for the provision of services at the community level for persons with an intellectual disability, including residential services, if the contract involves the use of state money or money for which the state has oversight responsibility.

(b) The system must require that each local intellectual and developmental disability authority:

(1) ensure public participation in the authority's decisions regarding whether to provide or to contract for a service;

(2) make a reasonable effort to give notice of the intent to contract for services to each potential private provider in the local service area of the authority; and

(3) review each submitted proposal and award the contract to the applicant that the authority determines has made the lowest and best bid to provide the needed services.

(c) Each local intellectual and developmental disability authority, in determining the lowest and best bid, shall consider any relevant information included in the authority's request for bid proposals, including:

(1) price;

(2) the ability of the bidder to perform the contract and to provide the required services;

(3) whether the bidder can perform the contract or provide the services within the period required, without delay or interference;

(4) the bidder's history of compliance with the laws relating to the bidder's business operations and the affected services and whether the bidder is currently in compliance;

(5) whether the bidder's financial resources are sufficient to perform the contract and to provide the services;

(6) whether necessary or desirable support and ancillary services are available to the bidder;

(7) the character, responsibility, integrity, reputation, and experience of the bidder;

(8) the quality of the facilities and equipment available to or proposed by the bidder;

(9) the ability of the bidder to provide continuity of services; and

(10) the ability of the bidder to meet all applicable written departmental policies, principles, and regulations.

Sec. 534.107. COORDINATION OF ACTIVITIES. A local intellectual and developmental disability authority shall coordinate its activities with the activities of other appropriate agencies that provide care and treatment for persons with drug or alcohol problems.

Sec. *534.1075* [~~534.057~~]. RESPITE CARE. (a) The *executive commissioner* [~~board~~] shall adopt rules relating to the provision of respite care and shall develop a system to reimburse providers of in-home respite care.

(b) The rules must:

(1) encourage the use of existing local providers;

(2) encourage family participation in the choice of a qualified provider;

(3) establish procedures necessary to administer this section, including procedures for:

(A) determining the amount and type of in-home respite care to be authorized;

(B) reimbursing providers;

(C) handling appeals from providers;

(D) handling complaints from recipients of in-home respite care;

(E) providing emergency backup for in-home respite care providers; and

(F) advertising for, selecting, and training in-home respite care providers; and

(4) specify the conditions and provisions under which a provider's participation in the program can be canceled.

(c) The *executive commissioner* [~~board~~] shall establish service and performance standards for department facilities and designated providers to use in operating the in-home respite care program. The *executive commissioner* [~~board~~] shall establish the standards from information obtained from the families of [~~patients and~~] clients receiving in-home respite care and from providers of in-home respite care. The *executive commissioner* [~~board~~] may obtain the information at a public hearing or from an advisory group.

(d) The service and performance standards established by the *executive commissioner* [~~board~~] under Subsection (c) must:

(1) prescribe minimum personnel qualifications the *executive commissioner* [~~board~~] determines are necessary to protect health and safety;

(2) establish levels of personnel qualifications that are dependent on the needs of the [~~patient or~~] client; and

(3) permit a health professional with a valid Texas practitioner's license to provide care that is consistent with the professional's training and license without requiring additional training unless the *executive commissioner* [~~board~~] determines that additional training is necessary.

Sec. 534.108. STANDARDS OF CARE. (a) The executive commissioner shall develop standards of care for the services provided by a local intellectual and developmental disability authority and its subcontractors under this subchapter.

(b) The standards must be designed to ensure that the quality of community-based intellectual disability services is consistent with the quality of care available in department facilities.

(c) In conjunction with local intellectual and developmental disability authorities, the executive commissioner shall review the standards biennially to determine if each standard is necessary to ensure the quality of care.

Sec. 534.109. CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES. (a) The department shall evaluate a local intellectual and developmental disability authority's compliance with its contract to ensure the provision of specific services to priority populations.

(b) If, by a date set by the commissioner, a local intellectual and developmental disability authority fails to comply with its contract to ensure the provision of services to the satisfaction of the commissioner, the department may impose a sanction as provided by the applicable contract rule until the dispute is resolved. The department shall notify the authority in writing of the department's decision to impose a sanction.

(c) A local intellectual and developmental disability authority may appeal the department's decision to impose a sanction on the authority. The executive commissioner by rule shall prescribe the appeal procedure.

(d) The filing of a notice of appeal stays the imposition of the department's decision to impose a sanction except when an act or omission by a local intellectual and

developmental disability authority is endangering or may endanger the life, health, welfare, or safety of a person.

(e) While an appeal under this section is pending, the department may limit general revenue allocations to a local intellectual and developmental disability authority to monthly distributions.

Sec. 534.110. PROGRAM AND SERVICE MONITORING AND REVIEW OF LOCAL AUTHORITIES. (a) The department shall develop mechanisms for monitoring the services provided by a local intellectual and developmental disability authority.

(b) The department shall review the program quality and program performance results of a local intellectual and developmental disability authority in accordance with a risk assessment and evaluation system appropriate to the authority's contract requirements. The department may determine the scope of the review.

(c) A contract between a local intellectual and developmental disability authority and the department must authorize the department to have unrestricted access to all facilities, records, data, and other information under the control of the authority as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with department funds.

Sec. 534.111. COORDINATED PROGRAM AUDITS OF LOCAL AUTHORITIES. (a) The executive commissioner shall coordinate with each agency or department of the state that contracts with a local intellectual and developmental disability authority to prescribe procedures for a coordinated program audit of the authority. The procedures must be:

(1) consistent with the requirements for the receipt of federal funding by the authority; and

(2) based on risk assessment.

(b) A program audit must evaluate:

(1) the extent to which a local intellectual and developmental disability authority is achieving the results or benefits established by an agency or department of the state or by the legislature;

(2) the effectiveness of the authority's organization, program, activities, or functions; and

(3) the authority's compliance with law.

(c) A program audit of a local intellectual and developmental disability authority must be performed in accordance with the procedures prescribed under this section.

(d) The department may not implement a procedure for a program audit under this section without the approval of the executive commissioner.

(e) This section does not prohibit an agency, department, or other entity providing funding to a local intellectual and developmental disability authority from investigating a complaint against the authority or performing additional contract monitoring of the authority.

Sec. 534.112. FINANCIAL AUDITS OF LOCAL AUTHORITIES. (a) The executive commissioner shall prescribe procedures for a financial audit of a local intellectual and developmental disability authority. The procedures must be consistent with requirements for the receipt of federal funding by the authority.

(b) The executive commissioner shall develop the procedures with the assistance of each agency or department of the state that contracts with a local intellectual and developmental disability authority. The executive commissioner shall incorporate each agency's or department's financial or compliance requirements for an authority into a single audit that meets the requirements of Section 534.121.

(c) Before prescribing or amending a procedure under this section, the executive commissioner must set a deadline for agencies and departments of the state that contract with local intellectual and developmental disability authorities to submit proposals relating to the procedure.

(d) An agency or department of the state that contracts with a local intellectual and developmental disability authority must comply with a procedure developed under this section.

(e) The department may not implement a procedure under this section without the approval of the executive commissioner.

Sec. 534.113. ADDITIONAL FINANCIAL AUDIT ACTIVITY. (a) The executive commissioner shall develop protocols for an agency or department of the state to conduct additional financial audit activities of a local intellectual and developmental disability authority.

(b) An agency or department of the state may not conduct additional financial audit activities relating to a local intellectual and developmental disability authority without the approval of the executive commissioner.

(c) This section, and a protocol developed under this section, do not apply to an audit conducted under Chapter 321, Government Code.

Sec. 534.114. PROGRAM AND SERVICE MONITORING AND REVIEW OF CERTAIN COMMUNITY SERVICES. (a) The local intellectual and developmental disability authority shall monitor the services of a provider who contracts with the authority to provide services to persons with an intellectual disability to ensure that the provider is delivering the services in a manner consistent with the provider's contract.

(b) Each provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the local intellectual and developmental disability authority or the authority's designee and the department or the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract.

(c) The department may withdraw funding from a local intellectual and developmental disability authority that fails to cancel a contract with a provider involving the use of state funds or funds for which the state has oversight responsibility if:

(1) the provider is not fulfilling its contractual obligations; and

(2) the authority has not taken appropriate action to remedy the problem in accordance with department rules.

(d) The executive commissioner by rule shall prescribe procedures a local intellectual and developmental disability authority must follow in remedying a problem with a provider.

Sec. 534.115. PEER REVIEW ORGANIZATION. The department shall assist a local intellectual and developmental disability authority in developing a peer review organization to provide self-assessment of programs and to supplement department reviews under Section 534.110.

Sec. 534.116. CONTRACT RENEWAL. The executive commissioner may refuse to renew a contract with a local intellectual and developmental disability authority and may select other agencies, entities, or organizations to be the local intellectual and developmental disability authority if the department's evaluation of the authority's performance under Section 534.109 indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

Sec. 534.117. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY SERVICES. (a) A local intellectual and developmental disability authority shall review a contract scheduled for renewal that:

(1) is between the authority and a private provider;

(2) is for the provision of intellectual disability services at the community level, including residential services; and

(3) involves the use of state funds or funds for which the state has oversight responsibility.

(b) The local intellectual and developmental disability authority may renew the contract only if the contract meets the criteria provided by Section 533A.016.

(c) The local intellectual and developmental disability authority and private provider shall negotiate a contract renewal at arm's length and in good faith.

(d) This section applies to a contract renewal regardless of the date on which the original contract was initially executed.

Sec. 534.118. LOCAL MATCH REQUIREMENT. (a) The department shall include in a contract with a local intellectual and developmental disability authority a requirement that some or all of the state funds the authority receives be matched by local support in an amount or proportion jointly agreed to by the department and the authority's board of trustees and based on the authority's financial capability and its overall commitment to other intellectual disability programs, as appropriate.

(b) Client fee income, third-party insurance income, services and facilities contributed by the local intellectual and developmental disability authority, contributions by a county or municipality, and other locally generated contributions, including local tax funds, may be counted when calculating the local support for a local intellectual and developmental disability authority. The department may disallow or reduce the value of services claimed as support.

Sec. 534.119. FEE COLLECTION POLICY. The executive commissioner shall establish a uniform fee collection policy for all local intellectual and developmental disability authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

Sec. 534.120. NOTICE OF DENIAL, REDUCTION, OR TERMINATION OF SERVICES. The executive commissioner by rule, in cooperation with local intellectual and developmental disability authorities, consumers, consumer advocates, and service providers, shall establish a uniform procedure that each local intellectual and developmental disability authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal those decisions.

Sec. 534.121. AUDITS. (a) As a condition to receiving funds under this subtitle, a local intellectual and developmental disability authority other than a state facility designated as an authority must annually submit to the department a financial and compliance audit prepared by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. To ensure the highest degree of independence and quality, the local intellectual and developmental disability authority shall use an invitation-for-proposal process as prescribed by the executive commissioner to select the auditor.

(a–1) The audit required under Subsection (a) may be published electronically on the local intellectual and developmental disability authority's Internet website. An authority that electronically publishes an audit under this subsection shall notify the department that the audit is available on the authority's Internet website on or before the date the audit is due.

(b) The audit must meet the minimum requirements as shall be, and be in the form and in the number of copies as may be, prescribed by the executive commissioner, subject to review and comment by the state auditor.

(c) The local intellectual and developmental disability authority shall file the required number of copies of the audit report with the department by the date prescribed by the executive commissioner. From the copies filed with the department, copies of the report shall be submitted to the governor and Legislative Budget Board.

(d) The local intellectual and developmental disability authority shall either approve or refuse to approve the audit report. If the authority refuses to approve the report, the authority shall include with the department's copies a statement detailing the reasons for refusal.

(e) The commissioner and state auditor have access to all vouchers, receipts, journals, or other records the commissioner or auditor considers necessary to review and analyze the audit report.

(f) The department shall annually submit to the governor, Legislative Budget Board, and Legislative Audit Committee a summary of the significant findings identified during the department's reviews of fiscal audit activities.

(g) The report required under Subsection (f) may be published electronically on the department's Internet website. The department shall notify each entity entitled to receive a copy of the report that the report is available on the department's Internet website on or before the date the report is due.

Sec. 534.122. CRITERIA FOR PROVIDING FUNDS FOR START-UP COSTS. (a) The executive commissioner by rule shall develop criteria to regulate the provision of payment to a private provider for start-up costs associated with the development of residential and other community services for persons with an intellectual disability.

(b) The criteria shall provide that start-up funds be awarded only as a last resort and shall include provisions relating to:

(1) the purposes for which start-up funds may be used;

(2) the ownership of capital property and equipment obtained by the use of start-up funds; and

(3) the obligation of the private provider to repay the start-up funds awarded by the department by direct repayment or by providing services for a period agreed to by the parties.

Sec. 534.123. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each local intellectual and developmental disability authority that receives prospective payment funds shall submit to the department a quarterly report that clearly identifies how the provider or program used the funds during the preceding fiscal quarter.

(b) The executive commissioner by rule shall prescribe the form of the report, the specific information that must be included in the report, and the deadlines for submitting the report.

(c) The department may not provide prospective payment funds to a local intellectual and developmental disability authority that fails to submit the quarterly reports required by this section.

(d) In this section, "prospective payment funds" means money the department prospectively provides to a local intellectual and developmental disability authority to provide community services to certain persons with an intellectual disability.

Sec. 534.124. ADVISORY COMMITTEE. A local intellectual and developmental disability authority may appoint a committee to advise its governing board on a matter relating to the oversight and provision of intellectual disability services. The appointment of a committee does not relieve the authority's governing board of a responsibility prescribed by this subtitle.

SUBCHAPTER C. HEALTH MAINTENANCE ORGANIZATIONS

Sec. *534.151* [~~534.101~~]. HEALTH MAINTENANCE ORGANIZATION CERTIFICATE OF AUTHORITY. (a) One or more community centers may create or operate a nonprofit corporation pursuant to the laws of this state for the purpose of accepting capitated or other at-risk payment arrangements for the provision of services designated in a plan approved by *each appropriate* [~~the~~] department under Subchapter A.

(b) Before a nonprofit corporation organized or operating under Subsection (a) accepts or enters into any capitated or other at-risk payment arrangement for services designated in a plan approved by *each appropriate* [~~the~~] department under Subchapter A, the nonprofit corporation must obtain the appropriate certificate of authority from the Texas Department of Insurance to operate as a health maintenance organization pursuant to Chapter 843, Insurance Code.

(c) Before submitting any bids, a nonprofit corporation operating under this subchapter shall disclose in an open meeting the services to be provided by the community center through any capitated or other at-risk payment arrangement by the non-

profit corporation. Notice of the meeting must be posted in accordance with Sections 551.041, 551.043, and 551.054, Government Code. *Each appropriate* [~~The~~] department shall verify that the services provided under any capitated or other at-risk payment arrangement are within the scope of services approved by *each appropriate* [~~the~~] department in each community center's plan required under Subchapter A.

(d) The board of the nonprofit corporation shall:

(1) provide for public notice of the nonprofit corporation's intent to submit a bid to provide or arrange services through a capitated or other at-risk payment arrangement through placement as a board agenda item on the next regularly scheduled board meeting that allows at least 15 days' public review of the plan; and

(2) provide an opportunity for public comment on the services to be provided through such arrangements and on the consideration of local input into the plan.

(e) The nonprofit corporation shall provide:

(1) public notice before verification and disclosure of services to be provided by the community center through any capitated or other at-risk payment arrangements by the nonprofit corporation;

(2) an opportunity for public comment on the community center services within the capitated or other at-risk payment arrangements offered by the nonprofit corporation;

(3) published summaries of all relevant documentation concerning community center services arranged through the nonprofit corporation, including summaries of any similar contracts the nonprofit corporation has entered into; and

(4) public access and review of all relevant documentation.

(f) A nonprofit corporation operating under this subchapter:

(1) is subject to the requirements of Chapters 551 and 552, Government Code;

(2) shall solicit public input on the operations of the nonprofit corporation and allow public access to information on the operations, including services, administration, governance, revenues, and expenses, on request unless disclosure is expressly prohibited by law or the information is confidential under law; and

(3) shall publish an annual report detailing the services, administration, governance, revenues, and expenses of the nonprofit corporation, including the disposition of any excess revenues.

Sec. *534.152* [~~534.102~~]. LAWS AND RULES. A nonprofit corporation created or operated under this subchapter that obtains and holds a valid certificate of authority as a health maintenance organization may exercise the powers and authority and is subject to the conditions and limitations provided by this subchapter, Chapter 843, Insurance Code, the Texas *Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code* [~~Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)~~], and rules of the Texas Department of Insurance.

Sec. *534.153* [~~534.103~~]. APPLICATION OF LAWS AND RULES. A health maintenance organization created and operating under this subchapter is governed as, and is subject to the same laws and rules of the Texas Department of Insurance as, any other health maintenance organization of the same type. The commissioner of insurance may adopt rules as necessary to accept funding sources other than the sources specified by Section 843.405, Insurance Code, from a nonprofit health maintenance organization created and operating under this subchapter, to meet the minimum surplus requirements of that section.

Sec. *534.154* [~~534.104~~]. *APPLICABILITY* [~~APPLICATION~~] OF SPECIFIC LAWS. (a) A nonprofit health maintenance organization created under Section *534.151* [~~534.101~~] is a health care provider that is a nonprofit health maintenance organization created and operated by a community center for purposes of Section 84.007(e), Civil Practice and Remedies Code. The nonprofit health maintenance organization is not a governmental unit or a unit of local government, for purposes of Chapters 101 and 102, Civil Practice and Remedies Code, respectively, or a local government for purposes of Chapter 791, Government Code.

(b) Nothing in this subchapter precludes one or more community centers from forming a nonprofit corporation under Chapter 162, Occupations Code, to provide services on a risk-sharing or capitated basis as permitted under Chapter 844, Insurance Code.

Sec. *534.155* [~~534.105~~]. CONSIDERATION OF BIDS. *Each appropriate* [~~The~~] department shall give equal consideration to bids submitted by any entity, whether it be public, for-profit, or nonprofit, if the department accepts bids to provide services through a capitated or at-risk payment arrangement and if the entities meet all other criteria as required by the department.

Sec. *534.156* [~~534.106~~]. CONDITIONS FOR CERTAIN CONTRACTS. A contract between *each appropriate* [~~the~~] department and a health maintenance organization formed by one or more community centers must provide that the health maintenance organization may not form a for-profit entity unless the organization transfers all of the organization's assets to the control of the boards of trustees of the community centers that formed the organization.

SECTION 3.1337. Chapter 551, Health and Safety Code, is amended to read as follows:

CHAPTER 551. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL POWERS AND DUTIES RELATING TO STATE FACILITIES

Sec. 551.001. DEFINITIONS. In this subtitle:

(1) *"Commission" means the Health and Human Services Commission.* [~~"Board" means the Texas Board of Mental Health and Mental Retardation.~~]

(2) "Commissioner" means:

(A) the commissioner of *state health services in relation to mental health services; and*

(B) the commissioner of aging and disability services in relation to intellectual disability services [~~mental health and mental retardation~~].

(3) "Department" means:

(A) the [~~Texas~~] Department of *State Health Services in relation to mental health services; and*

(B) the Department of Aging and Disability Services in relation to intellectual disability services [~~Mental Health and Mental Retardation~~].

(4) "Department facility" means:

(A) a facility [~~under the department's jurisdiction~~] for persons with mental illness *under the jurisdiction of the Department of State Health Services; and*

(B) a facility for persons with an intellectual disability under the jurisdiction of the Department of Aging and Disability Services [~~or mental retardation~~].

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Sec. 551.002. PROHIBITION OF INTEREST. *The* [~~A member of the board, the~~] superintendent *or director* of a department facility[~~,~~] or a person connected with *that* [~~a~~] department facility may not:

(1) sell or have a concern in the sale of merchandise, supplies, or other items to a department facility; or

(2) have an interest in a contract with a department facility.

Sec. 551.003. DEPOSIT OF PATIENT OR CLIENT FUNDS. (a) The superintendent *or director* of a department facility is the custodian of the personal funds that belong to a facility patient or client and that are on deposit with the institution.

(b) The superintendent *or director* may deposit or invest those funds in:

(1) a bank in this state;

(2) federal bonds or obligations; or

(3) bonds or obligations for which the faith and credit of the United States are pledged.

(c) The superintendent *or director* may combine the funds of facility patients or clients only to deposit or invest the funds.

(d) The *person performing the function of* [~~facility's~~] business manager *at that facility* shall maintain records of the amount of funds on deposit for each facility patient or client.

Sec. 551.004. BENEFIT FUND. (a) The superintendent *or director* may deposit the interest or increment accruing from funds deposited or invested under Section 551.003 into a fund to be known as the benefit fund. The superintendent *or director* is the trustee of the fund.

(b) The superintendent *or director* may spend money from the benefit fund for:

(1) educating or entertaining the patients or clients;

(2) barber or cosmetology services for the patients or clients; and

(3) the actual expense incurred in maintaining the fund.

Sec. 551.005. DISBURSEMENT OF PATIENT *OR CLIENT* FUNDS. Funds in the benefit fund or belonging to a facility patient or client may be disbursed only on the signatures of both the facility's superintendent *or director* and *the person performing the function of* business manager *at that facility*.

Sec. 551.006. FACILITY STANDARDS [~~BY DEPARTMENT OF HEALTH~~]. (a) The *executive commissioner* [~~Texas Department of Health~~] by rule shall prescribe standards for department facilities relating to building safety and the number and quality of staff. The staff standards must provide that adequate staff exist to ensure a continuous plan of adequate medical, psychiatric, nursing, and social work services for patients and clients of a department facility.

(b) *Each department* [~~The Texas Department of Health~~] shall approve [~~department~~] facilities *of that department* that meet applicable standards and, when requested, shall certify the approval to the *Centers for Medicare and Medicaid Services* [~~Texas Department of Human Services or the United States Health Care Financing Administration~~].

Sec. 551.007. BUILDING AND IMPROVEMENT PROGRAM. (a) The *executive commissioner, in coordination with the appropriate* department, shall design, construct, equip, furnish, and maintain buildings and improvements authorized by law at department facilities.

(b) The *executive commissioner* [~~department~~] may employ architects and engineers to prepare plans and specifications and to supervise construction of buildings and improvements. The *executive commissioner* [~~department~~] shall employ professional, technical, and clerical personnel to carry out the design and construction functions prescribed by this section, subject to the General Appropriations Act and other applicable law.

[~~(c) The board shall adopt rules in accordance with this section and other applicable law relating to awarding contracts for the construction of buildings and improvements. The department shall award contracts for the construction of buildings and improvements to the qualified bidder who makes the lowest and best bid.~~

[~~(d) The department may not award a construction contract for an amount that exceeds the amount of funds available for the project.~~

[~~(e) The department shall require each successful bidder to give a bond payable to the state in an amount equal to the amount of the bid and conditioned on the faithful performance of the contract.~~

[~~(f) The department may reject any or all bids.~~

[~~(g) The department may waive, suspend, or modify a provision of this section that might conflict with a federal statute, rule, regulation, or administrative procedure if the waiver, suspension, or modification is essential to the receipt of federal funds for a project. If a project is financed entirely from federal funds, a standard required by a federal statute, rule, or regulation controls.~~

[~~Sec. 551.008. TRANSFER OF FACILITIES. (a) The department may transfer the South Campus of the Vernon State Hospital to the Texas Youth Commission contingent upon the agreement of the governing board of the department and the executive commissioner of the Texas Youth Commission.~~

[~~(b) In this section, "transfer" means to convey title to, lease, or otherwise convey the beneficial use of facilities, equipment, and land appurtenant to the facilities.~~]

Sec. 551.009. HILL COUNTRY LOCAL MENTAL HEALTH AUTHORITY CRISIS STABILIZATION UNIT. (a) *In this section, "department" means the Department of State Health Services.*

(a–1) The *department* [~~Department of State Health Services~~] shall contract with the local mental health authority serving the Hill Country area, including Kerr County, to operate a crisis stabilization unit on the grounds of the Kerrville State Hospital as provided by this section. The unit must be a 16–bed facility separate from the buildings used by the Kerrville State Hospital.

(b) The department shall include provisions in the contract requiring the local mental health authority to ensure that the crisis stabilization unit provides short-term residential treatment, including medical and nursing services, designed to reduce a patient's acute symptoms of mental illness and prevent a patient's admission to an inpatient mental health facility.

(c) The local mental health authority shall contract with Kerrville State Hospital to provide food service, laundry service, and lawn care.

(d) The crisis stabilization unit may not be used to provide care to:

(1) children; or

(2) adults *committed to or court ordered to* [~~sentenced to~~] a *department* [~~state mental~~] facility as provided by Chapter 46C, Code of Criminal Procedure.

(e) The local mental health authority operating the crisis stabilization unit under contract shall use, for the purpose of operating the 16–bed unit, the money appropriated to the department for operating 16 beds in state hospitals that is allocated to the local mental health authority. The department shall ensure that the local mental health authority retains the remainder of the local authority's state hospital allocation that is not used for operating the 16–bed unit. The department may allocate additional funds appropriated to the department for state hospitals to the crisis stabilization unit.

(f) The department shall reduce the number of beds the department operates in the state hospital system by 16. The department, in collaboration with the local mental health authority, shall ensure that the 16 beds in the crisis stabilization unit are made available to other mental health authorities for use as designated by the department.

SUBCHAPTER B. PROVISIONS APPLICABLE TO FACILITY SUPERINTENDENT *OR DIRECTOR* [~~AND BUSINESS MANAGER~~]

Sec. 551.022. POWERS AND DUTIES OF SUPERINTENDENT. (a) The superintendent of a department facility *for persons with mental illness* is the administrative head of that facility.

(b) The superintendent has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the facility.

(c) The superintendent shall:

(1) oversee the admission and discharge of patients [~~and clients~~];

(2) keep a register of all patients [~~and clients~~] admitted to or discharged from the facility;

(3) supervise repairs and improvements to the facility;

(4) ensure that facility money is spent judiciously and economically;

(5) keep an accurate and detailed account of all money received and spent, stating the source of the money and to whom and the purpose for which the money is spent; and

(6) keep a full record of the facility's operations.

(d) In accordance with *department* [~~board~~] rules and departmental operating procedures, the superintendent may:

(1) establish policy to govern the facility that the superintendent considers will best promote the patients' [~~and clients'~~] interest and welfare;

(2) appoint subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and

(3) remove an officer, teacher, or employee for good cause.

(e) This section does not apply to a state supported living center or the director of a state supported living center.

Sec. 551.0225. POWERS AND DUTIES OF STATE SUPPORTED LIVING CENTER DIRECTOR. (a) The director of a state supported living center is the administrative head of the center.

(b) The director of a state supported living center has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the center.

(c) The director of a state supported living center shall:

(1) oversee the admission and discharge of residents and clients;

(2) keep a register of all residents and clients admitted to or discharged from the center;

(3) ensure that the civil rights of residents and clients of the center are protected;

(4) ensure the health, safety, and general welfare of residents and clients of the center;

(5) supervise repairs and improvements to the center;

(6) ensure that center money is spent judiciously and economically;

(7) keep an accurate and detailed account of all money received and spent, stating the source of the money and on whom and the purpose for which the money is spent;

(8) keep a full record of the center's operations;

(9) monitor the arrival and departure of individuals to and from the center as appropriate to ensure the safety of residents; and

(10) ensure that residents' family members and legally authorized representatives are notified of serious events that may indicate problems in the care or treatment of residents.

(d) In accordance with department rules and operating procedures, the director of a state supported living center may:

(1) establish policy to govern the center that the director considers will best promote the residents' interest and welfare;

(2) hire subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and

(3) dismiss a subordinate officer, teacher, or employee for good cause.

(e) The Department of Aging and Disability Services shall, with input from residents of a state supported living center, and the family members and legally authorized representatives of those residents, develop a policy that defines "serious event" for purposes of Subsection (c)(10).

Sec. 551.024. SUPERINTENDENT'S *OR DIRECTOR'S* DUTY TO ADMIT COMMISSIONER AND *EXECUTIVE COMMISSIONER* [~~BOARD MEMBERS~~]. (a) The superintendent *or director* shall admit into every part of the department facility the commissioner *of that department* and *the executive commissioner* [~~members of the board~~].

(b) The superintendent *or director* shall on request show any book, paper, or account relating to the department facility's business, management, discipline, or government to the commissioner *of that department* or *the executive commissioner* [~~board member~~].

(c) The superintendent *or director* shall give to the commissioner *of that department* or *the executive commissioner* [~~a board member~~] any requested copy, abstract, or report.

Sec. 551.025. DUTY TO REPORT MISSING PATIENT OR CLIENT. If a person receiving inpatient *intellectual disability* [~~mental retardation~~] services or court-ordered inpatient mental health services [~~in a department facility~~] leaves *a department* [~~the~~] facility without notifying the facility or without the facility's consent, the facility *director or* superintendent shall immediately report the person as a missing person to an appropriate law enforcement agency in the area in which the facility is located.

Sec. 551.026. *PERSON PERFORMING* BUSINESS MANAGER *FUNCTION*. (a) The *person performing the function of* business manager *of a department facility* is the chief disbursing officer of the department facility.

(b) The *person performing the function of* business manager *of a department facility* is directly responsible to the superintendent *or director*.

SUBCHAPTER C. POWERS AND DUTIES RELATING TO PATIENT *OR CLIENT* CARE

Sec. 551.041. MEDICAL AND DENTAL TREATMENT. (a) *Each* [~~The~~] department shall provide or perform recognized medical and dental treatment or services to a person admitted or committed to *that* [~~the~~] department's care. *Each* [~~The~~] department may perform this duty through an authorized agent.

(b) *Each* [~~The~~] department may contract for the support, maintenance, care, or medical or dental treatment or service with a municipal, county, or state hospital, a private physician, a licensed nursing *facility* [~~home~~] or hospital, or a hospital district. The authority to contract provided by this subsection is in addition to other contractual authority granted to the department. A contract entered into under this subsection may not assign a lien accruing to this state.

(c) If *a* [~~the~~] department requests consent to perform medical or dental treatment or services from a person or the guardian of the person whose consent is considered necessary and a reply is not obtained immediately, or if there is no guardian or responsible relative of the person to whom a request can be made, the superintendent *or director* of a department facility shall order:

(1) medical treatment or services for the person on the advice and consent of three physicians licensed by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~], at least one of whom is primarily engaged in the private practice of medicine; or

(2) dental treatment or services for the person on the advice and consent of a dentist licensed by the State Board of Dental Examiners and of two physicians licensed by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~], at least one of whom is primarily engaged in the private practice of medicine.

(d) This section does not authorize the performance of an operation involving sexual sterilization or a frontal lobotomy.

Sec. 551.042. OUTPATIENT CLINICS. (a) If funds are available, the *Department of State Health Services* [~~department~~] may establish in locations the department considers necessary outpatient clinics to treat persons with mental illness.

(b) As necessary to establish and operate the clinics*:*

(1) [~~;~~] the department may:

(A) [~~(1)~~] acquire facilities;

(B) [~~(2)~~] hire personnel;

[~~(3) adopt rules;~~] and

(C) [~~(4)~~] contract with persons, corporations, and local, state, and federal agencies*; and*

(2) the executive commissioner may adopt rules.

[~~Sec. 551.043. MENTAL HYGIENE CLINIC SERVICE. (a) The department may establish a mental hygiene clinic service through its agents and facilities.~~

[~~(b) The clinic service shall cooperate with the Texas Education Agency and local boards of education in studying the mental and physical health of children:~~

[~~(1) with serious retardation in school progress or in mental development; or~~

[~~(2) who have personality development problems.~~]

Sec. 551.044. OCCUPATIONAL THERAPY PROGRAMS. (a) *Each* [~~The~~] department may provide equipment, materials, and merchandise for occupational therapy programs at department facilities.

(b) The superintendent *or director* of a department facility may, in accordance with *rules of that* department [~~rules~~], contract for the provision of equipment, materials, and merchandise for occupational therapy programs. If the contractor retains the finished or semi-finished product, the contract shall provide for a fair and reasonable rental payment to the *applicable* department by the contractor for the use of facility premises or equipment. The rental payment is determined by the amount of time the facility premises or equipment is used in making the products.

(c) The finished products made in an occupational therapy program may be sold and the proceeds placed in the patients' *or clients'* benefit fund, the patients' *or clients'* trust fund, or a revolving fund for use by the patients *or clients*. A patient *or client* may keep the finished product if the patient *or client* purchases the material for the product from the state.

(d) *Each* [~~The~~] department may accept donations of money or materials for use in occupational therapy programs and may use a donation in the manner requested by the donor if not contrary to *the* [~~board~~] policy *of that department*.

SECTION 3.1338. Sections 552.016(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~department~~] may use the projected cost of providing inpatient services to establish *by rule* the maximum fee that may be charged to a payer.

(c) The *executive commissioner by rule* [~~department~~] may establish the maximum fee according to one or a combination of the following:

(1) a statewide per capita;

(2) an individual facility per capita; or

(3) the type of service provided.

(d) Notwithstanding Subsection (b), the *executive commissioner by rule* [~~department~~] may establish a fee in excess of the department's projected cost of providing inpatient services that may be charged to a payer:

(1) who is not an individual; and

(2) whose method of determining the rate of reimbursement to a provider results in the excess.

SECTION 3.1339. Sections 552.017(a), (b), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule shall establish a sliding fee schedule for the payment by the patient's parents of the state's total costs for the support, maintenance, and treatment of a patient younger than 18 years of age.

(b) The *executive commissioner* [~~department~~] shall set the fee according to the parents' net taxable income and ability to pay.

(d) In determining the portion of the costs of the patient's support, maintenance, and treatment that the parents are required to pay, the department, *in accordance with rules adopted by the executive commissioner,* shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

(e) The *executive commissioner* [~~department~~] shall evaluate and, if necessary, revise the fee schedule at least once every five years.

SECTION 3.1340. Section 552.018(e), Health and Safety Code, is amended to read as follows:

(e) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:

(1) a guardianship established under the *former* Texas Probate Code *or under the Estates Code*;

(2) a trust established under Chapter 142, Property Code;

(3) a facility custodial account established under Section 551.003;

(4) the provisions of a divorce decree or other court order relating to child support obligations;

(5) an administration of a decedent's estate; or

(6) an arrangement in which funds are held in the registry or by the clerk of a court.

SECTION 3.1341. Sections 552.019(a), (b), (c), and (g), Health and Safety Code, are amended to read as follows:

(a) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court of competent jurisdiction[~~:~~

[~~(1)~~] to require the person responsible for a patient to appear in court and show cause why the state should not have judgment against the person for the costs of the patient's support, maintenance, and treatment[~~; or~~

[~~(2) if the liability arises under Subchapter D, Chapter 593, to require a person responsible for a resident to appear in court and show cause why the state should not have judgment against the person for the resident's support and maintenance in a residential care facility operated by the department~~]].

(b) On a sufficient showing, the court may enter judgment against[~~:~~

[~~(1)~~] the person responsible for the patient for the costs of the patient's support, maintenance, and treatment[~~; or~~

[~~(2) the person responsible for the resident for the costs of the resident's support and maintenance~~]].

(c) Sufficient evidence to authorize the court to enter judgment is[~~:~~

[~~(1)~~] a verified account, sworn to by the superintendent [~~or director~~] of the hospital in which the patient is being treated, or has been treated, as to the amount due[~~; or~~

[~~(2) a verified account, sworn to by the superintendent or director of the residential care facility in which the person with mental retardation resided or has resided, as to the amount due~~]].

(g) In this section, *"person* [~~:~~

[~~(1) "Person~~] responsible for a patient" means the guardian of a patient, a person liable for the support of the patient, or both.

[~~(2) "Person responsible for a resident" means the resident, a person liable for the support of the resident, or both.~~

[~~(3) "Resident" means a person admitted to a residential care facility operated by the department for persons with mental retardation.~~]

SECTION 3.1342. The heading to Chapter 553, Health and Safety Code, is amended to read as follows:

CHAPTER 553. *SAN ANTONIO* STATE *SUPPORTED LIVING CENTER* [~~SCHOOLS~~]

SECTION 3.1343. Section 553.001, Health and Safety Code, is transferred to Subchapter A, Chapter 593, Health and Safety Code, redesignated as Section 593.014, Health and Safety Code, and amended to read as follows:

Sec. *593.014* [~~553.001~~]. EPILEPSY. A person may not be denied admission to a *residential care facility* [~~state institution or school~~] because the person suffers from epilepsy.

SECTION 3.1344. Section 553.022, Health and Safety Code, is amended to read as follows:

Sec. 553.022. SAN ANTONIO STATE *SUPPORTED LIVING CENTER* [~~SCHOOL~~]. (a) The San Antonio State *Supported Living Center* [~~School~~] is for the education, care, and treatment of persons with *an intellectual disability* [~~mental retardation~~].

(b) The [~~Texas~~] Department of *Aging and Disability Services* [~~Mental Health and Mental Retardation~~] may enter into agreements with the [~~Texas~~] Department of *State* Health *Services* for use of the excess facilities of *a public health hospital as defined by Section 13.033* [~~the Texas Center for Infectious Disease~~] in the operation of the *state supported living center* [~~school~~].

SECTION 3.1345. Chapter 554, Health and Safety Code, is amended by adding Section 554.0001 to read as follows:

Sec. 554.0001. DEFINITION. In this chapter, "department" means the Department of State Health Services.

SECTION 3.1346. Section 555.001, Health and Safety Code, is amended by amending Subdivisions (1), (2), (3), (4), (6), and (15) and adding Subdivision (10–a) to read as follows:

(1) "Alleged offender resident" means a person with *an intellectual disability* [~~mental retardation~~] who:

(A) was committed to or transferred to a state supported living center under Chapter 46B or 46C, Code of Criminal Procedure, as a result of being charged with or convicted of a criminal offense; or

(B) is a child committed to or transferred to a state supported living center under Chapter 55, Family Code, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(2) "Center" means the state supported living centers and the *ICF–IID* [~~ICF–MR~~] component of the Rio Grande State Center.

(3) "Center employee" means an employee of a state supported living center or the *ICF–IID* [~~ICF–MR~~] component of the Rio Grande State Center.

(4) "Client" means a person with *an intellectual disability* [~~mental retardation~~] who receives *ICF–IID* [~~ICF–MR~~] services from a state supported living center or the *ICF–IID* [~~ICF–MR~~] component of the Rio Grande State Center.

(6) "Complaint" means information received by the office of independent ombudsman regarding a possible violation of a right of a resident or client and includes information received regarding a failure by a state supported living center or the *ICF–IID* [~~ICF–MR~~] component of the Rio Grande State Center to comply with the department's policies and procedures relating to the community living options information process.

(10–a) "ICF–IID" has the meaning assigned by Section 531.002.

(15) "Resident" means a person with *an intellectual disability* [~~mental retardation~~] who resides in a state supported living center or the *ICF–IID* [~~ICF–MR~~] component of the Rio Grande State Center.

SECTION 3.1347. Sections 555.002(d) and (e), Health and Safety Code, are amended to read as follows:

(d) The department shall ensure that the forensic state supported living center:

(1) complies with the requirements for *ICF-IID* [~~ICF-MR~~] certification under the Medicaid program, as appropriate; and

(2) has additional center employees, including direct care employees, to protect the safety of center employees, residents, and the community.

(e) The department shall collect data regarding the commitment of alleged offender residents to state supported living centers, including any offense with which an alleged offender resident is charged, the location of the committing court, whether the alleged offender resident has previously been in the custody of the Texas *Juvenile Justice Department* [~~Youth Commission~~] or the Department of Family and Protective Services, and whether the alleged offender resident receives mental health services or previously received any services under a Section 1915(c) waiver program. The department shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the legislature with primary subject matter jurisdiction over state supported living centers a report of the information collected under this section. The report may not contain personally identifiable information for any person in the report.

SECTION 3.1348. Sections 555.024(a), (b), and (e), Health and Safety Code, are amended to read as follows:

(a) Before a center employee begins to perform the employee's duties without direct supervision, the department shall provide the employee with competency training and a course of instruction about the general duties of a center employee. The department shall ensure the basic center employee competency course focuses on:

(1) the uniqueness of the individuals the center employee serves;

(2) techniques for improving quality of life for and promoting the health and safety of individuals with *an intellectual disability* [~~mental retardation~~]; and

(3) the conduct expected of center employees.

(b) The department shall ensure the training required by Subsection (a) provides instruction and information regarding the following topics:

(1) the general operation and layout of the center at which the person is employed, including armed intruder lockdown procedures;

(2) an introduction to *intellectual disabilities* [~~mental retardation~~];

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals with *an intellectual disability* [~~mental retardation~~] who receive services from the department;

(6) respecting personal choices made by residents and clients;

(7) the safe and proper use of restraints;

(8) recognizing and reporting:

(A) evidence of abuse, neglect, and exploitation of individuals with *an intellectual disability* [~~mental retardation~~];

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in the workplace;

(D) workplace violence; or

(E) sexual harassment in the workplace;

(9) preventing and treating infection;

(10) first aid;

(11) cardiopulmonary resuscitation;

(12) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(13) the rights of center employees.

(e) A center may allow an employee of an *ICF–IID* [~~intermediate care facility for persons with mental retardation~~] licensed by the department, an employee of a person licensed or certified to provide Section 1915(c) waiver program services, or another employee or professional involved in the provision of services to persons with *an intellectual disability* [~~mental retardation~~] to receive information and training under this section, as appropriate. The center may charge an administrative fee in an amount not to exceed the cost of providing the information or training.

SECTION 3.1349. Section 555.025(d), Health and Safety Code, is amended to read as follows:

(d) The department shall ensure that the use of video surveillance equipment under this section complies with federal requirements for *ICF–IID* [~~ICF–MR~~] certification.

SECTION 3.1350. Section 555.051, Health and Safety Code, is amended to read as follows:

Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of independent ombudsman is established for the purpose of investigating, evaluating, and securing the rights of residents and clients of state supported living centers and the *ICF–IID* [~~ICF–MR~~] component of the Rio Grande State Center. The office is administratively attached to the department. The department shall provide administrative support and resources to the office as necessary for the office to perform its duties.

SECTION 3.1351. Section 555.053(b), Health and Safety Code, is amended to read as follows:

(b) The governor may appoint as independent ombudsman only an individual with at least five years of experience managing and ensuring the quality of care and services provided to individuals with *an intellectual disability* [~~mental retardation~~].

SECTION 3.1352. Section 555.054(b), Health and Safety Code, is amended to read as follows:

(b) The independent ombudsman may hire as assistant ombudsmen only individuals with at least five years of experience ensuring the quality of care and services provided to individuals with *an intellectual disability* [~~mental retardation~~].

SECTION 3.1353. Section 555.057(b), Health and Safety Code, is amended to read as follows:

(b) The records of the independent ombudsman are confidential, except that the independent ombudsman shall:

(1) share with the Department of Family and Protective Services a communication that may involve the abuse, neglect, or exploitation of a resident or client;

(2) share with the inspector general a communication that may involve an alleged criminal offense;

(3) share with the regulatory services division of the department a communication that may involve a violation of an *ICF–IID* [~~ICF–MR~~] standard or condition of participation; and

(4) disclose the ombudsman's nonprivileged records if required by a court order on a showing of good cause.

SECTION 3.1354. Section 555.059(a), Health and Safety Code, is amended to read as follows:

(a) The independent ombudsman shall:

(1) evaluate the process by which a center investigates, reviews, and reports an injury to a resident or client or an unusual incident;

(2) evaluate the delivery of services to residents and clients to ensure that the rights of residents and clients are fully observed, including ensuring that each center conducts sufficient unannounced patrols;

(3) immediately refer a complaint alleging the abuse, neglect, or exploitation of a resident or client to the Department of Family and Protective Services;

(4) refer a complaint alleging employee misconduct that does not involve abuse, neglect, or exploitation or a possible violation of an *ICF-IID* ~~[ICF-MR]~~ standard or condition of participation to the regulatory services division of the department;

(5) refer a complaint alleging a criminal offense, other than an allegation of abuse, neglect, or exploitation of a resident or client, to the inspector general;

(6) conduct investigations of complaints, other than complaints alleging criminal offenses or the abuse, neglect, or exploitation of a resident or client, if the office determines that:

(A) a resident or client or the resident's or client's family may be in need of assistance from the office; or

(B) a complaint raises the possibility of a systemic issue in the center's provision of services;

(7) conduct biennial on-site audits at each center of:

(A) the ratio of direct care employees to residents;

(B) the provision and adequacy of training to:

(i) center employees; and

(ii) direct care employees; and

(C) if the center serves alleged offender residents, the provision of specialized training to direct care employees;

(8) conduct an annual audit of each center's policies, practices, and procedures to ensure that each resident and client is encouraged to exercise the resident's or client's rights, including:

(A) the right to file a complaint; and

(B) the right to due process;

(9) prepare and deliver an annual report regarding the findings of each audit to the:

(A) executive commissioner;

(B) commissioner;

(C) Aging and Disability Services Council;

(D) governor;

(E) lieutenant governor;

(F) speaker of the house of representatives;

(G) standing committees of the senate and house of representatives with primary jurisdiction over state supported living centers; and

(H) state auditor;

(10) require a center to provide access to all records, data, and other information under the control of the center that the independent ombudsman determines is necessary to investigate a complaint or to conduct an audit under this section;

(11) review all final reports produced by the Department of Family and Protective Services, the regulatory services division of the department, and the inspector general regarding a complaint referred by the independent ombudsman;

(12) provide assistance to a resident, client, authorized representative of a resident or client, or family member of a resident or client who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the resident or client;

(13) make appropriate referrals under any of the duties and powers listed in this subsection; and

(14) monitor and evaluate the department's actions relating to any problem identified or recommendation included in a report received from the Department of Family and Protective Services relating to an investigation of alleged abuse, neglect, or exploitation of a resident or client.

SECTION 3.1355. Section 571.003, Health and Safety Code, is amended by amending Subdivisions (2), (5), (7), (9), (11), (14), and (18) and adding Subdivision (5–a) to read as follows:

(2) "Commissioner" means the commissioner of *state health services* [~~mental health and mental retardation~~].

(5) "Department" means the [~~Texas~~] Department of *State Health Services* [~~Mental Health and Mental Retardation~~].

(5–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(7) "General hospital" means a hospital operated primarily to diagnose, care for, and treat [~~physically ill~~] persons *who are physically ill*.

(9) "Inpatient mental health facility" means a mental health facility that can provide 24–hour residential and psychiatric services and that is:

(A) a facility operated by the department;

(B) a private mental hospital licensed by the *department* [~~Texas Department of Health~~];

(C) a community center, facility operated by or under contract with a community center or other entity the department designates to provide mental health services;

(D) a local mental health authority or a facility operated by or under contract with a local mental health authority;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the *department* [~~Texas Department of Health~~]; or

(F) a hospital operated by a federal agency.

(11) "Local mental health authority" means an entity to which the *executive commissioner* [~~board~~] delegates *the executive commissioner's* [~~its~~] authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in the most appropriate and available setting to meet individual needs in one or more local service areas.

(14) "Mental illness" means an illness, disease, or condition, other than epilepsy, *dementia, substance abuse* [~~senility, alcoholism~~], or *intellectual disability* [~~mental deficiency~~], that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as demonstrated by recent disturbed behavior.

(18) "Physician" means:

(A) a person licensed to practice medicine in this state;

(B) a person employed by a federal agency who has a license to practice medicine in any state; or

(C) a person authorized to perform medical acts under *a physician-in-training* [~~an institutional~~] permit at a Texas postgraduate training program approved by the Accreditation Council *for* [~~on~~] Graduate Medical Education, the American Osteopathic Association, or the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~].

SECTION 3.1356. Section 571.006, Health and Safety Code, is amended to read as follows:

Sec. 571.006. *EXECUTIVE COMMISSIONER AND* DEPARTMENT POWERS. *(a) The executive commissioner may adopt rules as necessary for the proper and efficient treatment of persons with mental illness.*

(b) The department may:

(1) [~~adopt rules as necessary for the proper and efficient treatment of persons with mental illness;~~

[~~(2)~~] prescribe the form and content of applications, certificates, records, and reports provided for under this subtitle;

(2) [~~(3)~~] require reports from a facility administrator relating to the admission, examination, diagnosis, release, or discharge of any patient;

(3) [~~(4)~~] regularly visit each mental health facility to review the commitment procedure for each new patient admitted after the last visit; and

(4) [~~(5)~~] visit a mental health facility to investigate a complaint made by a patient or by a person on behalf of a patient.

SECTION 3.1357. Section 571.0065, Health and Safety Code, is amended to read as follows:

Sec. 571.0065. TREATMENT METHODS. (a) The *executive commissioner* [~~board~~] by rule may adopt procedures for an advisory committee to review treatment methods for persons with mental illness.

(b) A state agency that has knowledge of or receives a complaint relating to an abusive treatment method shall report that knowledge or forward a copy of the complaint to the *department* [~~board~~].

(c) A mental health facility, physician, or other mental health professional is not liable for an injury or other damages sustained by a person as a result of the failure of the facility, physician, or professional to administer or perform a treatment prohibited by statute or rules adopted by the *executive commissioner* [~~board~~].

SECTION 3.1358. Section 571.0066(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall require a mental health facility that admits a patient under this subtitle to provide to the patient in the patient's primary language, if possible, information relating to prescription medications ordered by the patient's treating physician.

SECTION 3.1359. Section 571.009, Health and Safety Code, is amended to read as follows:

Sec. 571.009. EFFECT OF CERTAIN CONDITIONS ON ADMISSION OR COMMITMENT. A person with mental illness may not be denied admission or commitment to a mental health facility because the person also suffers from epilepsy, *dementia, substance abuse* [~~senility, alcoholism~~], or *intellectual disability* [~~mental deficiency~~].

SECTION 3.1360. Section 571.0167(c), Health and Safety Code, is amended to read as follows:

(c) In a habeas corpus proceeding in which a *department* [~~state~~] inpatient mental health facility or a physician employed by a *department* [~~state~~] inpatient mental health facility is a party as a result of enforcing a commitment order, the appropriate attorney prescribed by Section 571.016 shall represent the facility or physician, or both the facility and physician if both are parties, unless the attorney determines that representation violates the Texas Disciplinary Rules of Professional Conduct.

SECTION 3.1361. Sections 571.025(a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~board~~] may impose an administrative penalty against a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

(d) If the *department* [~~commissioner~~] determines that a violation has occurred, the

department [~~commissioner~~] may issue [~~to the board~~] a report that states the facts on which the determination is based and the *department's* [~~commissioner's~~] recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the *department* [~~commissioner~~] shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the *department* [~~commissioner~~] or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the *department* [~~commissioner~~], the *department* [~~board~~] by order shall [~~approve the determination and~~] impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the *department* [~~commissioner~~] shall set a hearing and give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~board~~] a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the *department* [~~board~~] by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the *department's* [~~board's~~] order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the *department's* [~~board's~~] order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30–day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the *department's* [~~board's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner~~] by certified mail.

(l) The *department* [~~commissioner~~] on receipt of a copy of an affidavit under Subsec-

tion (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the *department* [~~commissioner~~] may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the *department* [~~board~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.1362. Sections 571.027(a) through (e), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall appoint an advisory committee on inpatient mental health services to advise the *executive commissioner* [~~board~~] on:

(1) issues and policies related to the provision of mental health services in a facility described by Section 571.003(9)(B) or (E); *and*

(2) [~~coordination and communication between the department, the Texas Department of Health, and facilities described by Section 571.003(9)(B) or (E) to address consistency between the agencies in interpretation and enforcement of agency policies and other rules; and~~

[~~(3)~~] training for inpatient mental health facility surveyors or investigators.

(b) The *executive commissioner* [~~board~~] shall appoint to the committee:

(1) three representatives of hospitals, at least two of whom represent a facility described by Section 571.003(9)(B) or (E);

(2) three consumers of mental health services, each of whom has received treatment in a facility described by Section 571.003(9)(B) or (E);

(3) two physicians licensed under Subtitle B, Title 3, Occupations Code, who practice psychiatry and are board certified in psychiatry, at least one of whom is board certified in child and adolescent psychiatry; and

(4) one family member of a person who has been a consumer of mental health services provided by a facility described by Section 571.003(9)(B) or (E).

(c) The *executive commissioner* [~~Texas Board of Health~~] shall provide the advisory committee with two persons to represent the *department* [~~Texas Department of Health~~]. The representatives may address the advisory committee on any issue relevant to a matter before the advisory committee, but the representatives may not vote on any matter. The *executive commissioner* [~~Texas Board of Health~~] shall consider designating an inpatient mental health facility surveyor or investigator to be a representative under this subsection.

(d) Except for persons who represent the *department* [~~Texas Department of Health~~] designated under Subsection (c), members of the advisory committee serve staggered four-year terms. A member's term expires on August 31 of the fourth year following the member's appointment.

(e) The *executive commissioner* [~~board~~] shall fill vacancies on the *advisory committee* [~~board~~] in the same manner as the original appointment.

SECTION 3.1363. Section 572.0022(a), Health and Safety Code, is amended to read as follows:

(a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with *department* [~~board~~] rules information relating to prescription medication ordered by the patient's treating physician.

SECTION 3.1364. Sections 572.0025(a), (c), and (e), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt rules governing the voluntary admission of a patient to an inpatient mental health facility, including rules governing the intake and assessment procedures of the admission process.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by *department* [~~board~~] rules.

(e) In accordance with *department* [~~board~~] rule, a facility shall provide annually a minimum of eight hours of inservice training regarding intake and assessment for persons who will be conducting an intake or assessment for the facility. A person may not conduct intake or assessments without having completed the initial and applicable annual inservice training.

SECTION 3.1365. Section 572.003(e), Health and Safety Code, is amended to read as follows:

(e) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under Section 572.002(3)(B) has the right to be evaluated by a physician at regular intervals to determine the person's need for continued inpatient treatment. The *executive commissioner* [~~department~~] by rule shall establish the intervals at which a physician shall evaluate a person under this subsection.

SECTION 3.1366. Section 573.001(a), Health and Safety Code, is amended to read as follows:

(a) A peace officer, without a warrant, may take a person into custody if the officer:

(1) has reason to believe and does believe that:

(A) the person is *a person with mental illness* [~~mentally ill~~]; and

(B) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and

(2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.

SECTION 3.1367. Section 573.003(a), Health and Safety Code, is amended to read as follows:

(a) A guardian of the person of a ward who is 18 years of age or older, without the assistance of a peace officer, may transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Section 573.021 if the guardian has reason to believe and does believe that:

(1) the ward is *a person with mental illness* [~~mentally ill~~]; and

(2) because of that mental illness there is a substantial risk of serious harm to the ward or to others unless the ward is immediately restrained.

SECTION 3.1368. Section 573.022(a), Health and Safety Code, is amended to read as follows:

(a) A person may be admitted to a facility for emergency detention only if the physician who conducted the preliminary examination of the person makes a written statement that:

(1) is acceptable to the facility;

(2) states that after a preliminary examination it is the physician's opinion that:

(A) the person is *a person with mental illness* [~~mentally ill~~];

(B) the person evidences a substantial risk of serious harm to *the person* [~~himself~~] or *to* others;

(C) the described risk of harm is imminent unless the person is immediately restrained; and

(D) emergency detention is the least restrictive means by which the necessary restraint may be accomplished; and

(3) includes:

(A) a description of the nature of the person's mental illness;

(B) a specific description of the risk of harm the person evidences that may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty; and

(C) the specific detailed information from which the physician formed the opinion in Subdivision (2).

SECTION 3.1369. Section 573.023(b), Health and Safety Code, is amended to read as follows:

(b) A person admitted to a facility under Section 573.022 shall be released if the facility administrator determines at any time during the emergency detention period that one of the criteria prescribed by Section *573.022(a)(2)* [~~573.022(2)~~] no longer applies.

SECTION 3.1370. Section 573.025(c), Health and Safety Code, is amended to read as follows:

(c) The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall prescribe the manner in which the person is informed of the person's rights under this section and this subtitle.

SECTION 3.1371. Section 574.001(f), Health and Safety Code, is amended to read as follows:

(f) An application in which the proposed patient is a child in the custody of the Texas *Juvenile Justice Department* [~~Youth Commission~~] may be filed in the county in which the child's commitment to the *Texas Juvenile Justice Department* [~~commission~~] was ordered.

SECTION 3.1372. Section 574.002(c), Health and Safety Code, is amended to read as follows:

(c) Any application must contain the following information according to the applicant's information and belief:

(1) the proposed patient's name and address;

(2) the proposed patient's county of residence in this state;

(3) a statement that the proposed patient is *a person with mental illness* [~~mentally ill~~] and meets the criteria in Section 574.034 or 574.035 for court-ordered mental health services; and

(4) whether the proposed patient is charged with a criminal offense.

SECTION 3.1373. Section 574.011(a), Health and Safety Code, is amended to read as follows:

(a) A certificate of medical examination for mental illness must be sworn to, dated, and signed by the examining physician. The certificate must include:

(1) the name and address of the examining physician;

(2) the name and address of the person examined;

(3) the date and place of the examination;

(4) a brief diagnosis of the examined person's physical and mental condition;

(5) the period, if any, during which the examined person has been under the care of the examining physician;

(6) an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and

(7) the examining physician's opinion that:

(A) the examined person is *a person with mental illness* [~~mentally ill~~]; and

(B) as a result of that illness the examined person is likely to cause serious harm to *the person* [~~himself~~] or to others or is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of *the proposed patient's* [~~his~~] ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) not able to make a rational and informed decision as to whether to submit to treatment.

SECTION 3.1374. Section 574.022(a), Health and Safety Code, is amended to read as follows:

(a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that a physician has stated *the physician's* [~~his~~] opinion and the detailed reasons for *the physician's* [~~his~~] opinion that the proposed patient is *a person with mental illness* [~~mentally ill~~]; and

(2) the proposed patient presents a substantial risk of serious harm to *the proposed patient* [~~himself~~] or others if not immediately restrained pending the hearing.

SECTION 3.1375. Section 574.025(a), Health and Safety Code, is amended to read as follows:

(a) A hearing must be held to determine if:

(1) there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to *the proposed patient* [~~himself~~] or others to the extent that *the proposed patient* [~~he~~] cannot be at liberty pending the hearing on court-ordered mental health services; and

(2) a physician has stated *the physician's* [~~his~~] opinion and the detailed reasons for *the physician's* [~~his~~] opinion that the proposed patient is *a person with mental illness* [~~mentally ill~~].

SECTION 3.1376. Section 574.026(d), Health and Safety Code, is amended to read as follows:

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, *20*____ [~~19~~____], the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that *the proposed patient* [~~(s)~~he] presents a substantial risk of serious harm to self or others.

The proposed patient and *the proposed patient's* [~~his~~]
attorney _____ have been given written notice that the
(attorney)

proposed patient was placed under an order of protective custody
and the reasons for such order on _____.
(date of notice)

I have examined the certificate of medical examination for mental
illness and _____. Based on
(other evidence considered)

this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to *the proposed patient* [~~himself~~] (yes _____ or no _____) or others (yes _____ or no _____) such that *the proposed patient* [~~(s)~~he] cannot be at liberty pending final hearing because

_____

_____

(reasons for finding; type of risk found)

SECTION 3.1377. Section 574.032(f), Health and Safety Code, is amended to read as follows:

(f) In a hearing before a jury, the jury shall determine if the proposed patient is *a person with mental illness* [~~mentally ill~~] and meets the criteria for court-ordered mental health services. The jury may not make a finding about the type of services to be provided to the proposed patient.

SECTION 3.1378. Section 574.033(a), Health and Safety Code, is amended to read as follows:

(a) The court shall enter an order denying an application for court-ordered temporary or extended mental health services if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is *a person with mental illness* [~~mentally ill~~] and meets the applicable criteria for court-ordered mental health services.

SECTION 3.1379. Sections 574.034(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The judge may order a proposed patient to receive court-ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, that:

(1) the proposed patient is *a person with mental illness* [~~mentally ill~~]; and

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to *the proposed patient* [~~himself~~];

(B) is likely to cause serious harm to others; or

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment.

(b) The judge may order a proposed patient to receive court-ordered temporary outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the *proposed* patient; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) the proposed patient is *a person with mental illness* [~~mentally ill~~];

(B) the nature of the mental illness is severe and persistent;

(C) as a result of the mental illness, the proposed patient will, if not treated, continue to:

(i) suffer severe and abnormal mental, emotional, or physical distress; and

(ii) experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services; and

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period which immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that make impossible a rational and informed decision whether to submit to voluntary outpatient treatment.

SECTION 3.1380. Sections 574.035(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The judge may order a proposed patient to receive court-ordered extended inpatient mental health services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, that:

(1) the proposed patient is *a person with mental illness* [~~mentally ill~~];

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to *the proposed patient* [~~himself~~];

(B) is likely to cause serious harm to others; or

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment;

(3) the proposed patient's condition is expected to continue for more than 90 days; and

(4) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

(b) The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the *proposed* patient; and

(2) the jury, or the judge if the right to a jury is waived, finds from clear and convincing evidence that:

(A) the proposed patient is *a person with mental illness* [~~mentally ill~~];

(B) the nature of the mental illness is severe and persistent;

(C) as a result of the mental illness, the proposed patient will, if not treated, continue to:

(i) suffer severe and abnormal mental, emotional, or physical distress; and

(ii) experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period which immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that make impossible a rational and informed decision whether to submit to voluntary outpatient treatment;

(E) the proposed patient's condition is expected to continue for more than 90 days; and

(F) the proposed patient has received:

(i) court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(ii) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

SECTION 3.1381. Section 574.036(a), Health and Safety Code, is amended to read as follows:

(a) The judge shall dismiss the jury, if any, after a hearing in which a person is found to be *a person with mental illness* [~~mentally ill~~] and to meet the criteria for court-ordered temporary or extended mental health services.

SECTION 3.1382. Section 574.0415(a), Health and Safety Code, is amended to read as follows:

(a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with *department* [~~board~~] rules information relating to prescription medication ordered by the patient's treating physician.

SECTION 3.1383. Section 574.0455(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~Department of State Health Services~~] shall prescribe uniform standards:

(1) that a person must meet to be listed as a qualified transportation service provider under Subsection (a); and

(2) prescribing requirements relating to how the transportation of a person to a mental health facility by a qualified transportation service provider is provided.

SECTION 3.1384. Section 574.103(a), Health and Safety Code, is amended to read as follows:

(a) In this section, "ward" has the meaning assigned by Section *1002.030, Estates* [~~601, Texas Probate~~] Code.

SECTION 3.1385. Section 575.003, Health and Safety Code, is amended to read as follows:

Sec. 575.003. ADMISSION OF *PERSONS WITH CHEMICAL DEPENDENCY* [~~ALCOHOLICS~~] AND PERSONS CHARGED WITH CRIMINAL OFFENSE. This subtitle does not affect the admission to a state mental health facility of:

(1) *a person with a chemical dependency* [~~an alcoholic~~] admitted under Chapter 462; or

(2) a person charged with a criminal offense admitted under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

SECTION 3.1386. Section 575.012, Health and Safety Code, is amended to read as follows:

Sec. 575.012. TRANSFER OF PERSON WITH *AN INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~] TO AN INPATIENT MENTAL HEALTH FACILITY OPERATED BY THE DEPARTMENT. (a) An inpatient mental health facility may not transfer a patient who is also a person with *an intellectual disability* [~~mental retardation~~] to a department mental health facility unless, before initiating the transfer, the facility administrator of the inpatient mental health facility obtains from the commissioner a determination that space is available in a department facility unit that is specifically designed to serve such a person.

(b) The department shall maintain an appropriate number of hospital-level beds for

persons with *an intellectual disability* [~~mental retardation~~] who are committed for court-ordered mental health services to meet the needs of the local mental health authorities. The number of beds the department maintains must be determined according to the previous year's need.

SECTION 3.1387. The heading to Section 575.013, Health and Safety Code, is amended to read as follows:

Sec. 575.013. TRANSFER OF PERSON WITH *AN INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~] TO STATE *SUPPORTED LIVING CENTER* [~~SCHOOL~~].

SECTION 3.1388. Sections 575.013(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The facility administrator of an inpatient mental health facility operated by the department may transfer an involuntary patient in the facility to a state *supported living center* [~~school~~] for persons with *an intellectual disability* [~~mental retardation~~] if:

(1) an examination of the patient indicates that the patient has symptoms of *an intellectual disability* [~~mental retardation~~] to the extent that training, education, rehabilitation, care, treatment, and supervision in a state *supported living center* [~~school~~] are in the patient's best interest;

(2) the director of the state supported living center to which the patient is to be transferred agrees to the transfer; and

(3) the facility administrator coordinates the transfer with the director of that state supported living center.

(b) A certificate containing the diagnosis and the facility administrator's recommendation of transfer to a specific state *supported living center* [~~school~~] shall be furnished to the committing court.

SECTION 3.1389. Section 575.017, Health and Safety Code, is amended to read as follows:

Sec. 575.017. TRANSFER OF RECORDS. The facility administrator of the transferring inpatient mental health facility shall send the patient's appropriate hospital records, or a copy of the records, to the hospital or facility administrator of the mental hospital or state *supported living center* [~~school~~] to which the patient is transferred.

SECTION 3.1390. Section 577.001(b), Health and Safety Code, is amended to read as follows:

(b) A community center or other entity designated by the *department* [~~Texas Department of Mental Health and Mental Retardation~~] to provide mental health services may not operate a mental health facility that provides court-ordered mental health services without a license issued by the department under this chapter.

SECTION 3.1391. Section 577.002, Health and Safety Code, is amended to read as follows:

Sec. 577.002. EXEMPTIONS FROM LICENSING REQUIREMENT. A mental health facility operated by the *department* [~~Texas Department of Mental Health and Mental Retardation~~] or a federal agency need not be licensed under this chapter.

SECTION 3.1392. Section 577.003, Health and Safety Code, is amended to read as follows:

Sec. 577.003. ADDITIONAL LICENSE NOT REQUIRED. A mental hospital licensed under this chapter that the *department* [~~Texas Department of Mental Health and Mental Retardation~~] designates to provide mental health services is not required to obtain an additional license to provide court-ordered mental health services.

SECTION 3.1393. Sections 577.006(a), (b), (c), (e), (g), and (i), Health and Safety Code, are amended to read as follows:

(a) The department shall charge each hospital *every two years a* [~~an annual~~] license fee for an initial license or a license renewal.

(b) The *executive commissioner* [~~board~~] by rule shall adopt the fees authorized by

Subsection (a) *in accordance with Section 12.0111 and* according to a schedule under which the number of beds in the hospital determines the amount of the fee. [~~The fee may not exceed $15 a bed.~~] A minimum license fee may be established. [~~The minimum fee may not exceed $1,000.~~]

(c) The *executive commissioner* [~~board~~] by rule shall adopt fees for hospital plan reviews according to a schedule under which the amounts of the fees are based on the estimated construction costs.

(e) The department shall charge a fee for field surveys of construction plans reviewed under this section. The *executive commissioner* [~~board~~] by rule shall adopt a fee schedule for the surveys that provides a minimum fee [~~of $500~~] and a maximum fee [~~of $1,000~~] for each survey conducted.

(g) The *executive commissioner* [~~department~~] may establish staggered license renewal dates and dates on which fees are due.

(i) All license fees collected shall be deposited *to the credit of the general revenue fund* [~~in the state treasury to the credit of the department to administer and enforce this chapter. These fees may be appropriated only to the department~~].

SECTION 3.1394. Section 577.009, Health and Safety Code, is amended to read as follows:

Sec. 577.009. LIMITATION ON CERTAIN CONTRACTS. A community center or other entity the *department* [~~Texas Department of Mental Health and Mental Retardation~~] designates to provide mental health services may not contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the department.

SECTION 3.1395. Section 577.010(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~Texas Board of Mental Health and Mental Retardation~~] shall adopt rules and standards the *executive commissioner* [~~board~~] considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under this chapter.

SECTION 3.1396. Section 577.0101(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt rules governing the transfer or referral of a patient from a private mental hospital to an inpatient mental health facility.

SECTION 3.1397. Section 578.003(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall adopt a standard written consent form to be used when electroconvulsive therapy is considered. The *executive commissioner* [~~board~~] by rule shall also prescribe the information that must be contained in the written supplement required under Subsection (c). In addition to the information required under this section, the form must include the information required by the Texas Medical Disclosure Panel for electroconvulsive therapy. In developing the form, the *executive commissioner* [~~board~~] shall consider recommendations of the panel. Use of the consent form prescribed by the *executive commissioner* [~~board~~] in the manner prescribed by this section creates a rebuttable presumption that the disclosure requirements of Sections 74.104 and 74.105, Civil Practice and Remedies Code, have been met.

SECTION 3.1398. Sections 578.006(b), (c), (d), and (f), Health and Safety Code, are amended to read as follows:

(b) A mental hospital or facility administering electroconvulsive therapy or a private physician administering the therapy on an outpatient basis must file an application for registration under this section. The applicant must submit the application to the department on a form prescribed by [~~the~~] department *rule*.

(c) The application must be accompanied by a nonrefundable application fee. The *executive commissioner by rule* [~~board~~] shall set the fee in a reasonable amount not to exceed the cost to the department to administer this section.

(d) The application must contain:

(1) the model, manufacturer, and age of each piece of equipment used to administer the therapy; and

(2) any other information required by [~~the~~] department *rule.*

(f) The *executive commissioner* [~~board~~] by rule may prohibit the registration and use of equipment of a type, model, or age the *executive commissioner* [~~board~~] determines is dangerous.

SECTION 3.1399. Section 578.007(b), Health and Safety Code, is amended to read as follows:

(b) A report must state for each quarter:

(1) the number of patients who received the therapy, including:

(A) the number of persons voluntarily receiving mental health services who consented to the therapy;

(B) the number of involuntary patients who consented to the therapy; and

(C) the number of involuntary patients for whom a guardian of the person consented to the therapy;

(2) the age, sex, and race of the persons receiving the therapy;

(3) the source of the treatment payment;

(4) the average number of nonelectroconvulsive treatments;

(5) the average number of electroconvulsive treatments administered for each complete series of treatments, but not including maintenance treatments;

(6) the average number of maintenance electroconvulsive treatments administered per month;

(7) the number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death;

(8) autopsy findings if death followed within 14 days after the date of the administration of the therapy; and

(9) any other information required by [~~the~~] department *rule.*

SECTION 3.1400. The heading to Subtitle D, Title 7, Health and Safety Code, is amended to read as follows:

SUBTITLE D. PERSONS WITH *AN INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~] ACT

SECTION 3.1401. Section 591.001, Health and Safety Code, is amended to read as follows:

Sec. 591.001. SHORT TITLE. This subtitle may be cited as the Persons with *an Intellectual Disability* [~~Mental Retardation~~] Act.

SECTION 3.1402. Section 591.002, Health and Safety Code, is amended to read as follows:

Sec. 591.002. PURPOSE. (a) It is the public policy of this state that persons with *an intellectual disability* [~~mental retardation~~] have the opportunity to develop to the fullest extent possible their potential for becoming productive members of society.

(b) It is the purpose of this subtitle to provide and assure a continuum of quality services to meet the needs of all persons with *an intellectual disability* [~~mental retardation~~] in this state.

(c) The state's responsibility to persons with *an intellectual disability* [~~mental retardation~~] does not replace or impede parental rights and responsibilities or terminate the activities of persons, groups, or associations that advocate for and assist persons with *an intellectual disability* [~~mental retardation~~].

(d) It is desirable to preserve and promote living at home if feasible. If living at home is not possible and placement in a residential *care* facility [~~for persons with mental retardation~~] is necessary, a person must be admitted in accordance with basic due process requirements, giving appropriate consideration to parental desires if possible. The person must be admitted to a facility that provides habilitative training for the person's condition, that fosters the personal development of the person, and that enhances the person's ability to cope with the environment.

(e) Because persons with *an intellectual disability* [~~mental retardation~~] have been denied rights solely because *they are persons with an intellectual disability* [~~of their retardation~~], the general public should be educated to the fact that persons with *an intellectual disability* [~~mental retardation~~] who have not been adjudicated incompetent and for whom a guardian has not been appointed by a due process proceeding in a court have the same rights and responsibilities enjoyed by all citizens of this state. All citizens are urged to assist persons with *an intellectual disability* [~~mental retardation~~] in acquiring and maintaining rights and in participating in community life as fully as possible.

SECTION 3.1403. Section 591.003, Health and Safety Code, is amended by amending Subdivisions (3), (4), (5), (6), (7), (8), (9), (10), (14), (15–a), (16), (18), (19), (22), and (23) and adding Subdivisions (4–a) and (9–a) to read as follows:

(3) "Care" means the life support and maintenance services or other aid provided to a person with *an intellectual disability* [~~mental retardation~~], including dental, medical, and nursing care and similar services.

(4) "Client" means a person receiving *intellectual disability* [~~mental retardation~~] services from the department or a community center. *The term includes a resident.*

(4–a) "Commission" means the Health and Human Services Commission.

(5) "Commissioner" means the commissioner of *aging and disability services* [~~mental health and mental retardation~~].

(6) "Community center" means an entity organized under Subchapter A, Chapter 534, that provides *intellectual disability* [~~mental retardation~~] services.

(7) "Department" means the [~~Texas~~] Department of *Aging and Disability Services* [~~Mental Health and Mental Retardation~~].

(8) "Interdisciplinary team" means a group of *intellectual disability* [~~mental retardation~~] professionals and paraprofessionals who assess the treatment, training, and habilitation needs of a person with *an intellectual disability* [~~mental retardation~~] and make recommendations for services for that person.

(9) "Director" means the director *or superintendent* of a *residential care facility* [~~community center~~].

(9–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(10) "Group home" means a residential arrangement, other than a residential care facility, operated by the department or a community center in which not more than 15 persons with *an intellectual disability* [~~mental retardation~~] voluntarily live and under appropriate supervision may share responsibilities for operation of the living unit.

(14) *"Intellectual disability* [~~"Mental retardation~~] services" means programs and assistance for persons with *an intellectual disability* [~~mental retardation~~] that may include a determination of *an intellectual disability* [~~mental retardation~~], interdisciplinary team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

(15–a) "Person with *an* intellectual disability" means a person determined by a physician or psychologist licensed in this state or certified by the department to have subaverage general intellectual functioning with deficits in adaptive behavior.

(16) "Person with mental retardation" means a person with *an* intellectual disability.

(18) "Residential care facility" means a *state supported living center or the ICF–IID*

component of the Rio Grande Center [~~facility operated by the department or a community center that provides 24-hour services, including domiciliary services, directed toward enhancing the health, welfare, and development of persons with mental retardation~~].

(19) "Service provider" means a person who provides *intellectual disability* [~~mental retardation~~] services.

(22) "Training" means the process by which a person with *an intellectual disability* [~~mental retardation~~] is habilitated and may include the teaching of life and work skills.

(23) "Treatment" means the process by which a service provider attempts to ameliorate the condition of a person with *an intellectual disability* [~~mental retardation~~].

SECTION 3.1404. Section 591.004, Health and Safety Code, is amended to read as follows:

Sec. 591.004. RULES. The *executive commissioner* [~~board~~] by rule shall ensure the implementation of this subtitle.

SECTION 3.1405. Sections 591.011(a), (b), (c), and (e), Health and Safety Code, are amended to read as follows:

(a) *Subject to the executive commissioner's authority to adopt rules and policies, the* [~~The~~] department shall make all reasonable efforts consistent with available resources to:

(1) assure that each identified person with *an intellectual disability* [~~mental retardation~~] who needs *intellectual disability* [~~mental retardation~~] services is given while these services are needed quality care, treatment, education, training, and rehabilitation appropriate to the person's individual needs other than those services or programs explicitly delegated by law to other governmental agencies;

(2) initiate, carry out, and evaluate procedures to guarantee to persons with *an intellectual disability* [~~mental retardation~~] the rights listed in this subtitle;

(3) carry out this subtitle, including planning, initiating, coordinating, promoting, and evaluating all programs developed;

(4) provide either directly or by cooperation, negotiation, or contract with other agencies and those persons and groups listed in Section *533A.034* [~~533.034~~], a continuum of services to persons with *an intellectual disability* [~~mental retardation~~]; and

(5) provide, either directly or by contract with other agencies, a continuum of services to children, juveniles, or adults with *an intellectual disability* [~~mental retardation~~] committed into the department's custody by the juvenile or criminal courts.

(b) The services provided by the department under Subsection (a)(4) shall include:

(1) treatment and care;

(2) education and training, including sheltered workshop programs;

(3) counseling and guidance; and

(4) development of residential and other facilities to enable persons with *an intellectual disability* [~~mental retardation~~] to live and be habilitated in the community.

(c) The facilities provided under Subsection (b) shall include group homes, foster homes, halfway houses, and day-care facilities for persons with *an intellectual disability* [~~mental retardation~~] to which the department has assigned persons with *an intellectual disability* [~~mental retardation~~].

(e) The department shall have the right of access to all *clients* [~~residents~~] and records of *clients* [~~residents~~] who are placed with residential service providers.

SECTION 3.1406. Section 591.013, Health and Safety Code, is amended to read as follows:

Sec. 591.013. LONG-RANGE PLAN. (a) The *commission* [~~department and the Texas Department of Human Services~~] shall [~~jointly~~] develop a long-range plan for services to persons with *intellectual and* developmental disabilities[~~, including mental retardation~~].

(b) The *executive* commissioner [~~of each department~~] shall appoint the necessary staff to develop the plan through research of appropriate topics and public hearings to obtain testimony from persons with knowledge of or interest in state services to persons with *intellectual and* developmental disabilities[~~, including mental retardation~~].

(c) In developing the plan, the *commission* [~~department~~] shall consider existing plans or studies made by the *commission or department* [~~departments~~].

(d) The plan must address at least the following topics:

(1) the needs of persons with *intellectual and* developmental disabilities[~~, including mental retardation~~];

(2) how state services should be structured to meet those needs;

(3) how the *ICF-IID* [~~ICF-MR~~] program, the waiver program under Section 1915(c), federal Social Security Act, other programs under Title XIX, federal Social Security Act, and other federally funded programs can best be structured and financed to assist the state in delivering services to persons with *intellectual and* developmental disabilities[~~, including mental retardation~~];

(4) the statutory limits and rule or policy changes necessary to ensure the controlled growth of the programs under Title XIX, federal Social Security Act, and other federally funded programs;

(5) methods for expanding services available through the *ICF-IID* [~~ICF-MR~~] program to persons with related conditions as defined by federal regulations relating to the medical assistance program; and

(6) the cost of implementing the plan.

(e) The *commission and the department* [~~departments~~] shall, if necessary, modify their respective long-range plans and other existing plans relating to the provision of services to persons with *intellectual and* developmental disabilities[~~, including mental retardation,~~] to incorporate the provisions of the [~~joint~~] plan.

(f) The *commission* [~~departments~~] shall review and revise the plan biennially. *The commission and the* [~~Each~~] department shall consider the most recent revision of the plan in any modifications of *the commission's or* [~~that~~] department's long-range plans and in each future budget request.

(g) This section does not affect the authority of the *commission and the* department [~~and the Texas Department of Human Services~~] to carry out their separate functions as established by state and federal law.

(h) In this section, *"ICF-IID* [~~"ICF-MR~~] program" means the medical assistance program serving persons with *intellectual and developmental disabilities* [~~mental retardation~~] who receive care in intermediate care facilities.

SECTION 3.1407. Sections 591.022(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) A person who intentionally violates the rights guaranteed by this subtitle to a person with *an intellectual disability* [~~mental retardation~~] is liable to the person injured by the violation in an amount of not less than $100 or more than $5,000.

(b) A person who recklessly violates the rights guaranteed by this subtitle to a person with *an intellectual disability* [~~mental retardation~~] is liable to the person injured by the violation in an amount of not less than $100 or more than $1,000.

(c) A person who intentionally releases confidential information or records of a person with *an intellectual disability* [~~mental retardation~~] in violation of law is liable to the person injured by the unlawful disclosure for $1,000 or three times the actual damages, whichever is greater.

SECTION 3.1408. Sections 591.023(a) and (e), Health and Safety Code, are amended to read as follows:

(a) A district court, in an action brought in the name of the state by the state attorney general or a district or county attorney within the attorney's respective jurisdiction, may

issue a temporary restraining order, a temporary injunction, or a permanent injunction to:

(1) restrain and prevent a person from violating this subtitle or a rule adopted by the *executive commissioner* [~~department~~] under this subtitle; or

(2) enforce compliance with this subtitle or a rule adopted by the *executive commissioner* [~~department~~] under this subtitle.

(e) A civil penalty recovered under this section shall be paid to the state for use in *intellectual disability* [~~mental retardation~~] services.

SECTION 3.1409. The heading to Chapter 592, Health and Safety Code, is amended to read as follows:

CHAPTER 592. RIGHTS OF PERSONS WITH *AN INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~]

SECTION 3.1410. Section 592.001, Health and Safety Code, is amended to read as follows:

Sec. 592.001. PURPOSE. The purpose of this chapter is to recognize and protect the individual dignity and worth of each person with *an intellectual disability* [~~mental retardation~~].

SECTION 3.1411. Section 592.002, Health and Safety Code, is amended to read as follows:

Sec. 592.002. RULES. The *executive commissioner* [~~board~~] by rule shall ensure the implementation of the rights guaranteed in this chapter.

SECTION 3.1412. Subchapter B, Chapter 592, Health and Safety Code, is amended to read as follows:

SUBCHAPTER B. BASIC BILL OF RIGHTS

Sec. 592.011. RIGHTS GUARANTEED. (a) Each person with *an intellectual disability* [~~mental retardation~~] in this state has the rights, benefits, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) The rights specifically listed in this subtitle are in addition to all other rights that persons with *an intellectual disability* [~~mental retardation~~] have and are not exclusive or intended to limit the rights guaranteed by the constitution and laws of the United States and this state.

Sec. 592.012. PROTECTION FROM EXPLOITATION AND ABUSE. Each person with *an intellectual disability* [~~mental retardation~~] has the right to protection from exploitation and abuse because of the person's *intellectual disability* [~~mental retardation~~].

Sec. 592.013. LEAST RESTRICTIVE LIVING ENVIRONMENT. Each person with *an intellectual disability* [~~mental retardation~~] has the right to live in the least restrictive setting appropriate to the person's individual needs and abilities and in a variety of living situations, including living:

(1) alone;

(2) in a group home;

(3) with a family; or

(4) in a supervised, protective environment.

Sec. 592.014. EDUCATION. Each person with *an intellectual disability* [~~mental retardation~~] has the right to receive publicly supported educational services, including those services provided under the Education Code, that are appropriate to the person's individual needs regardless of [~~the person's~~]:

(1) *the person's* chronological age;

(2) *the* degree of *the person's intellectual disability* [~~retardation~~];

(3) *the person's* accompanying disabilities or handicaps; or

(4) *the person's* admission or commitment to *intellectual disability* [~~mental retardation~~] services.

Sec. 592.015. EMPLOYMENT. An employer, employment agency, or labor organization may not deny a person equal opportunities in employment because of the person's *intellectual disability* [~~mental retardation~~], unless:

(1) the person's *intellectual disability* [~~mental retardation~~] significantly impairs the person's ability to perform the duties and tasks of the position for which the person has applied; or

(2) the denial is based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise.

Sec. 592.016. HOUSING. An owner, lessee, sublessee, assignee, or managing agent or other person having the right to sell, rent, or lease real property, or an agent or employee of any of these, may not refuse to sell, rent, or lease to any person or group of persons solely because the person is a person with *an intellectual disability* [~~mental retardation~~] or a group that includes one or more persons with *an intellectual disability* [~~mental retardation~~].

Sec. 592.017. TREATMENT AND SERVICES. Each person with *an intellectual disability* [~~mental retardation~~] has the right to receive for *the person's intellectual disability* [~~mental retardation~~] adequate treatment and habilitative services that:

(1) are suited to the person's individual needs;

(2) maximize the person's capabilities;

(3) enhance the person's ability to cope with the person's environment; and

(4) are administered skillfully, safely, and humanely with full respect for the dignity and personal integrity of the person.

Sec. 592.018. DETERMINATION OF *AN INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~]. A person thought to be a person with *an intellectual disability* [~~mental retardation~~] has the right promptly to receive a determination of *an intellectual disability* [~~mental retardation~~] using diagnostic techniques that are adapted to that person's cultural background, language, and ethnic origin to determine if the person is in need of *intellectual disability* [~~mental retardation~~] services as provided by Subchapter A, Chapter 593.

Sec. 592.019. ADMINISTRATIVE HEARING. A person who files an application for a determination of *an intellectual disability* [~~mental retardation~~] has the right to request and promptly receive an administrative hearing under Subchapter A, Chapter 593, to contest the findings of the determination of *an intellectual disability* [~~mental retardation~~].

Sec. 592.020. INDEPENDENT DETERMINATION OF *AN INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~]. A person for whom a determination of *an intellectual disability* [~~mental retardation~~] is performed or a person who files an application for a determination of *an intellectual disability* [~~mental retardation~~] under Section 593.004 and who questions the validity or results of the determination of *an intellectual disability* [~~mental retardation~~] has the right to an additional, independent determination of *an intellectual disability* [~~mental retardation~~] performed at the person's own expense.

Sec. 592.021. ADDITIONAL RIGHTS. Each person with *an intellectual disability* [~~mental retardation~~] has the right to:

(1) presumption of competency;

(2) due process in guardianship proceedings; and

(3) fair compensation for the person's labor for the economic benefit of another, regardless of any direct or incidental therapeutic value to the person.

SECTION 3.1413. Sections 592.033(c) and (d), Health and Safety Code, are amended to read as follows:

(c) The plan shall be implemented as soon as possible but not later than the 30th day after the date on which the client is admitted or committed to *intellectual disability* [~~mental retardation~~] services.

(d) The content of an individualized habilitation plan is as required *by department rule and as may be required* by the department *by contract*.

SECTION 3.1414. Section 592.036(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section 593.030, a client, the parent if the client is a minor, or a guardian of the person may withdraw the client from *intellectual disability* [~~mental retardation~~] services.

SECTION 3.1415. Section 592.039, Health and Safety Code, is amended to read as follows:

Sec. 592.039. GRIEVANCES. A client, or a person acting on behalf of a person with *an intellectual disability* [~~mental retardation~~] or a group of persons with *an intellectual disability* [~~mental retardation~~], has the right to submit complaints or grievances regarding the infringement of the rights of a person with *an intellectual disability* [~~mental retardation~~] or the delivery of *intellectual disability* [~~mental retardation~~] services against a person, group of persons, organization, or business to the *department's Office of Consumer Rights and Services* [~~appropriate public responsibility committee~~] for investigation and appropriate action.

SECTION 3.1416. Section 592.040(a), Health and Safety Code, is amended to read as follows:

(a) On admission for *intellectual disability* [~~mental retardation~~] services, each client, and the parent if the client is a minor or the guardian of the person of the client, shall be given written notice of the rights guaranteed by this subtitle. The notice shall be in plain and simple language.

SECTION 3.1417. The heading to Section 592.054, Health and Safety Code, is amended to read as follows:

Sec. 592.054. DUTIES OF [~~SUPERINTENDENT OR~~] DIRECTOR.

SECTION 3.1418. Section 592.054(a), Health and Safety Code, is amended to read as follows:

(a) Except as limited by this subtitle, the [~~superintendent or~~] director shall provide without further consent necessary care and treatment to each court-committed resident and make available necessary care and treatment to each voluntary resident.

SECTION 3.1419. Section 592.153(a), Health and Safety Code, is amended to read as follows:

(a) In this section, "ward" has the meaning assigned by Section *1002.030, Estates* [~~601, Texas Probate~~] Code.

SECTION 3.1420. The heading to Chapter 593, Health and Safety Code, is amended to read as follows:

CHAPTER 593. ADMISSION AND COMMITMENT TO *INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~] SERVICES

SECTION 3.1421. Section 593.001, Health and Safety Code, is amended to read as follows:

Sec. 593.001. ADMISSION. A person may be admitted for *intellectual disability* [~~mental retardation~~] services offered by the department or a community center, admitted voluntarily to a residential care program, or committed to a residential care facility, only as provided by this chapter.

SECTION 3.1422. Section 593.002, Health and Safety Code, is amended to read as follows:

Sec. 593.002. CONSENT REQUIRED. (a) Except as provided by Subsection (b), the

department or a community center may not provide *intellectual disability* [~~mental retardation~~] services to a client without the client's legally adequate consent.

(b) The department or community center may provide nonresidential *intellectual disability* [~~mental retardation~~] services, including a determination of *an intellectual disability* [~~mental retardation~~], to a client without the client's legally adequate consent if the department or community center has made all reasonable efforts to obtain consent.

(c) The *executive commissioner* [~~board~~] by rule shall prescribe the efforts to obtain consent that are reasonable and the documentation for those efforts.

SECTION 3.1423. Section 593.003, Health and Safety Code, is amended to read as follows:

Sec. 593.003. REQUIREMENT OF DETERMINATION OF *AN INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~]. [~~(a)~~] Except as provided by Sections 593.027, 593.0275, and 593.028, a person is not eligible to receive *intellectual disability* [~~mental retardation~~] services unless the person first is determined to *be a person with an intellectual disability* [~~have mental retardation~~].

[~~(b) This section does not apply to an eligible child with a developmental disability receiving services under Subchapter A, Chapter 535.~~]

SECTION 3.1424. The heading to Section 593.004, Health and Safety Code, is amended to read as follows:

Sec. 593.004. APPLICATION FOR DETERMINATION OF *AN INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~].

SECTION 3.1425. Section 593.004(b), Health and Safety Code, is amended to read as follows:

(b) A person believed to be a person with *an intellectual disability* [~~mental retardation~~], the parent if the person is a minor, or the guardian of the person may make written application to an authorized provider for a determination of *an intellectual disability* [~~mental retardation~~] using forms provided by the department.

SECTION 3.1426. The heading to Section 593.005, Health and Safety Code, is amended to read as follows:

Sec. 593.005. DETERMINATION OF *AN INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~].

SECTION 3.1427. Sections 593.005(a–1) and (d), Health and Safety Code, are amended to read as follows:

(a–1) An authorized provider shall perform the determination of *an intellectual disability* [~~mental retardation~~]. The department may charge a reasonable fee for certifying an authorized provider.

(d) If the person is indigent, the determination of *an intellectual disability* [~~mental retardation~~] shall be performed at the department's expense by an authorized provider.

SECTION 3.1428. Section 593.006, Health and Safety Code, is amended to read as follows:

Sec. 593.006. REPORT. A person who files an application for a determination of *an intellectual disability* [~~mental retardation~~] under Section 593.004 shall be promptly notified in writing of the findings.

SECTION 3.1429. Section 593.007, Health and Safety Code, is amended to read as follows:

Sec. 593.007. NOTIFICATION OF CERTAIN RIGHTS. The department shall inform the person who filed an application for a determination of *an intellectual disability* [~~mental retardation~~] of the person's right to:

(1) an independent determination of *an intellectual disability* [~~mental retardation~~] under Section 592.020; and

(2) an administrative hearing under Section 593.008 by the agency that conducted

the determination of *an intellectual disability* [~~mental retardation~~] to contest the findings.

SECTION 3.1430. Sections 593.008(b) and (e), Health and Safety Code, are amended to read as follows:

(b) The proposed client, contestant, and their respective representative by right may:

(1) have reasonable access at a reasonable time before the hearing to any records concerning the proposed client relevant to the proposed action;

(2) present oral or written testimony and evidence, including the results of an independent determination of *an intellectual disability* [~~mental retardation~~]; and

(3) examine witnesses.

(e) The *executive commissioner* [~~board~~] by rule shall implement the hearing procedures.

SECTION 3.1431. Section 593.012(a), Health and Safety Code, is amended to read as follows:

(a) The *director* [~~superintendent~~] of a residential care facility to which a client has been admitted for court-ordered care and treatment may have a client who is absent without authority taken into custody, detained, and returned to the facility by issuing a certificate to a law enforcement agency of the municipality or county in which the facility is located or by obtaining a court order issued by a magistrate in the manner prescribed by Section 574.083.

SECTION 3.1432. Sections 593.013(b) and (f), Health and Safety Code, are amended to read as follows:

(b) An interdisciplinary team shall:

(1) interview the person with *an intellectual disability* [~~mental retardation~~], the person's parent if the person is a minor, and the person's guardian;

(2) review the person's:

(A) social and medical history;

(B) medical assessment, which shall include an audiological, neurological, and vision screening;

(C) psychological and social assessment; and

(D) determination of adaptive behavior level;

(3) determine the person's need for additional assessments, including educational and vocational assessments;

(4) obtain any additional assessment necessary to plan services;

(5) identify the person's habilitation and service preferences and needs; and

(6) recommend services to address the person's needs that consider the person's preferences.

(f) If the court has ordered the interdisciplinary team report and recommendations under Section 593.041, the team shall promptly send a copy of the report and recommendations to the court, the person with *an intellectual disability* [~~mental retardation~~] or the person's legal representative, the person's parent if the person is a minor, and the person's guardian.

SECTION 3.1433. The heading to Subchapter B, Chapter 593, Health and Safety Code, is amended to read as follows:

SUBCHAPTER B. APPLICATION AND ADMISSION TO VOLUNTARY *INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~] SERVICES

SECTION 3.1434. Section 593.021(a), Health and Safety Code, is amended to read as follows:

(a) The proposed client or the parent if the proposed client is a minor may apply for

voluntary *intellectual disability* [~~mental retardation~~] services under Section 593.022, 593.026, 593.027, 593.0275, or 593.028.

SECTION 3.1435. The heading to Section 593.022, Health and Safety Code, is amended to read as follows:

Sec. 593.022. ADMISSION TO VOLUNTARY *INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~] SERVICES.

SECTION 3.1436. Section 593.022(a), Health and Safety Code, is amended to read as follows:

(a) An eligible person who applies for *intellectual disability* [~~mental retardation~~] services may be admitted as soon as appropriate services are available.

SECTION 3.1437. Section 593.023(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall develop and adopt procedures permitting a client, a parent if the client is a minor, or a guardian of the person to participate in planning the client's treatment and habilitation, including a decision to recommend or place a client in an alternative setting.

SECTION 3.1438. Section 593.026, Health and Safety Code, is amended to read as follows:

Sec. 593.026. REGULAR VOLUNTARY ADMISSION. A regular voluntary admission is permitted if:

(1) space is available at the facility for which placement is requested; and

(2) the facility *director* [~~superintendent~~] determines that the facility provides services that meet the needs of the proposed resident.

SECTION 3.1439. Section 593.027, Health and Safety Code, is amended to read as follows:

Sec. 593.027. EMERGENCY ADMISSION. (a) An emergency admission to a residential care facility is permitted without a determination of *an intellectual disability* [~~mental retardation~~] and an interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with *an intellectual disability* [~~mental retardation~~];

(2) space is available at the facility for which placement is requested;

(3) the proposed resident has an urgent need for services that the facility *director* [~~superintendent~~] determines the facility provides; and

(4) the facility can provide relief for the urgent need within a year after admission.

(b) A determination of *an intellectual disability* [~~mental retardation~~] and an interdisciplinary team recommendation for the person admitted under this section shall be performed within 30 days after the date of admission.

SECTION 3.1440. Section 593.0275, Health and Safety Code, is amended to read as follows:

Sec. 593.0275. EMERGENCY SERVICES. (a) A person may receive emergency services without a determination of *an intellectual disability* [~~mental retardation~~] if:

(1) there is persuasive evidence that the person is a person with *an intellectual disability* [~~mental retardation~~];

(2) emergency services are available; and

(3) the person has an urgent need for emergency services.

(b) A determination of *an intellectual disability* [~~mental retardation~~] for the person served under this section shall be performed within 30 days after the date the services begin.

SECTION 3.1441. Sections 593.028(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A person may be admitted to a residential care facility for respite care without a determination of *an intellectual disability* [~~mental retardation~~] and interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with *an intellectual disability* [~~mental retardation~~];

(2) space is available at the facility for which respite care is requested;

(3) the facility *director* [~~superintendent~~] determines that the facility provides services that meet the needs of the proposed resident; and

(4) the proposed resident or the proposed resident's family urgently requires assistance or relief that can be provided within a period not to exceed 30 consecutive days after the date of admission.

(b) If the relief sought by the proposed resident or the proposed resident's family has not been provided within 30 days, one 30–day extension may be allowed if:

(1) the facility *director* [~~superintendent~~] determines that the relief may be provided in the additional period; and

(2) the parties agreeing to the original placement consent to the extension.

SECTION 3.1442. Section 593.029, Health and Safety Code, is amended to read as follows:

Sec. 593.029. TREATMENT OF MINOR WHO REACHES MAJORITY. When a facility resident who is voluntarily admitted as a minor approaches 18 years of age and continues to be in need of residential services, the *facility director* [~~superintendent~~] shall ensure that when the resident becomes an adult:

(1) the resident's legally adequate consent for admission to the facility is obtained from the resident or the guardian of the person; or

(2) an application is filed for court commitment under Subchapter C.

SECTION 3.1443. Section 593.030, Health and Safety Code, is amended to read as follows:

Sec. 593.030. WITHDRAWAL FROM SERVICES. A resident voluntarily admitted to a residential care facility may not be detained more than 96 hours after the time the resident, the resident's parents if the resident is a minor, or the guardian of the resident's person requests discharge of the resident as provided by department rules, unless:

(1) the facility *director* [~~superintendent~~] determines that the resident's condition or other circumstances are such that the resident cannot be discharged without endangering the safety of the resident or the general public;

(2) the *facility director* [~~superintendent~~] files an application for judicial commitment under Section 593.041; and

(3) a court issues a protective custody order under Section 593.044 pending a final determination on the application.

SECTION 3.1444. Sections 593.041(a), (b), (c), and (e), Health and Safety Code, are amended to read as follows:

(a) A proposed resident, if an adult, a parent if the proposed resident is a minor, the guardian of the person, the court, or any other interested person, including a community center or agency that conducted a determination of *an intellectual disability* [~~mental retardation~~] of the proposed resident, may file an application for an interdisciplinary team report and recommendation that the proposed client is in need of long-term placement in a residential care facility.

(b) Except as provided by Subsection (e), the application must be filed with the county clerk in the county in which the proposed resident resides. If the *director* [~~superintendent~~] of a residential care facility files an application for judicial commitment of a voluntary resident, the county in which the facility is located is considered the resident's county of residence.

(c) The county court has original jurisdiction of all judicial proceedings for commitment of a person with *an intellectual disability* [~~mental retardation~~] to residential care facilities.

(e) An application in which the proposed patient is a child in the custody of the Texas *Juvenile Justice Department* [~~Youth Commission~~] may be filed in the county in which the child's commitment to *the Texas Juvenile Justice Department* [~~the commission~~] was ordered.

SECTION 3.1445. Section 593.044(a), Health and Safety Code, is amended to read as follows:

(a) The court in which an application for a hearing is filed may order the proposed resident taken into protective custody if the court determines from certificates filed with the court that the proposed resident is:

(1) believed to be a person with *an intellectual disability* [~~mental retardation~~]; and

(2) likely to cause injury to *the proposed resident* [~~himself~~] or others if not immediately restrained.

SECTION 3.1446. Section 593.048, Health and Safety Code, is amended to read as follows:

Sec. 593.048. HEARING NOTICE. (a) Not later than the 11th day before the date set for the hearing, a copy of the application, notice of the time and place of the hearing and, if appropriate, the order for the determination of *an intellectual disability* [~~mental retardation~~] and interdisciplinary team report and recommendations shall be served on:

(1) the proposed resident or the proposed resident's representative;

(2) the parent if the proposed resident is a minor;

(3) the guardian of the person; and

(4) the department.

(b) The notice must specify in plain and simple language:

(1) the right to an independent determination of *an intellectual disability* [~~mental retardation~~] under Section 593.007; and

(2) the provisions of Sections 593.043, 593.047, 593.049, 593.050, and 593.053.

SECTION 3.1447. Section 593.050(d), Health and Safety Code, is amended to read as follows:

(d) The Texas Rules of Evidence apply. The results of the determination of *an intellectual disability* [~~mental retardation~~] and the current interdisciplinary team report and recommendations shall be presented in evidence.

SECTION 3.1448. Section 593.052(a), Health and Safety Code, is amended to read as follows:

(a) A proposed resident may not be committed to a residential care facility unless:

(1) the proposed resident is a person with *an intellectual disability* [~~mental retardation~~];

(2) evidence is presented showing that because of *the proposed resident's intellectual disability* [~~retardation~~], the proposed resident:

(A) represents a substantial risk of physical impairment or injury to *the proposed resident* [~~himself~~] or others; or

(B) is unable to provide for and is not providing for the proposed resident's most basic personal physical needs;

(3) the proposed resident cannot be adequately and appropriately habilitated in an available, less restrictive setting; and

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the proposed resident's needs.

SECTION 3.1449. Section 593.073, Health and Safety Code, is amended to read as follows:

Sec. 593.073. DETERMINATION OF RESIDENTIAL COSTS. The *executive commissioner* [~~board~~] by rule may determine the cost of support, maintenance, and treatment of a resident.

SECTION 3.1450. Sections 593.074(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~department~~] may use the projected cost of providing residential services to establish *by rule* the maximum fee that may be charged to a payer.

(c) The *executive commissioner by rule* [~~department~~] may establish maximum fees on one or a combination of the following:

(1) a statewide per capita;

(2) an individual facility per capita; or

(3) the type of service provided.

(d) Notwithstanding Subsection (b), the *executive commissioner by rule* [~~department~~] may establish a fee in excess of the department's projected cost of providing residential services that may be charged to a payer:

(1) who is not an individual; and

(2) whose method of determining the rate of reimbursement to a provider results in the excess.

SECTION 3.1451. Sections 593.075(a), (b), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall establish a sliding fee schedule for the payment by the resident's parents of the state's total costs for the support, maintenance, and treatment of a resident younger than 18 years of age.

(b) The *executive commissioner by rule* [~~board~~] shall set the fee according to the parents' net taxable income and ability to pay.

(d) In determining the portion of the costs of the resident's support, maintenance, and treatment that the parents are required to pay, the department, *in accordance with rules adopted by the executive commissioner,* shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

(e) The *executive commissioner* [~~department~~] shall evaluate and, if necessary, revise the fee schedule at least once every five years.

SECTION 3.1452. Section 593.077(a), Health and Safety Code, is amended to read as follows:

(a) Child support payments for the benefit of a resident paid or owed by a parent under court order are considered the property and estate of the resident and the [~~department may~~]:

(1) *department may* be reimbursed for the costs of a resident's support, maintenance, and treatment from those amounts; and

(2) *executive commissioner by rule may* establish a fee based on the child support obligation in addition to other fees authorized by this subchapter.

SECTION 3.1453. Section 593.081(f), Health and Safety Code, is amended to read as follows:

(f) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:

(1) a guardianship established under the *former* Texas Probate Code *or under the Estates Code*;

(2) a trust established under Chapter 142, Property Code;

(3) a facility custodial account established under Section 551.003;

(4) the provisions of a divorce decree or other court order relating to child support obligations;

(5) an administration of a decedent's estate; or

(6) an arrangement in which funds are held in the registry or by the clerk of a court.

SECTION 3.1454. Subchapter D, Chapter 593, Health and Safety Code, is amended by adding Section 593.082 to read as follows:

Sec. 593.082. FILING OF CLAIMS. (a) In this section:

(1) "Person responsible for a resident" means the resident, a person liable for the support of the resident, or both.

(2) "Resident" means a person admitted to a residential care facility operated by the department for persons with an intellectual disability.

(b) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court of competent jurisdiction to require a person responsible for a resident to appear in court and show cause why the state should not have judgment against the person for the resident's support and maintenance in a residential care facility operated by the department.

(c) On a sufficient showing, the court may enter judgment against the person responsible for the resident for the costs of the resident's support and maintenance.

(d) Sufficient evidence to authorize the court to enter judgment is a verified account, sworn to by the director of the residential care facility in which the person with an intellectual disability resided or has resided, as to the amount due.

(e) The judgment may be enforced as in other cases.

(f) The county or district attorney representing the state is entitled to a commission of 10 percent of the amount collected.

(g) The attorney general shall represent the state if the county and district attorney refuse or are unable to act on the department's request.

SECTION 3.1455. Section 593.092, Health and Safety Code, is amended to read as follows:

Sec. 593.092. DISCHARGE OF PERSON VOLUNTARILY ADMITTED TO RESIDENTIAL CARE FACILITY. (a) Except as otherwise provided, a resident voluntarily admitted to a residential care facility under a law in force before January 1, 1978, shall be discharged not later than the 96th hour after the time the *facility director* [~~superintendent~~] receives written request from the person on whose application the resident was admitted, or on the resident's own request.

(b) The *facility director* [~~superintendent~~] may detain the resident for more than 96 hours in accordance with Section 593.030.

SECTION 3.1456. Sections 594.001(b) and (c), Health and Safety Code, are amended to read as follows:

(b) This chapter does not apply to the:

(1) transfer of a client for emergency medical, dental, or psychiatric care for not more than 30 consecutive days;

(2) voluntary withdrawal of a client from *intellectual disability* [~~mental retardation~~] services; or

(3) discharge of a client by a [~~superintendent or~~] director because the person is not a person with *an intellectual disability* [~~mental retardation~~] according to the results of the determination of *an intellectual disability* [~~mental retardation~~].

(c) A discharge under Subsection (b)(3) is without further hearings, unless an

administrative hearing under Subchapter A, Chapter 593, to contest the determination of *an intellectual disability* [~~mental retardation~~] is requested.

SECTION 3.1457. Section 594.002, Health and Safety Code, is amended to read as follows:

Sec. 594.002. LEAVE; FURLOUGH. The *director* [~~superintendent~~] may grant or deny a resident a leave of absence or furlough.

SECTION 3.1458. Section 594.014(b), Health and Safety Code, is amended to read as follows:

(b) A client may not be transferred to another facility or discharged from *intellectual disability* [~~mental retardation~~] services unless the client is given the opportunity to request and receive an administrative hearing to contest the proposed transfer or discharge.

SECTION 3.1459. Section 594.015(b), Health and Safety Code, is amended to read as follows:

(b) The client, the parent of a client who is a minor, the guardian of the person, and the *director* [~~superintendent~~] have the right to:

(1) be present and represented at the hearing; and

(2) have reasonable access at a reasonable time before the hearing to any records concerning the client relevant to the proposed action.

SECTION 3.1460. Section 594.016(d), Health and Safety Code, is amended to read as follows:

(d) If an appeal is not filed from a final order granting a request for a transfer or discharge, the *director* [~~superintendent~~] shall proceed with the transfer or discharge.

SECTION 3.1461. Section 594.019(a), Health and Safety Code, is amended to read as follows:

(a) The department shall provide appropriate alternative or follow-up supportive services consistent with available resources by agreement among the department, the *local intellectual and developmental disability* [~~mental retardation~~] authority in the area in which the client will reside, and the client, parent of a client who is a minor, or guardian of the person. The services shall be consistent with the rights guaranteed in Chapter 592.

SECTION 3.1462. Subchapter C, Chapter 594, Health and Safety Code, is amended by adding Section 594.0301 to read as follows:

Sec. 594.0301. DEFINITION. In this subchapter, "state mental hospital" has the meaning assigned by Section 571.003.

SECTION 3.1463. Section 594.032(a), Health and Safety Code, is amended to read as follows:

(a) The *director* [~~superintendent~~] may transfer a resident committed to a residential care facility under Subchapter C, Chapter 593, to a state mental hospital for mental health care if:

(1) an examination of the resident by a licensed physician indicates symptoms of mental illness to the extent that care, treatment, [~~control,~~] and rehabilitation in a state mental hospital is in the best interest of the resident;

(2) the hospital administrator of the state mental hospital to which the resident is to be transferred agrees to the transfer; and

(3) the director coordinates the transfer with the hospital administrator of the state mental hospital.

SECTION 3.1464. Section 594.036(b), Health and Safety Code, is amended to read as follows:

(b) Notice shall also be served on the parents if the resident is a minor and on the guardian for the resident's person if the resident has been declared to be incapacitated

as provided by the *former* Texas Probate Code *or the Estates Code* and a guardian has been appointed.

SECTION 3.1465. Section 594.041(b), Health and Safety Code, is amended to read as follows:

(b) A person may not be transferred to a *state* mental hospital except on competent medical or psychiatric testimony.

SECTION 3.1466. The heading to Section 594.044, Health and Safety Code, is amended to read as follows:

Sec. 594.044. TRANSFER *TO* [~~OF~~] RESIDENTIAL CARE FACILITY.

SECTION 3.1467. Section 594.044(b), Health and Safety Code, is amended to read as follows:

(b) The hospital administrator of the state mental hospital shall notify the *director* [~~superintendent~~] of the facility from which the resident was transferred that hospitalization in a state mental hospital is not necessary or appropriate for the resident. The *director* [~~superintendent~~] shall immediately provide for the return of the resident to the facility.

SECTION 3.1468. Section 594.045(a), Health and Safety Code, is amended to read as follows:

(a) If a resident has been transferred to a state mental hospital under a court order under this subchapter, the hospital administrator of the state mental hospital shall:

(1) send a certificate to the committing court stating that the resident does not require hospitalization in a state mental hospital but requires care in a residential care facility because of *the resident's intellectual disability* [~~mental retardation~~]; and

(2) request that the resident be transferred to a residential care facility.

SECTION 3.1469. Section 595.001, Health and Safety Code, is amended to read as follows:

Sec. 595.001. CONFIDENTIALITY OF RECORDS. Records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to *an intellectual disability* [~~mental retardation~~] are confidential and may be disclosed only for the purposes and under the circumstances authorized *by this chapter, subject to applicable federal and other state law* [~~under Sections 595.003 and 595.004~~].

SECTION 3.1470. Section 595.002, Health and Safety Code, is amended to read as follows:

Sec. 595.002. RULES. The *executive commissioner* [~~board~~] shall adopt rules to carry out this chapter that *are* [~~the department considers~~] necessary or proper to:

(1) prevent circumvention or evasion of the chapter; or

(2) facilitate compliance with the chapter.

SECTION 3.1471. Section 595.005(a), Health and Safety Code, is amended to read as follows:

(a) The content of a confidential record may be disclosed without the consent required under Section 595.003 to:

(1) medical personnel to the extent necessary to meet a medical emergency;

(2) qualified personnel for management audits, financial audits, program evaluations, or research approved by the department; or

(3) personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of persons with *an intellectual disability* [~~mental retardation~~].

SECTION 3.1472. Section 595.0055(b), Health and Safety Code, is amended to read as follows:

(b) Notwithstanding any other law, on request by a representative of a cemetery orga-

nization or funeral establishment, the *director* [~~superintendent~~] of a residential care facility shall release to the representative the name, date of birth, or date of death of a person who was a resident at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release the person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subsection only for the purpose of inscribing the name or date on a grave marker.

SECTION 3.1473. Section 595.008, Health and Safety Code, is amended to read as follows:

Sec. 595.008. EXCHANGE OF RECORDS. The prohibitions against disclosure apply to an exchange of records between government agencies or persons, except for exchanges of information necessary for:

(1) delivery of services to clients; or

(2) payment for *intellectual disability* [~~mental retardation~~] services as defined in this subtitle.

SECTION 3.1474. Section 595.010, Health and Safety Code, is amended to read as follows:

Sec. 595.010. DISCLOSURE OF PHYSICAL OR MENTAL CONDITION. This chapter does not prohibit a qualified professional from disclosing the current physical and mental condition of a person with *an intellectual disability* [~~mental retardation~~] to the person's parent, guardian, relative, or friend.

SECTION 3.1475. Sections 597.001(2), (4), (5), and (8), Health and Safety Code, are amended to read as follows:

(2) "Client" means a person receiving services in a community-based *ICF–IID* [~~ICF–MR facility~~].

(4) *"ICF–IID"* [~~"ICF–MR"~~] has the meaning assigned by Section 531.002.

(5) "Interdisciplinary team" means those interdisciplinary teams defined in the Code of Federal Regulations for participation in the intermediate care facilities for *individuals with intellectual and developmental disabilities* [~~the mentally retarded~~].

(8) "Surrogate decision-maker" means an individual authorized under Section 597.041 to consent on behalf of a client residing in an *ICF–IID* [~~ICF–MR facility~~].

SECTION 3.1476. Section 597.002, Health and Safety Code, is amended to read as follows:

Sec. 597.002. RULES. The *executive commissioner* [~~board~~] may adopt rules necessary to implement this chapter [~~not later than 180 days after its effective date~~].

SECTION 3.1477. Section 597.021, Health and Safety Code, is amended to read as follows:

Sec. 597.021. *ICF–IID* [~~ICF–MR~~] ASSESSMENT OF CLIENT'S CAPACITY TO CONSENT TO TREATMENT. (a) The *executive commissioner* [~~board~~] by rule shall require an *ICF–IID* [~~ICF–MR facility~~] certified in this state to assess the capacity of each adult client without a legal guardian to make treatment decisions when there is evidence to suggest the individual is not capable of making a decision covered under this chapter.

(b) The rules must require the use of a uniform assessment process prescribed by *department* [~~board~~] rule to determine a client's capacity to make treatment decisions.

SECTION 3.1478. The heading to Subchapter C, Chapter 597, Health and Safety Code, is amended to read as follows:

SUBCHAPTER C. SURROGATE CONSENT FOR *ICF–IID* [~~ICF–MR~~] CLIENTS

SECTION 3.1479. Section 597.041(d), Health and Safety Code, is amended to read as follows:

(d) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record under *Title 3, Estates* [~~Chapter V, Texas Probate~~] Code.

SECTION 3.1480. Section 597.043(c), Health and Safety Code, is amended to read as follows:

(c) The list of qualified individuals from which committee members are drawn shall include:

(1) health care professionals licensed or registered in this state who have specialized training in medicine, psychopharmacology, nursing, or psychology;

(2) persons with *an intellectual disability* [~~mental retardation~~] or parents, siblings, spouses, or children of a person with *an intellectual disability* [~~mental retardation~~];

(3) attorneys licensed in this state who have knowledge of legal issues of concern to persons with *an intellectual disability* [~~mental retardation~~] or to the families of persons with *an intellectual disability* [~~mental retardation~~];

(4) members of private organizations that advocate on behalf of persons with *an intellectual disability* [~~mental retardation~~]; and

(5) persons with demonstrated expertise or interest in the care and treatment of persons with *an intellectual disability* [~~mental disabilities~~].

SECTION 3.1481. Section 597.044(a), Health and Safety Code, is amended to read as follows:

(a) If the results of the assessment conducted in accordance with Section 597.021 indicate that a client who does not have a legal guardian or surrogate decision-maker lacks the capacity to make a treatment decision about major medical or dental treatment, psychoactive medication, or a highly restrictive procedure, the *ICF-IID* [~~ICF-MR facility~~] must file an application for a treatment decision with the department.

SECTION 3.1482. Sections 597.045(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *ICF-IID* [~~ICF-MR facility~~] with assistance from the department shall schedule a review of the application.

(c) The *ICF-IID* [~~ICF-MR facility~~] with assistance from the department shall send notice of the date, place, and time of the review to the surrogate consent committee, the client who is the subject of the application, the client's actively involved parent, spouse, adult child, or other person known to have a demonstrated interest in the care and welfare of the client, and any other person as prescribed by *department* [~~board~~] rule. The *ICF-IID* [~~ICF-MR facility~~] shall include a copy of the application and a statement of the committee's procedure for consideration of the application, including the opportunity to be heard or to present evidence and to appeal.

SECTION 3.1483. Section 597.047, Health and Safety Code, is amended to read as follows:

Sec. 597.047. CONFIDENTIAL INFORMATION. Notwithstanding any other state law, a person licensed by this state to provide services related to health care or to the treatment or care of a person with *an intellectual disability* [~~mental retardation~~], a developmental disability, or a mental illness shall provide to the committee members any information the committee requests that is relevant to the client's need for a proposed treatment.

SECTION 3.1484. Section 597.048(f), Health and Safety Code, is amended to read as follows:

(f) At any time before the committee makes its determination of a client's best interest under Section 597.049, the committee chair may suspend the review of the application for not more than five days if any person applies for appointment as the client's guardian of the person in accordance with the *Estates* [~~Texas Probate~~] Code.

SECTION 3.1485. Section 597.050(b), Health and Safety Code, is amended to read as follows:

(b) The *ICF-IID* [~~ICF-MR facility~~] shall send a copy of the committee's opinion to:

(1) each person notified under Section 597.045; and

(2) the department.

SECTION 3.1486. Section 597.054(a), Health and Safety Code, is amended to read as follows:

(a) Each *ICF-IID* [~~ICF-MR~~] shall develop procedures for the surrogate consent committees in accordance with the rules adopted under Section 597.002.

SECTION 3.1487. Section 612.002(a), Health and Safety Code, is amended to read as follows:

(a) Under the compact, the governor shall appoint the *executive* commissioner of *the Health and Human Services Commission* [~~mental health and mental retardation~~] as the compact administrator.

SECTION 3.1488. Section 612.005(b), Health and Safety Code, is amended to read as follows:

(b) If a supplementary agreement requires or contemplates the use of an institution or facility of this state or requires or contemplates the provision of a service by this state, the supplementary agreement does not take effect until approved by the *executive commissioner and the* head of the department or agency:

(1) under whose jurisdiction the institution or facility is operated; or

(2) that will perform the service.

SECTION 3.1489. Section 614.001, Health and Safety Code, is amended by amending Subdivisions (2), (6), (7), (8), and (10) and adding Subdivision (4-a) to read as follows:

(2) "Case management" means a process by which a person or team responsible for establishing and continuously maintaining contact with a person with mental illness, a developmental disability, or *an intellectual disability* [~~mental retardation~~] provides that person with access to services required by the person and ensures the coordinated delivery of those services to the person.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Mental impairment" means a mental illness, *an intellectual disability* [~~mental retardation~~], or a developmental disability.

(7) *"Intellectual disability"* [~~"Mental retardation"~~] has the meaning assigned by Section 591.003.

(8) "Offender with a medical or mental impairment" means a juvenile or adult who is arrested or charged with a criminal offense and who:

(A) *is a person with:*

(i) [~~has~~] a mental impairment; or

(ii) a physical disability, terminal illness, or significant illness; or

(B) is elderly[~~, physically disabled, terminally ill, or significantly ill~~].

(10) "Person with *an intellectual disability* [~~mental retardation~~]" means a juvenile or adult with *an intellectual disability* [~~mental retardation~~] that is not a mental disorder who, because of the mental deficit, requires special training, education, supervision, treatment, care, or control in the person's home or community or in a private [~~or state~~] school *or state supported living center* for persons with *an intellectual disability* [~~mental retardation~~].

SECTION 3.1490. Sections 614.002(a), (b), and (e), Health and Safety Code, are amended to read as follows:

(a) The Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments is composed of *28* [~~29~~] members.

(b) The governor shall appoint, with the advice and consent of the senate:

(1) four at-large members who have expertise in mental health, *intellectual disabilities* [~~mental retardation~~], or developmental disabilities, three of whom must be forensic psychiatrists or forensic psychologists;

(2) one at-large member who is the judge of a district court with criminal jurisdiction;

(3) one at-large member who is a prosecuting attorney;

(4) one at-large member who is a criminal defense attorney;

(5) two at-large members who have expertise in the juvenile justice or criminal justice system; and

(6) one at-large member whose expertise can further the mission of the committee.

(e) The executive head of each of the following agencies, divisions of agencies, or associations, or that person's designated representative, shall serve as a member of the committee:

(1) the correctional institutions division of the Texas Department of Criminal Justice;

(2) the Department of State Health Services;

(3) the parole division of the Texas Department of Criminal Justice;

(4) the community justice assistance division of the Texas Department of Criminal Justice;

(5) the Texas Juvenile Justice Department;

(6) the Department of Assistive and Rehabilitative Services;

(7) the Correctional Managed Health Care Committee;

(8) [~~the~~] Mental Health *America of* [~~Association in~~] Texas;

(9) the Board of Pardons and Paroles;

(10) the Texas Commission on Law Enforcement;

(11) the Texas Council of Community [~~Mental Health and Mental Retardation~~] Centers;

(12) the Commission on Jail Standards;

(13) the Texas Council for Developmental Disabilities;

(14) the *Arc of* Texas [~~Association for Retarded Citizens~~];

(15) the National Alliance *on Mental Illness* [~~for the Mentally Ill~~] of Texas;

(16) the Parent Association for the Retarded of Texas, Inc.;

(17) the Health and Human Services Commission; and

(18) the Department of Aging and Disability Services.

SECTION 3.1491. Section 614.008(a), Health and Safety Code, is amended to read as follows:

(a) The office may maintain at least one program in a county selected by the office to employ a cooperative community-based alternative system to divert from the state criminal justice system offenders with mental impairments or offenders who are identified as being elderly *or persons with physical disabilities, terminal illnesses, or significant illnesses*[~~, physically disabled, terminally ill, or significantly ill~~] and to rehabilitate those offenders.

SECTION 3.1492. Section 614.013, Health and Safety Code, is amended to read as follows:

Sec. 614.013. CONTINUITY OF CARE FOR OFFENDERS WITH MENTAL IMPAIRMENTS. (a) The Texas Department of Criminal Justice, the Department of

State Health Services, the bureau of identification and records of the Department of Public Safety, representatives of local mental health or *intellectual and developmental disability* [~~mental retardation~~] authorities appointed by the commissioner of the Department of State Health Services, and the directors of community supervision and corrections departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders with mental impairments in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders with mental impairments in the criminal justice system and collecting and reporting prevalence rate data to the office;

(2) developing interagency rules, policies, procedures, and standards for the coordination of care of and the exchange of information on offenders with mental impairments by local and state criminal justice agencies, the *Department of State Health Services and the Department of Aging and Disability Services* [~~Texas Department of Mental Health and Mental Retardation~~], local mental health or *intellectual and developmental disability* [~~mental retardation~~] authorities, the Commission on Jail Standards, and local jails;

(3) identifying the services needed by offenders with mental impairments to reenter the community successfully; and

(4) establishing a process to report implementation activities to the office.

(c) The Texas Department of Criminal Justice, the Department of State Health Services, local mental health or *intellectual and developmental disability* [~~mental retardation~~] authorities, and community supervision and corrections departments shall:

(1) operate the continuity of care and service program for offenders with mental impairments in the criminal justice system with funds appropriated for that purpose; and

(2) actively seek federal grants or funds to operate and expand the program.

(d) Local and state criminal justice agencies shall, whenever possible, contract with local mental health or *intellectual and developmental disability* [~~mental retardation~~] authorities to maximize Medicaid funding and improve on the continuity of care and service program for offenders with mental impairments in the criminal justice system.

(e) The office, in coordination with each state agency identified in Subsection (b)(2), shall develop a standardized process for collecting and reporting the memorandum of understanding implementation outcomes by local and state criminal justice agencies and local and state mental health or *intellectual and developmental disability* [~~mental retardation~~] authorities. The findings of these reports shall be submitted to the office by September 1 of each even-numbered year and shall be included in recommendations to the board in the office's biennial report under Section 614.009.

SECTION 3.1493. Section 614.014, Health and Safety Code, is amended to read as follows:

Sec. 614.014. CONTINUITY OF CARE FOR ELDERLY OFFENDERS. (a) The Texas Department of Criminal Justice *and the executive commissioner*[~~, the Texas Department of Human Services, and the Texas Department on Aging~~] by rule shall adopt a memorandum of understanding that establishes *the* [~~their~~] respective responsibilities *of the Texas Department of Criminal Justice, the Department of State Health Services, the Department of Aging and Disability Services, and the Department of Assistive and Rehabilitative Services* to institute a continuity of care and service program for elderly offenders in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying elderly offenders in the criminal justice system;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on elderly offenders by local and state criminal justice agencies, the *Department of State Health Services, the Department of Aging and Disability Services, and the Department of Assistive and Rehabilitative Services* [~~Texas Department of Human Services, and the Texas Department on Aging~~]; and

(3) identifying the services needed by elderly offenders to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the *Department of State Health Services, the Department of Aging and Disability Services, and the Department of Assistive and Rehabilitative Services* [~~Texas Department of Human Services, and the Texas Department on Aging~~] shall:

(1) operate the continuity of care and service program for elderly offenders in the criminal justice system with funds appropriated for that purpose; and

(2) actively seek federal grants or funds to operate and expand the program.

SECTION 3.1494. Section 614.015, Health and Safety Code, is amended to read as follows:

Sec. 614.015. CONTINUITY OF CARE FOR [~~PHYSICALLY DISABLED, TERMINALLY ILL, OR SIGNIFICANTLY ILL~~] OFFENDERS *WITH PHYSICAL DISABILITIES, TERMINAL ILLNESSES, OR SIGNIFICANT ILLNESSES*. (a) The Texas Department of Criminal Justice *and the executive commissioner*[~~, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services~~] by rule shall adopt a memorandum of understanding that establishes *the* [~~their~~] respective responsibilities *of the Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services* to institute a continuity of care and service program for offenders in the criminal justice system who are *persons with physical disabilities, terminal illnesses, or significant illnesses* [~~physically disabled, terminally ill, or significantly ill~~]. The council shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are *persons with physical disabilities, terminal illnesses, or significant illnesses* [~~physically disabled, terminally ill, or significantly ill~~];

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on offenders who are *persons with physical disabilities, terminal illnesses, or significant illnesses* [~~physically disabled, terminally ill, or significantly ill~~] by local and state criminal justice agencies, the Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services; and

(3) identifying the services needed by offenders who are *persons with physical disabilities, terminal illnesses, or significant illnesses* [~~physically disabled, terminally ill, or significantly ill~~] to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services shall:

(1) operate, with funds appropriated for that purpose, the continuity of care and service program for offenders in the criminal justice system who are *persons with physical disabilities, terminal illnesses, or significant illnesses* [~~physically disabled, terminally ill, or significantly ill~~]; and

(2) actively seek federal grants or funds to operate and expand the program.

SECTION 3.1495. Section 614.016, Health and Safety Code, is amended to read as

follows:

Sec. 614.016. CONTINUITY OF CARE FOR CERTAIN OFFENDERS BY LAW ENFORCEMENT AND JAILS. (a) The office, the Texas Commission on Law Enforcement, the bureau of identification and records of the Department of Public Safety, and the Commission on Jail Standards by rule shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders in the criminal justice system who are *persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are* [~~mentally impaired,~~] elderly[~~, physically disabled, terminally ill, or significantly ill~~].

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are *persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are* [~~mentally impaired,~~] elderly[~~, physically disabled, terminally ill, or significantly ill~~];

(2) developing procedures for the exchange of information relating to offenders who are *persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are* [~~mentally impaired,~~] elderly[~~, physically disabled, terminally ill, or significantly ill~~] by the office, the Texas Commission on Law Enforcement, and the Commission on Jail Standards for use in the continuity of care and services program; and

(3) adopting rules and standards that assist in the development of a continuity of care and services program for offenders who are *persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are* [~~mentally impaired,~~] elderly[~~, physically disabled, terminally ill, or significantly ill~~].

SECTION 3.1496. Section 614.018(b), Health and Safety Code, is amended to read as follows:

(b) The memorandum of understanding must establish methods for:

(1) identifying juveniles with mental impairments in the juvenile justice system and collecting and reporting relevant data to the office;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on juveniles with mental impairments who are committed to or treated, served, or supervised by the Texas Juvenile Justice Department, the Department of Public Safety, the Department of State Health Services, the Department of Family and Protective Services, the Department of Aging and Disability Services, the Texas Education Agency, local juvenile probation departments, local mental health or *intellectual and developmental disability* [~~mental retardation~~] authorities, and independent school districts; and

(3) identifying the services needed by juveniles with mental impairments in the juvenile justice system.

SECTION 3.1497. Section 614.019, Health and Safety Code, is amended to read as follows:

Sec. 614.019. PROGRAMS FOR JUVENILES. (a) The office, in cooperation with the *Department of State Health Services* [~~Texas Commission on Alcohol and Drug Abuse, the Texas Department of Mental Health and Mental Retardation~~], the Department of *Family and* Protective [~~and Regulatory~~] Services, the Texas Juvenile *Justice Department* [~~Probation Commission, the Texas Youth Commission~~], and the Texas Education Agency, may establish and maintain programs, building on existing successful efforts in communities, to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders.

(b) A child with mental illness who is receiving continuity of care services during parole from the Texas *Juvenile Justice Department* [~~Youth Commission~~] and who is no longer eligible to receive services from a local mental health authority when the child becomes 17 years of age because the child does not meet the requirements of a local service area plan under Section 533.0352(a) may continue to receive continuity of care services from the office until the child completes the child's parole.

(c) A child with mental illness or *an intellectual disability* [~~mental retardation~~] who is discharged from the Texas Juvenile Justice Department under Section 244.011, Human Resources Code, may receive continuity of care services from the office for a minimum of 90 days after discharge from the *department* [~~commission~~] and for as long as necessary for the child to demonstrate sufficient stability to transition successfully to mental health or *intellectual disability* [~~mental retardation~~] services provided by a local mental health or *intellectual and developmental disability* [~~mental retardation~~] authority.

SECTION 3.1498. Section 614.020(b), Health and Safety Code, is amended to read as follows:

(b) The program must be modeled after other assertive community treatment programs established by the [~~Texas~~] Department of *State Health Services* [~~Mental Health and Mental Retardation~~]. The program is limited to serving not more than 30 program participants at any time.

SECTION 3.1499. Section 614.021(a), Health and Safety Code, is amended to read as follows:

(a) In this section, "wrongfully imprisoned person" has the meaning assigned by Section *501.101* [~~501.102~~], Government Code.

SECTION 3.1500. Chapter 615, Health and Safety Code, is amended to read as follows:

CHAPTER 615. MISCELLANEOUS PROVISIONS

Sec. 615.001. COUNTY RESPONSIBILITY. Each commissioners court shall provide for the support of a person with mental illness or *an intellectual disability* [~~mental retardation~~] who is:

(1) a resident of the county;

(2) unable to provide self-support; and

(3) cannot be admitted to a state mental health or *intellectual disability* [~~mental retardation~~] facility.

Sec. 615.002. ACCESS TO [~~MENTAL HEALTH~~] RECORDS BY PROTECTION AND ADVOCACY SYSTEM. (a) Notwithstanding other state law, the protection and advocacy system established in this state under the federal Protection and Advocacy for *Individuals with Mental Illness* [~~Mentally Ill Individuals~~] Act [~~of 1986~~] (42 U.S.C. Sec. 10801 et seq.) *and the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. Sec. 15001 et seq.)* is entitled to access to records relating to persons with mental illness *or developmental disabilities* to the extent authorized by federal law.

(b) If the *person* [~~patient~~] consents to notification, the protection and advocacy system shall notify the [~~Texas~~] Department of *State Health Services or the Department of Aging and Disability Services, as appropriate,* [~~Mental Health and Mental Retardation's Office of Client Services and Rights Protection~~] if the system decides to investigate a complaint of abuse, neglect, or rights violation that relates to *a person with mental illness or a developmental disability who is* a patient *or client* in a facility or program operated by, licensed by, certified by, or in a contractual relationship with *that* [~~the~~] department.

SECTION 3.1501. Section 671.001(d), Health and Safety Code, is amended to read as follows:

(d) A registered nurse or physician assistant may determine and pronounce a person dead in situations other than those described by Subsection (b) if permitted by written policies of a licensed health care facility, institution, or entity providing services to that person. Those policies must include physician assistants who are credentialed or otherwise permitted to practice at the facility, institution, or entity. If the facility, institution, or entity has an organized nursing staff and an organized medical staff or medical consultant, the nursing staff and medical staff or consultant shall jointly develop and approve those policies. The *executive commissioner of the Health and Human Services Commission* [~~board~~] shall adopt rules to govern policies for facilities, institutions,

or entities that do not have organized nursing staffs and organized medical staffs or medical consultants.

SECTION 3.1502. Section 672.002(d), Health and Safety Code, is amended to read as follows:

(d) A review team may include:

(1) a criminal prosecutor involved in prosecuting crimes involving family violence;

(2) a peace officer;

(3) a justice of the peace or medical examiner;

(4) a public health professional;

(5) a representative of the Department of *Family and* Protective [~~and Regulatory~~] Services engaged in providing adult protective services;

(6) a mental health services provider;

(7) a representative of the family violence shelter center providing services to the county;

(8) the victim witness advocate in the county prosecutor's office;

(9) a representative from the battering intervention and prevention program for the county; and

(10) a community supervision and corrections department officer.

SECTION 3.1503. Section 672.008, Health and Safety Code, is amended to read as follows:

Sec. 672.008. REPORT. (a) Not later than December 15 of each even-numbered year, each review team shall submit to the Department of *Family and* Protective [~~and Regulatory~~] Services a report on deaths reviewed.

(b) Subject to Section 672.009, the Department of *Family and* Protective [~~and Regulatory~~] Services shall make the reports received under Subsection (a) available to the public.

SECTION 3.1504. Section 673.001, Health and Safety Code, is amended to read as follows:

Sec. 673.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of *state* health *services*.

(2) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1505. Sections 673.002(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The justice of the peace or medical examiner shall inform the child's legal guardian or parents that an autopsy shall be performed on the child. The state shall reimburse a county $500 for the cost of the autopsy if the primary cause of death of the child is sudden infant death syndrome. The *executive commissioner* [~~department~~] shall adopt rules that:

(1) define sudden infant death syndrome; and

(2) describe the method for obtaining reimbursement for the cost of an autopsy.

(c) Reimbursement required by Subsection (b) [~~of this section~~] is subject to the availability of funds.

SECTION 3.1506. Section 694.001, Health and Safety Code, is amended to read as follows:

Sec. 694.001. DUTIES OF [~~TEXAS~~] DEPARTMENT OF *STATE* HEALTH *SERVICES*. The [~~Texas~~] Department of *State* Health *Services* shall regulate the dis-

posal, transportation, interment, and disinterment of dead bodies to the extent reasonable and necessary to protect public health and safety.

SECTION 3.1507. Section 751.010(a), Health and Safety Code, is amended to read as follows:

(a) After notice and a public hearing, the *executive commissioner of the Health and Human Services Commission* [~~Texas Board of Health~~] shall adopt rules relating to minimum standards of health and sanitation to be maintained at mass gatherings.

SECTION 3.1508. Section 755.033(a), Health and Safety Code, is amended to read as follows:

(a) The executive director shall enter into interagency agreements with the [~~Texas~~] Department of *State* Health *Services*, the Texas Commission on Fire Protection, and the Texas Department of Insurance under which inspectors, marshals, or investigators from those agencies who discover unsafe or unregistered boilers in the course and scope of inspections conducted as part of regulatory or safety programs administered by those agencies are required to report the unsafe or unregistered boilers to the executive director.

SECTION 3.1509. Section 757.010(b), Health and Safety Code, is amended to read as follows:

(b) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool may, at the person's option, exceed the standards of this chapter or those adopted [~~by the Texas Board of Health~~] under Section 757.011. A tenant or occupant in a multiunit rental complex and a member of a property owners association may, by express written agreement, require the owner of the complex or the association to exceed those standards.

SECTION 3.1510. Section 757.011, Health and Safety Code, is amended to read as follows:

Sec. 757.011. *RULEMAKING* AUTHORITY [~~OF TEXAS BOARD OF HEALTH~~]. The *executive commissioner of the Health and Human Services Commission* [~~Texas Board of Health~~] may adopt rules requiring standards for design and construction of pool yard enclosures that exceed the requirements of this chapter and that apply to all pools and pool yards subject to this chapter. An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall comply with and shall be liable for failure to comply with those rules to the same extent as if they were part of this chapter.

SECTION 3.1511. Sections 773.003(6), (10), and (18), Health and Safety Code, are amended to read as follows:

(6) "Commissioner" means the commissioner of *state* health *services*.

(10) "Emergency medical services personnel" means:

(A) emergency care attendant;

(B) emergency medical technicians;

(C) *advanced* emergency medical *technicians* [~~technicians—intermediate~~];

(D) emergency medical technicians—paramedic; or

(E) licensed paramedic.

(18) "Medical supervision" means direction given to emergency medical services personnel by a licensed physician under Subtitle B, Title 3, Occupations Code, and the rules adopted under that subtitle by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~].

SECTION 3.1512. Section 773.0045(b), Health and Safety Code, is amended to read as follows:

(b) The department on a case-by-case basis may temporarily exempt emergency medi-

cal services personnel who primarily practice in a rural area from a requirement imposed either by Section 773.050 or 773.055 or by a *department* rule adopted [~~by the department~~] under Section 773.050 or 773.055 if specific circumstances that affect the rural area served by the emergency medical services personnel justify the exemption. The department may temporarily exempt the emergency medical services personnel from a requirement imposed:

(1) by a department rule adopted under Section 773.050 or 773.055 only if the department finds that, under the circumstances, imposing the requirement would not be in the best interests of the people in the rural area who are served by the emergency medical services personnel; and

(2) by Section 773.050 or 773.055 only if the department finds that, under the circumstances, there is a substantial risk that imposing the requirement will detrimentally affect the health or safety of one or more persons in the affected rural area or hinder the ability of emergency medical services personnel who practice in the area to alleviate a threat to the health or safety of one or more persons in the area.

SECTION 3.1513. Section 773.006, Health and Safety Code, is amended to read as follows:

Sec. 773.006. FUND FOR EMERGENCY MEDICAL SERVICES, TRAUMA FACILITIES, AND TRAUMA CARE SYSTEMS. (a) The fund for emergency medical services, trauma facilities, and trauma care systems is established as an account in the general revenue fund. Money in the account may be appropriated only to the *department* [~~bureau~~] for the purposes specified by Section 773.122.

(b) The account is composed of money deposited to the account under Article 102.0185, Code of Criminal Procedure[~~, and the earnings of the account~~].

(c) *Section* [~~Sections 403.095 and~~] 404.071, Government Code, *does* [~~do~~] not apply to the account.

SECTION 3.1514. Sections 773.011(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules establishing minimum standards for the creation and operation of a subscription program.

(c) The *executive commissioner* [~~board~~] shall adopt a rule that requires an emergency medical services provider to secure a surety bond in the amount of sums to be subscribed before soliciting subscriptions and creating and operating a subscription program. The surety bond must be issued by a company that is licensed by or eligible to do business in this state.

(d) The *executive commissioner* [~~board~~] may adopt rules for waiver of the surety bond.

SECTION 3.1515. Sections 773.012(a) and (j), Health and Safety Code, are amended to read as follows:

(a) The governor shall appoint an advisory council to advise the *department* [~~board~~] regarding matters related to the responsibilities of the *executive commissioner* [~~board~~], commissioner, and department under this chapter. In making appointments to the advisory council, the governor shall ensure that approximately one-half of the members of the advisory council are residents of rural areas of the state.

(j) The advisory council periodically shall review *department* [~~board~~] rules relating to this chapter and may recommend changes in those rules to the *department* [~~board~~]. The *department* [~~board and the commissioner~~] shall ensure that the advisory council is given adequate time and opportunity to review and comment on each rule proposed for adoption by the *executive commissioner* [~~board~~] under this chapter, including the amendment or repeal of an existing rule, but not including an emergency rule.

SECTION 3.1516. Section 773.013, Health and Safety Code, is amended to read as follows:

Sec. 773.013. PEER ASSISTANCE PROGRAM. The department may establish, approve, and fund a peer assistance program in accordance with Section 467.003 and *department* [~~board~~] rules.

SECTION 3.1517. Sections 773.014(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~department~~] shall adopt rules designed to protect the public health and safety to implement this section. The rules must provide that emergency medical services personnel may administer an epinephrine auto-injector device to another only if the person has successfully completed a training course, approved by the department, in the use of the device that is consistent with the national standard training curriculum for emergency medical technicians.

(c) An emergency medical services provider or first responder organization may acquire, possess, maintain, and dispose of epinephrine auto-injector devices, and emergency medical services personnel may carry, maintain, administer, and dispose of epinephrine auto-injector devices, only in accordance with:

(1) rules adopted [~~by the department~~] under this section; and

(2) a delegated practice agreement that provides for medical supervision by a licensed physician who either:

(A) acts as a medical director for an emergency medical services system or a licensed hospital; or

(B) has knowledge and experience in the delivery of emergency care.

SECTION 3.1518. Sections 773.021(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~bureau~~] shall develop a state plan for the prompt and efficient delivery of adequate emergency medical services to acutely sick or injured persons.

(c) The advisory council shall consider the *department's* [~~bureau's~~] actions under Subsection (a), and the *department* [~~board~~] shall review the council's recommendations.

SECTION 3.1519. Section 773.022, Health and Safety Code, is amended to read as follows:

Sec. 773.022. SERVICE DELIVERY AREAS. The *department* [~~bureau~~] shall divide the state into emergency medical services delivery areas that coincide, to the extent possible, with other regional planning areas.

SECTION 3.1520. Section 773.023(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~bureau~~] shall:

(1) identify all public or private agencies and institutions that are used or may be used for emergency medical services in each delivery area; and

(2) enlist the cooperation of all concerned agencies and institutions in developing a well-coordinated plan for delivering emergency medical services in each delivery area.

SECTION 3.1521. Section 773.024, Health and Safety Code, is amended to read as follows:

Sec. 773.024. FEDERAL PROGRAMS. The *department* [~~bureau~~] is the state agency designated to develop state plans required for participation in federal programs involving emergency medical services. The *department* [~~bureau~~] may receive and disburse available federal funds to implement the service programs.

SECTION 3.1522. Sections 773.025(a), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~bureau~~] shall identify all individuals and public or private agencies and institutions that are or may be engaged in emergency medical services training in each delivery area.

(c) A governmental entity that sponsors or wishes to sponsor an emergency medical services provider may request the *department* [~~bureau~~] to provide emergency medical services training for emergency care attendants at times and places that are convenient for the provider's personnel, if the training is not available locally.

(d) A governmental entity or nongovernmental organization that sponsors or wishes to sponsor an emergency medical services provider or first responder organization in a rural or underserved area may request the *department* [~~bureau~~] to provide or facilitate the provision of initial training for emergency care attendants, if the training is not available locally. The *department* [~~bureau~~] shall ensure that the training is provided. The *department* [~~bureau~~] shall provide the training without charge, or contract with qualified instructors to provide the training without charge, to students who agree to perform emergency care attendant services for at least one year with the local emergency medical services provider or first responder organization. The training must be provided at times and places that are convenient to the students. The *department* [~~bureau~~] shall require that at least three students are scheduled to take any class offered under this subsection.

(e) To facilitate all levels of emergency medical services training, the *department* [~~bureau~~] shall consult with and solicit comment from emergency medical services providers, first responder organizations, persons who provide emergency medical services training, and other entities interested in emergency medical services training programs.

SECTION 3.1523. Section 773.0415, Health and Safety Code, is amended to read as follows:

Sec. 773.0415. LIMITATION ON INFORMATION REQUIRED FOR CERTIFICATE RENEWAL. The requirements and procedures adopted by the *executive commissioner* [~~department~~] for the renewal of a certificate to practice as emergency medical services personnel issued under this chapter:

(1) may not require an applicant to provide unchanged criminal history information already included in one or more of the applicant's previous applications for certification or for certificate renewal filed with the department; and

(2) may require the applicant to provide only information relevant to the period occurring since the date of the applicant's last application for certification or for certificate renewal, as applicable, including information relevant to any new requirement applicable to the certificate held by the applicant.

SECTION 3.1524. Section 773.045(c), Health and Safety Code, is amended to read as follows:

(c) An air ambulance company based in another state that transports patients from a point in this state is required to be licensed by the department as an emergency medical services provider. The department shall issue a license to an air ambulance company under this subsection if the company applies as required by this chapter and has met the [~~department's~~] qualifications *specified in department rules* for safely transporting patients. An air ambulance company accredited by the *Commission* [~~Committee~~] on *Accreditation of* [~~Air Ambulance~~] Medical *Transport Systems* [~~Services~~] is rebuttably presumed to have met the department's qualifications.

SECTION 3.1525. Section 773.046(c), Health and Safety Code, is amended to read as follows:

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

SECTION 3.1526. Sections 773.048 and 773.0495, Health and Safety Code, are amended to read as follows:

Sec. 773.048. *ADVANCED* EMERGENCY MEDICAL *TECHNICIAN* [~~TECHNICIAN—INTERMEDIATE~~] QUALIFICATIONS. An individual qualifies as an *advanced* emergency medical *technician* [~~technician-intermediate~~] if the individual is certified by the department as minimally proficient to provide emergency prehospital care by initiating under medical supervision certain procedures, including intravenous therapy and endotracheal or esophageal intubation.

Sec. 773.0495. LICENSED PARAMEDIC QUALIFICATIONS. An individual qualifies as a licensed paramedic if the department determines that the individual is minimally proficient to provide advanced life support that includes initiation under

medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation, electrical cardiac defibrillation or cardioversion, and drug therapy. In addition, a licensed paramedic must complete a curriculum that includes college-level course work in accordance with *department* rules [~~adopted by the board~~].

SECTION 3.1527. Section 773.050(h), Health and Safety Code, is amended to read as follows:

(h) The department may provide a prescreening criminal history record check for an emergency medical services personnel applicant to determine the applicant's eligibility to receive certification before enrollment in the educational and training requirements mandated by the executive commissioner. The *executive commissioner by rule may prescribe* [~~department may charge~~] a reasonable fee for the costs associated with prescreening to *charge* each applicant who requests prescreening. *The department shall collect the prescribed fee.*

SECTION 3.1528. Section 773.0505, Health and Safety Code, is amended to read as follows:

Sec. 773.0505. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The *executive commissioner* [~~board~~] may not adopt rules restricting advertising or competitive bidding by a license or certificate holder except to prohibit false, misleading, or deceptive practices.

(b) In [~~its~~] rules to prohibit false, misleading, or deceptive practices, the *executive commissioner* [~~board~~] may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license or certificate holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license or certificate holder; or

(4) restricts the license or certificate holder's advertisement under a trade name.

SECTION 3.1529. Sections 773.052(a) and (c), Health and Safety Code, are amended to read as follows:

(a) An emergency medical services provider with a specific hardship may apply to the *department* [~~bureau chief~~] for a variance from a rule adopted under this chapter. The *executive commissioner by rule* [~~board~~] may adopt a fee of not more than $30 for filing an application for a variance.

(c) The *department* [~~bureau chief~~] shall grant to a sole provider for a service area a variance from the minimum standards for staffing and equipment for the provision of basic life-support emergency medical services if the provider is an emergency medical services provider exempt from the payment of fees under Section 773.0581.

SECTION 3.1530. Section 773.054(b), Health and Safety Code, is amended to read as follows:

(b) Each application must be made to the department on a form prescribed by the *department* [~~board~~] and under *department* rules [~~adopted by the board~~].

SECTION 3.1531. Sections 773.055(a), (d), and (g), Health and Safety Code, are amended to read as follows:

(a) A nonrefundable fee must accompany each application for emergency medical services personnel certification. The fee may not exceed:

(1) $90 for an emergency medical technician-paramedic or *advanced* emergency medical *technician* [~~technician-intermediate~~];

(2) $60 for an emergency medical technician or emergency care attendant;

(3) $90 for recertification of an emergency medical technician-paramedic or *advanced* emergency medical *technician* [~~technician-intermediate~~];

(4) $60 for recertification of an emergency medical technician or emergency care attendant; or

(5) $120 for certification or recertification of a licensed paramedic.

(d) The department shall furnish a person who fails an examination for certification with an analysis of the person's performance on the examination if requested in writing by that person. The *executive commissioner* [~~board~~] may adopt rules to allow a person who fails the examination to retake all or part of the examination. A fee of not more than $30 must accompany each application for reexamination.

(g) The *executive commissioner* [~~board~~] by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, the department shall prorate certificate fees on a monthly basis so that each certificate holder pays only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

SECTION 3.1532. Sections 773.057(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) An emergency medical services provider must submit an application for a license in accordance with procedures prescribed by the *executive commissioner* [~~board~~].

(b) A nonrefundable application and vehicle fee determined by the *executive commissioner by rule* [~~board~~] must accompany each application. The application fee may not exceed $500 for each application and the vehicle fee may not exceed $180 for each emergency medical services vehicle operated by the provider.

(c) The department may delegate vehicle inspections to the commissioners court of a county or the governing body of a municipality. The delegation must be made:

(1) at the request of the commissioners court or governing body; and

(2) in accordance with criteria and procedures adopted by the *executive commissioner* [~~board~~].

SECTION 3.1533. Section 773.0572, Health and Safety Code, is amended to read as follows:

Sec. 773.0572. PROVISIONAL LICENSES. The *executive commissioner* [~~board~~] by rule shall establish conditions under which an emergency medical services provider who fails to meet the minimum standards prescribed by this chapter may be issued a provisional license. The department may issue a provisional license to an emergency medical services provider under this chapter if the department finds that issuing the license would serve the public interest and that the provider meets the requirements of the rules adopted under this section. A nonrefundable fee of not more than $30 must accompany each application for a provisional license.

SECTION 3.1534. Section 773.060(b), Health and Safety Code, is amended to read as follows:

(b) The department shall deposit the fees and other funds in the state treasury to the credit of the bureau of emergency management *account in the general revenue* fund. The *account* [~~fund~~] may be used only to administer this chapter.

SECTION 3.1535. Section 773.061(d), Health and Safety Code, is amended to read as follows:

(d) The department may place on probation a course or training program or a person, including emergency medical services personnel, an emergency medical services provider license holder, or a program instructor, examiner, or course coordinator, whose certificate, license, or approval is suspended. If a suspension is probated, the department may require the person or the sponsor of a course or training program, as applicable:

(1) to report regularly to the department on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the *department* [~~board~~]; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

SECTION 3.1536. Section 773.0611(c), Health and Safety Code, is amended to read as follows:

(c) The *executive commissioner* [~~board~~] shall adopt rules for unannounced inspections authorized under this section. The department or its representative shall perform unannounced inspections in accordance with those rules. An emergency medical services provider shall pay to the department a nonrefundable fee of not more than $30 if reinspection is necessary to determine compliance with this chapter and the rules adopted under this chapter.

SECTION 3.1537. Section 773.0612(b), Health and Safety Code, is amended to read as follows:

(b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with *department* [~~the~~] rules [~~adopted by the board~~].

SECTION 3.1538. Section 773.0613(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~department~~] shall adopt rules relating to the type of information an emergency medical services provider must provide under this section and the manner in which the information must be provided.

SECTION 3.1539. Section 773.0614(a), Health and Safety Code, is amended to read as follows:

(a) In addition to the grounds under Section 773.061, the *department* [~~commissioner~~] may suspend or revoke a certificate, disqualify a person from receiving a certificate, or deny a person the opportunity to take a certification examination on the grounds that the person has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities of emergency medical services personnel.

SECTION 3.1540. Section 773.06141(a), Health and Safety Code, is amended to read as follows:

(a) The *department* [~~commissioner~~] may suspend, revoke, or deny an emergency medical services provider license on the grounds that the provider's administrator of record, employee, or other representative:

(1) has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities of the administrator, employee, or representative, other than an offense for which points are assigned under Section 708.052, Transportation Code;

(2) has been convicted of or placed on deferred adjudication community supervision or deferred disposition for an offense, including:

(A) an offense listed in Sections 3g(a)(1)(A) through (H), Article 42.12, Code of Criminal Procedure; or

(B) an offense, other than an offense described by Subdivision (1), for which the person is subject to registration under Chapter 62, Code of Criminal Procedure; or

(3) has been convicted of Medicare or Medicaid fraud, has been excluded from participation in the state Medicaid program, or has a hold on payment for reimbursement under the state Medicaid program under Subchapter C, Chapter 531, Government Code.

SECTION 3.1541. Sections 773.0615(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) In determining whether an offense directly relates to the duties and responsibilities of emergency medical services personnel under Section 773.0614(a), the *department* [~~commissioner~~] shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring certification to engage in emergency medical services;

(3) the extent to which certification might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of emergency medical services personnel.

(b) In determining the fitness to perform the duties and discharge the responsibilities of emergency medical services personnel for a person who has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, a crime the *department* [~~commissioner~~] shall consider, in addition to the factors listed in Subsection (a):

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated, after release, or since imposition of community supervision or deferred adjudication; and

(6) other evidence of the person's fitness, including letters of recommendation from:

(A) prosecutors, law enforcement officers, correctional officers, or community supervision officers who prosecuted, arrested, or had custodial or other responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other person in contact with the person.

(c) The applicant or certificate holder has the responsibility, to the extent possible, to obtain and provide to the *department* [~~commissioner~~] the recommendations of the persons required by Subsection (b)(6).

SECTION 3.1542. Sections 773.0616(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A proceeding [~~before the commissioner~~] to consider the issues under Section 773.0615 is governed by Chapter 2001, Government Code.

(b) The executive commissioner shall issue guidelines relating to the *department's* [~~commissioner's~~] decision-making under Sections 773.0614 and 773.0615. The guidelines must state the reasons a particular crime is considered to relate to emergency medical services personnel and include any other criterion that may affect the decisions of the *department* [~~commissioner~~].

SECTION 3.1543. Section 773.0617, Health and Safety Code, is amended to read as follows:

Sec. 773.0617. NOTICE AND REVIEW OF SUSPENSION, REVOCATION, DISQUALIFICATION FOR, OR DENIAL OF CERTIFICATION. (a) If the *department* [~~commissioner~~] suspends or revokes a certification, denies a person a certificate, or denies the opportunity to be examined for a certificate under Section 773.0614, the *department* [~~commissioner~~] shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by Subsection (b); and

(3) the earliest date the person may appeal the action of the *department* [~~commissioner~~].

(b) A person whose certificate has been suspended or revoked or who has been denied a certificate or the opportunity to take an examination and who has exhausted the person's administrative appeals may file an action in the district court in Travis County

for review of the evidence presented to the *department* [~~commissioner~~] and the decision of the *department* [~~commissioner~~].

(c) The petition for an action under Subsection (b) must be filed not later than the 30th day after the date the *department's* [~~commissioner's~~] decision is final.

SECTION 3.1544. Sections 773.062(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The *commissioner* [~~bureau chief~~] shall issue an emergency order to suspend a certificate or license issued under this chapter if the *commissioner* [~~bureau chief~~] has reasonable cause to believe that the conduct of any certificate or license holder creates an imminent danger to the public health or safety.

(c) The holder may request in writing a hearing on the emergency suspension. The department shall *refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall* conduct the hearing not earlier than the 10th day or later than the 30th day after the date on which the request is received *by the department, shall make findings of fact, and shall issue a written proposal for decision regarding whether the department should* [~~and may~~] continue, modify, or rescind the suspension. The *department's* [~~department~~] hearing rules and Chapter 2001, Government Code, govern the hearing and any appeal from a disciplinary action related to the hearing.

SECTION 3.1545. Section 773.064(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly practices as, attempts to practice as, or represents himself to be an emergency medical technician-paramedic, *advanced* emergency medical *technician* [~~technician-intermediate~~], emergency medical technician, emergency care attendant, or licensed paramedic and the person does not hold an appropriate certificate issued by the department under this chapter. An offense under this subsection is a Class A misdemeanor.

SECTION 3.1546. Sections 773.065(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] may assess an administrative penalty against an emergency medical services provider or a course coordinator who violates this chapter or a rule adopted or an order issued under this chapter.

(b) In determining the amount of the penalty, the *department* [~~commissioner~~] shall consider:

(1) the emergency medical services provider's or course coordinator's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the emergency medical services provider's or course coordinator's demonstrated good faith; and

(5) any other matter as justice may require.

(c) The penalty may not exceed $7,500 for each violation. The *executive commissioner* [~~board~~] by rule shall establish gradations of penalties in accordance with the relative seriousness of the violation.

SECTION 3.1547. Sections 773.066(b), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(b) If a hearing is held, the *department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office* [~~commissioner~~] shall *conduct the hearing,* make findings of fact, and [~~shall~~] issue *to the department* a written *proposal for* decision regarding whether the emergency medical services provider or course coordinator committed a violation and the amount of any penalty to be assessed.

(c) If the emergency medical services provider or course coordinator charged with the

violation does not request a hearing, the *department* [~~commissioner~~] shall determine whether the provider or course coordinator committed a violation and the amount of any penalty to be assessed.

(d) After making a determination under *this section* [~~Subsection (b) or (c)~~] that a penalty is to be assessed against an emergency medical services provider or a course coordinator, the *department* [~~commissioner~~] shall issue an order requiring that the emergency medical services provider or course coordinator pay the penalty.

(e) Not later than the 30th day after the date an order is issued under Subsection (d), the *department* [~~commissioner~~] shall give written notice of the order to the emergency medical services provider or course coordinator.

SECTION 3.1548. Sections 773.067(b), (c), (d), and (e), Health and Safety Code, are amended to read as follows:

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the *department's* [~~commissioner's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner~~] by certified mail.

(c) If the *department* [~~commissioner~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~commissioner~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(d) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the *department* [~~commissioner~~] may refer the matter to the attorney general for collection of the amount of the penalty.

(e) Judicial review of the order of the *department* [~~commissioner~~]:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

SECTION 3.1549. Section 773.069, Health and Safety Code, is amended to read as follows:

Sec. 773.069. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the *department* [~~commissioner~~] may bring a civil action to recover an administrative penalty assessed under this subchapter.

SECTION 3.1550. Section 773.070, Health and Safety Code, is amended to read as follows:

Sec. 773.070. *DENIAL OF CERTIFICATION OR LICENSURE FOR FAILURE TO PROVIDE* [~~ACCESS TO~~] CERTAIN CRIMINAL HISTORY RECORD INFORMATION. [~~(e)~~] The *department* [~~board~~] may deny licensure or certification to an applicant who does not provide a complete set of the required fingerprints *to obtain criminal history record information.*

SECTION 3.1551. Section 773.071(a), Health and Safety Code, is amended to read as follows:

(a) To the extent feasible, the *executive commissioner* [~~board~~] by rule shall set the fees under this subchapter in amounts necessary for the department to recover the cost of administering this subchapter.

SECTION 3.1552. Sections 773.092(b), (c), and (e), Health and Safety Code, are amended to read as follows:

(b) Information under *Subsection (a)(4)* [~~Subdivision (4)~~] is discoverable in any court or administrative proceeding in this state if the court or administrative body has jurisdiction of the subject matter, pursuant to rules of procedure specified for the matter.

(c) *Subsection (a)(5)* [~~Subdivision (5)~~] does not authorize the release of confidential information to instigate or substantiate criminal charges against a patient.

(e) Communications and records that are confidential under this section may be disclosed to:

(1) medical or law enforcement personnel if the emergency medical services personnel, the physician providing medical supervision, or the emergency medical services provider determines that there is a probability of imminent physical danger to any person or if there is a probability of immediate mental or emotional injury to the patient;

(2) governmental agencies if the disclosure is required or authorized by law;

(3) qualified persons to the extent necessary for management audits, financial audits, program evaluation, system improvement, or research, except that any report of the research, audit, or evaluation may not directly or indirectly identify a patient;

(4) any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information as provided by Section 773.093;

(5) the department for data collection or complaint investigation;

(6) other emergency medical services personnel, other physicians, and other personnel under the direction of a physician who are participating in the diagnosis, evaluation, or treatment of a patient; *or*

(7) individuals, corporations, or governmental agencies involved in the payment or collection of fees for emergency medical services rendered by emergency medical services personnel.

SECTION 3.1553. The heading to Section 773.112, Health and Safety Code, is amended to read as follows:

Sec. 773.112. [~~DUTIES OF BOARD;~~] RULES.

SECTION 3.1554. Section 773.112(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule shall adopt minimum standards and objectives to implement emergency medical services and trauma care systems. The *executive commissioner* [~~board~~] by rule shall provide for the designation of trauma facilities and for triage, transfer, and transportation policies. The *executive commissioner* [~~board~~] shall consider guidelines adopted by the American College of Surgeons and the American College of Emergency Physicians in adopting rules under this section.

SECTION 3.1555. Section 773.113, Health and Safety Code, is amended to read as follows:

Sec. 773.113. DUTIES OF *DEPARTMENT* [~~BUREAU~~]. (a) The *department* [~~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.

(b) The *department* [~~bureau~~] may grant an exception to a rule adopted under Section 773.112 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.

SECTION 3.1556. Section 773.1135, Health and Safety Code, is transferred to Section 773.113, Health and Safety Code, redesignated as Section 773.113(c), Health and Safety Code, and amended to read as follows:

(c) [~~Sec. 773.1135. DUTIES OF DEPARTMENT.~~] The department shall develop performance measures for regional advisory councils in trauma service areas to:

(1) promote the provision of a minimum level of emergency medical services in a trauma service area in accordance with the rules adopted under Section 773.112;

(2) promote the provision of quality care and service by the emergency medical services and trauma care system in accordance with the rules adopted under Section 773.112; and

(3) maximize the accuracy of information provided by a regional advisory council to the department [~~or bureau~~] for increased council effectiveness.

SECTION 3.1557. Section 773.114(a), Health and Safety Code, is amended to read as follows:

(a) 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 *department* [~~board~~] rule.

SECTION 3.1558. Section 773.115, Health and Safety Code, is amended to read as follows:

Sec. 773.115. TRAUMA FACILITIES. (a) The *department* [~~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 and II trauma facilities and *department* rules [~~adopted by the board~~] for level III and IV trauma facilities. In adopting rules under this section, the *executive commissioner* [~~board~~] may consider trauma caseloads, geographic boundaries, or minimum population requirements, but the *department* [~~bureau~~] may not deny designation solely on these criteria. The *executive commissioner* [~~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 *department* [~~bureau~~] for designation as a trauma facility, and the *department* [~~bureau~~] shall grant the designation if the facility meets the requirements for designation prescribed by *department* [~~board~~] rules.

(c) *A* [~~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 subchapter.

SECTION 3.1559. Sections 773.116(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) The *department* [~~bureau~~] shall charge a fee to a health care facility that applies for initial or continuing designation as a trauma facility.

(b) The *executive commissioner* [~~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. The amount of the fee may not exceed:

(1) $5,000 for a Level I or II facility;

(2) $2,500 for a Level III facility; or

(3) $1,000 for a Level IV facility.

(d) To the extent feasible, the *executive commissioner* [~~board~~] by rule shall set the fee in an amount necessary for the department to recover the cost directly related to designating trauma facilities under this subchapter.

SECTION 3.1560. Sections 773.119(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The *executive commissioner* [~~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 *department* [~~the~~] rules [~~adopted by the board~~]. A grant awarded under this section is governed by *Chapter 783, Government Code,* [~~the Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes)~~] and by the rules adopted under that *chapter* [~~Act~~].

SECTION 3.1561. Section 773.122(e), Health and Safety Code, is amended to read as follows:

(e) In any fiscal year, the commissioner may use not more than three percent of the appropriated money from the accounts after any amount necessary to maintain the reserve established by Subsection (b) is deducted to fund the administrative costs [~~of the bureau of emergency management~~] of the department associated with administering the state emergency medical services program, the trauma program, and the accounts and to fund the costs of monitoring and providing technical assistance for those programs and the accounts.

SECTION 3.1562. The heading to Subchapter F, Chapter 773, Health and Safety Code, is amended to read as follows:

SUBCHAPTER F. MEDICAL INFORMATION PROVIDED BY CERTAIN EMERGENCY MEDICAL SERVICES *CALL TAKERS* [~~OPERATORS~~]

SECTION 3.1563. Section 773.141(2), Health and Safety Code, is amended to read as follows:

(2) "Emergency medical services *call taker* [~~operator~~]" means a person who, as a volunteer or employee of a public agency, as that term is defined by Section 771.001, receives emergency calls.

SECTION 3.1564. Section 773.143, Health and Safety Code, is amended to read as follows:

Sec. 773.143. PROVISION OF MEDICAL INFORMATION. An emergency medical services *call taker* [~~operator~~] may provide medical information to a member of the public during an emergency call if:

(1) the *call taker* [~~operator~~] has successfully completed an emergency medical services *call taker* [~~operator~~] training program and holds a certificate issued under Section 773.144; and

(2) the information provided substantially conforms to the protocol for delivery of the information adopted by the *executive commissioner* [~~board~~] under Section 773.145.

SECTION 3.1565. Section 773.144, Health and Safety Code, is amended to read as follows:

Sec. 773.144. TRAINING PROGRAMS. (a) The department may offer emergency medical services *call taker* [~~operator~~] training programs and may approve training programs offered by other persons. The *executive commissioner* [~~board~~] by rule shall establish minimum standards for approval of training programs and certification and decertification of program instructors.

(b) The provider of an emergency medical services *call taker* [~~operator~~] training program shall issue an emergency medical services *call taker* [~~operator~~] a certificate evidencing completion of the training program. The *executive commissioner* [~~board~~] by rule may require that, before issuance of the certificate, the *call taker* [~~operator~~] successfully complete an examination administered by the *department* [~~board~~], by the provider of the training program, or by another person.

(c) The *executive commissioner* [~~board~~] by rule may provide that a certificate issued under Subsection (b) expires at the end of a specified period not less than one year after the date on which the certificate is issued and may adopt requirements, including additional training or examination, for renewal of the certificate.

(d) The *executive commissioner* [~~board~~] by rule may adopt other requirements relating to emergency medical services *call taker* [~~operator~~] training programs. The establishment of minimum standards under this section does not prohibit the entity that is employing or accepting the volunteer services of the emergency medical services *call taker* [~~operator~~] from imposing additional training standards or procedures.

SECTION 3.1566. Section 773.145, Health and Safety Code, is amended to read as follows:

Sec. 773.145. MEDICAL INFORMATION. The *executive commissioner* [~~board~~] by rule shall adopt a protocol that must be used to provide medical information under Section 773.143. The protocol may include the use of a flash-card system or other similar system designed to make the information readily accessible to the emergency medical services *call taker* [~~operator~~] in an understandable form.

SECTION 3.1567. Section 773.146(a), Health and Safety Code, is amended to read as follows:

(a) An emergency medical services *call taker* [~~operator~~] who holds a certificate under Section 773.144 is not liable for damages that arise from the provision of medical information according to the protocol adopted under Section 773.145 if the information is provided in good faith. This subsection does not apply to an act or omission of the *call taker* [~~operator~~] that constitutes gross negligence, recklessness, or intentional misconduct. This subsection does not affect any liability imposed on a public agency for the conduct of the emergency medical services *call taker* [~~operator~~] under Section 101.062, Civil Practice and Remedies Code.

SECTION 3.1568. Section 773.147(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule may adopt fees for:

(1) training programs provided by the *department* [~~board~~] under Section 773.144; and

(2) the approval of program instructors and of training programs offered by other persons.

SECTION 3.1569. Section 773.171(a), Health and Safety Code, is amended to read as follows:

(a) The emergency medical services for children program is in the *department* [~~bureau of emergency management~~].

SECTION 3.1570. The heading to Section 773.173, Health and Safety Code, is amended to read as follows:

Sec. 773.173. [~~DUTIES OF BOARD;~~] RULES.

SECTION 3.1571. Sections 773.173(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) On the recommendation of the advisory *council* [~~committee~~], the *executive commissioner* [~~board~~] shall adopt minimum standards and objectives to implement a pediatric emergency services system, including rules that:

(1) provide guidelines for categorization of a facility's pediatric capability;

(2) provide for triage, transfer, and transportation policies for pediatric care;

(3) establish guidelines for:

(A) prehospital care management for triage and transportation of a pediatric patient;

(B) prehospital and hospital equipment that is necessary and appropriate for the care of a pediatric patient;

(C) necessary pediatric emergency equipment and training in long-term care facilities; and

(D) an interhospital transfer system for a critically ill or injured pediatric patient; and

(4) provide for data collection and analysis.

(b) The *executive commissioner* [~~board~~] and the advisory *council* [~~committee~~] shall consider guidelines endorsed by the American Academy of Pediatrics and the American College of Surgeons in recommending and adopting rules under this section.

(c) The *department* [~~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 persons served in the affected local pediatric emergency medical services system.

SECTION 3.1572. Section 773.204(c), Health and Safety Code, is amended to read as follows:

(c) In developing the stroke emergency transport plan and stroke facility criteria, the stroke committee shall consult the criteria for stroke facilities established by national medical organizations such as *The* [~~the~~] Joint Commission [~~on Accreditation of Healthcare Organizations~~].

SECTION 3.1573. Section 774.002(a), Health and Safety Code, is amended to read as follows:

(a) A municipality or other political subdivision that employs emergency medical technicians may pay educational incentive pay to employees holding certificates from the [~~Texas~~] Department of *State* Health *Services* as emergency medical technicians.

SECTION 3.1574. Section 777.008(b), Health and Safety Code, is amended to read as follows:

(b) The committee is composed of:

(1) one public member appointed by the Commission on State Emergency Communications;

(2) six members who represent the six regional poison control centers, one appointed by the chief executive officer of each center;

(3) one member appointed by the commissioner of *state health services* [~~the Department of State Health Services~~]; and

(4) one member who is a health care professional designated as the poison control program coordinator appointed by the Commission on State Emergency Communications.

SECTION 3.1575. Section 779.002, Health and Safety Code, is amended to read as follows:

Sec. 779.002. TRAINING. (a) A person or entity that acquires an automated external defibrillator shall ensure that:

(1) each user of the automated external defibrillator receives training given or approved by the [~~Texas~~] Department of *State* Health *Services* in:

(A) cardiopulmonary resuscitation; and

(B) use of the automated external defibrillator; and

(2) a licensed physician is involved in the training program to ensure compliance with the requirements of this chapter.

(b) The *executive commissioner of the Health and Human Services Commission* [~~Texas Department of Health~~] shall adopt rules establishing the minimum requirements for the training required by this section. In adopting rules under this section, the *executive commissioner* [~~Texas Department of Health~~] shall consider the guidelines for automated external defibrillator training approved by the American Heart Association, the American Red Cross, or another nationally recognized association.

SECTION 3.1576. Section 781.001, Health and Safety Code, is amended by adding Subdivision (4–a) to read as follows:

(4–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1577. Sections 781.051(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) The *executive* commissioner shall adopt rules necessary to administer this chapter.

(c) The *executive* commissioner *by rule* shall establish fees necessary to administer this chapter, including fees for processing and issuing or renewing a license or registration under this chapter.

(d) The *department* [~~commissioner~~] shall prescribe forms required by this chapter.

SECTION 3.1578. Section 781.103, Health and Safety Code, is amended to read as follows:

Sec. 781.103. APPLICATION FOR LICENSE. An application for a license under this chapter must be in the form prescribed by the *department* [~~commissioner~~] and include:

(1) the full name and business address of the applicant;

(2) the name under which the applicant intends to do business;

(3) a statement as to the general nature of the business in which the applicant intends to engage;

(4) if the applicant is an entity other than an individual, the full name and residence address of each partner, officer, and director of the applicant, and of the applicant's manager;

(5) a verified statement of the applicant's experience qualifications;

(6) a report from the Department of Public Safety stating the applicant's record of any convictions for a Class B misdemeanor or equivalent offense or a greater offense;

(7) the social security number of the individual making the application; and

(8) other information, evidence, statements, or documents required by the department.

SECTION 3.1579. Section 781.105, Health and Safety Code, is amended to read as follows:

Sec. 781.105. FORM OF LICENSE. The *department* [~~commissioner~~] shall prescribe the form of a license, including a branch office license. The license must include:

(1) the name of the license holder;

(2) the name under which the license holder is to operate; and

(3) the license number and the date the license was issued.

SECTION 3.1580. Section 781.108(d), Health and Safety Code, is amended to read as follows:

(d) After suspension of the license, the department may not reinstate the license until an application, in the form prescribed by the *department* [~~commissioner~~], is filed accompanied by a proper insurance certificate. The department may deny the application notwithstanding the applicant's compliance with this section:

(1) for a reason that would justify suspending, revoking, or denying a license; or

(2) if, during the suspension, the applicant performs a practice for which a license is required.

SECTION 3.1581. Section 781.155(b), Health and Safety Code, is amended to read as follows:

(b) The *executive commissioner* [~~department~~] by rule may adopt additional qualifications for an individual to be registered under this subchapter.

SECTION 3.1582. Section 781.254, Health and Safety Code, is amended to read as follows:

Sec. 781.254. STAGGERED RENEWAL; PRORATION OF LICENSE FEE. The *executive commissioner* [~~department~~] by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date of a license is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

SECTION 3.1583. Section 781.352, Health and Safety Code, is amended to read as follows:

Sec. 781.352. HEARING. (a) If the department proposes to revoke or suspend a person's license or registration, the person is entitled to a hearing before *an administrative law judge of* [~~a hearings officer appointed by~~] the State Office of Administrative Hearings.

(b) The *executive* commissioner shall prescribe procedures for appealing to the department a decision to revoke or suspend a license or registration.

SECTION 3.1584. Section 781.453, Health and Safety Code, is amended to read as follows:

Sec. 781.453. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY. (a) If the *department* [~~commissioner or the commissioner's designee~~] determines that a violation occurred, the [~~commissioner or the designee may issue to the~~] department, *within* [~~a report stating:~~

[~~(1) the facts on which the determination is based; and~~

[~~(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.~~

[~~(b) Within~~] 14 days after the date the report is issued, [~~the commissioner or the commissioner's designee~~] shall give written notice of the *violation* [~~report~~] to the person *by certified mail.*

(b) The notice *under Subsection (a)* must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended administrative penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 3.1585. Section 781.454, Health and Safety Code, is amended to read as follows:

Sec. 781.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the *department's* determination and recommended administrative penalty [~~of the commissioner or the commissioner's designee~~]; or

(2) [~~make a~~] request [~~for~~] a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty [~~of the commissioner or the commissioner's designee~~], the department by order shall [~~approve the determination and~~] impose the recommended penalty.

SECTION 3.1586. Section 781.455(a), Health and Safety Code, is amended to read as follows:

(a) If the person requests a hearing or fails to respond in a timely manner to the notice, *an administrative law judge of the State Office of Administrative Hearings* [~~the commissioner or the commissioner's designee~~] shall set a hearing and *the department shall* give written notice of the hearing to the person.

SECTION 3.1587. Sections 781.457(b) and (c), Health and Safety Code, are amended to read as follows:

(b) Within the 30–day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner or the commissioner's designee~~] by certified mail.

(c) If the *department* [~~commissioner or the commissioner's designee~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~commissioner or the designee~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit.

SECTION 3.1588. Section 782.001(2), Health and Safety Code, is amended to read as follows:

(2) *"Executive commissioner"* [~~"Commissioner"~~] means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1589. Section 782.002(b), Health and Safety Code, as added by Chapter 1149 (S.B. 1119), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(b) The account is composed of money deposited to the credit of the account under *Sections 542.406 and* [~~Section~~] 707.008, Transportation Code[~~, and the earnings of the account~~].

SECTION 3.1590. Section 782.002(c), Health and Safety Code, is amended to read as follows:

(c) *Section* [~~Sections 403.095 and~~] 404.071, Government Code, *does* [~~do~~] not apply to the account.

SECTION 3.1591. Section 782.003(a), Health and Safety Code, as added by Chapter 1149 (S.B. 1119), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(a) The *executive* commissioner shall use money appropriated from the regional trauma account established under Section 782.002 to fund uncompensated care of designated trauma facilities and county and regional emergency medical services located in the area served by the trauma service area regional advisory council that serves the local authority submitting money under Section *542.406 or* 707.008, Transportation Code.

SECTION 3.1592. Section 782.003(b), Health and Safety Code, is amended to read as follows:

(b) In any fiscal year, the *executive* commissioner shall use:

(1) 96 percent of the money appropriated from the account to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the Department of State Health Services;

(2) two percent of the money appropriated from the account for county and regional emergency medical services;

(3) one percent of the money appropriated from the account for distribution to the 22 trauma service area regional advisory councils; and

(4) one percent of the money appropriated from the account to fund administrative costs of the commission.

SECTION 3.1593. Section 821.001, Health and Safety Code, is amended to read as follows:

Sec. 821.001. DEFINITION. In this subchapter, "animal" includes every living *non-human* [~~dumb~~] creature.

SECTION 3.1594. Section 821.052(b), Health and Safety Code, is amended to read as follows:

(b) A person may euthanize all other animals in the custody of an animal shelter, including birds and reptiles, only in accordance with the applicable methods, recommendations, and procedures set forth in the *edition* [~~2000 Report~~] of the American Veterinary Medical Association *Guidelines for the* [~~Panel on~~] Euthanasia *of Animals* [~~as modified or superseded by a subsequent report of the American Veterinary Medical Association Panel on Euthanasia~~] that is approved by the *executive commissioner* [~~board~~].

SECTION 3.1595. Section 821.053, Health and Safety Code, is amended to read as follows:

Sec. 821.053. REQUIREMENTS FOR USE OF SODIUM PENTOBARBITAL. (a) The *executive commissioner* [~~board~~] by rule shall establish the requirements and procedures for administering sodium pentobarbital to euthanize an animal in the custody of an animal shelter.

(b) A person may administer sodium pentobarbital to euthanize an animal in the custody of an animal shelter only in accordance with the requirements and procedures established by *department* [~~board~~] rule.

SECTION 3.1596. Section 821.056(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person violates this subchapter or a [~~board~~] rule adopted under this subchapter.

SECTION 3.1597. Section 821.057, Health and Safety Code, is amended to read as follows:

Sec. 821.057. INJUNCTION. A court of competent jurisdiction, on the petition of any

person, may prohibit by injunction the substantial violation of this subchapter or a [~~board~~] rule adopted under this subchapter.

SECTION 3.1598. Section 822.006(d), Health and Safety Code, is amended to read as follows:

(d) It is a defense to prosecution under Section 822.005(a) that the person is *a person with a disability* [~~disabled~~] and uses the dog to provide assistance, the dog is trained to provide assistance to a person with a disability, and the person is using the dog to provide assistance in connection with the person's disability.

SECTION 3.1599. Section 822.101, Health and Safety Code, is amended by adding Subdivision (4–a) to read as follows:

(4–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1600. Section 822.102(a), Health and Safety Code, is amended to read as follows:

(a) This subchapter does not apply to:

(1) a county, municipality, or agency of the state or an agency of the United States or an agent or official of a county, municipality, or agency acting in an official capacity;

(2) a research facility, as that term is defined by Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132), and its subsequent amendments, that is licensed by the secretary of agriculture of the United States under that Act;

(3) an organization that is an accredited member of the [~~American Zoo and Aquarium~~] Association *of Zoos and Aquariums*;

(4) an injured, infirm, orphaned, or abandoned dangerous wild animal while being transported for care or treatment;

(5) an injured, infirm, orphaned, or abandoned dangerous wild animal while being rehabilitated, treated, or cared for by a licensed veterinarian, an incorporated humane society or animal shelter, or a person who holds a rehabilitation permit issued under Subchapter C, Chapter 43, Parks and Wildlife Code;

(6) a dangerous wild animal owned by and in the custody and control of a transient circus company that is not based in this state if:

(A) the animal is used as an integral part of the circus performances; and

(B) the animal is kept within this state only during the time the circus is performing in this state or for a period not to exceed 30 days while the circus is performing outside the United States;

(7) a dangerous wild animal while in the temporary custody or control of a television or motion picture production company during the filming of a television or motion picture production in this state;

(8) a dangerous wild animal owned by and in the possession, custody, or control of a college or university solely as a mascot for the college or university;

(9) a dangerous wild animal while being transported in interstate commerce through the state in compliance with the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments and the regulations adopted under that Act;

(10) a nonhuman primate owned by and in the control and custody of a person whose only business is supplying nonhuman primates directly and exclusively to biomedical research facilities and who holds a Class "A" or Class "B" dealer's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments;

(11) a dangerous wild animal that is:

(A) owned by or in the possession, control, or custody of a person who is a participant in a species survival plan of the [~~American Zoo and Aquarium~~] Association *of Zoos and Aquariums* for that species; and

(B) an integral part of that species survival plan; and

(12) in a county west of the Pecos River that has a population of less than 25,000, a cougar, bobcat, or coyote in the possession, custody, or control of a person that has trapped the cougar, bobcat, or coyote as part of a predator or depredation control activity.

SECTION 3.1601. Section 822.106(b), Health and Safety Code, is amended to read as follows:

(b) Not later than the 10th day after the date a person receives a certificate of registration, the person shall file a clear and legible copy of the certificate of registration with the [~~Texas~~] Department of *State* Health *Services*. The *executive commissioner* [~~department~~] shall establish a procedure for filing a certificate of registration and *by rule* shall *establish* [~~charge~~] a reasonable fee *to be collected by the department* in an amount sufficient to recover the cost associated with filing a certificate of registration under this subsection.

SECTION 3.1602. Section 822.111, Health and Safety Code, is amended to read as follows:

Sec. 822.111. POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER* [~~BOARD~~]; CAGING REQUIREMENTS AND STANDARDS. (a) The *executive commissioner* [~~board~~] by rule shall establish caging requirements and standards for the keeping and confinement of a dangerous wild animal to ensure that the animal is kept in a manner and confined in a primary enclosure that:

(1) protects and enhances the public's health and safety;

(2) prevents escape by the animal; and

(3) provides a safe, healthy, and humane environment for the animal.

(b) An owner of a dangerous wild animal shall keep and confine the animal in accordance with the caging requirements and standards established by the *executive commissioner* [~~board~~].

(c) An animal registration agency may approve a deviation from the caging requirements and standards established by the *executive commissioner* [~~board~~], only if:

(1) the animal registration agency has good cause for the deviation; and

(2) the deviation:

(A) does not compromise the public's health and safety;

(B) does not reduce the total area of the primary enclosure below that established by the *executive commissioner* [~~board~~]; and

(C) does not otherwise adversely affect the overall welfare of the animal involved.

SECTION 3.1603. Section 823.001(4), Health and Safety Code, is amended to read as follows:

(4) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

SECTION 3.1604. Sections 823.003(a) and (e), Health and Safety Code, are amended to read as follows:

(a) Each animal shelter operated in this state shall comply with the standards for:

(1) housing and sanitation *as provided in* [~~existing on September 1, 1982, and adopted under~~] Chapter 826 *for quarantine and impoundment facilities*; and

(2) animal control officer training adopted under Chapter 829.

(e) The *executive commissioner of the Health and Human Services Commission* [~~board~~] may require each person operating an animal shelter to keep records of the date and disposition of animals in its custody, to maintain the records on the business premises of the animal shelter, and to make the records available for inspection at reasonable times.

SECTION 3.1605. Section 826.002, Health and Safety Code, is amended by amending Subdivisions (5) and (9) and adding Subdivision (7–a) to read as follows:

(5) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(7-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(9) "Quarantine" means strict confinement of an animal specified in an order of the *department* [~~board~~] or its designee:

(A) on the private premises of the animal's owner or at a facility approved by the *department* [~~board~~] or its designee; and

(B) under restraint by closed cage or paddock or in any other manner approved by *department* [~~board~~] rule.

SECTION 3.1606. The heading to Subchapter B, Chapter 826, Health and Safety Code, is amended to read as follows:

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER, DEPARTMENT,* [~~BOARD~~] AND LOCAL GOVERNMENTS

SECTION 3.1607. Section 826.011, Health and Safety Code, is amended to read as follows:

Sec. 826.011. GENERAL POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER AND DEPARTMENT* [~~BOARD~~]. (a) The *department* [~~board~~] or its designee, with the cooperation of the governing bodies of counties and municipalities, shall administer the rabies control program established by this chapter.

(b) The *executive commissioner* [~~board~~] shall adopt rules necessary to effectively administer this chapter.

(c) The *department* [~~board~~] or its designee may enter into contracts or agreements with public or private entities to carry out this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(d) Subject to any limitations or conditions prescribed by the legislature, the *department* [~~board~~] or its designee may seek, receive, and spend funds received through appropriations, grants, or donations from public or private sources for the rabies control program established by this chapter.

(e) The *department* [~~board~~] or its designee may compile, analyze, publish, and distribute information relating to the control of rabies for the education of physicians, veterinarians, public health personnel, and the public.

SECTION 3.1608. Section 826.012, Health and Safety Code, is amended to read as follows:

Sec. 826.012. MINIMUM STANDARDS FOR RABIES CONTROL. This chapter and the rules adopted by the *executive commissioner* [~~board~~] under this chapter are the minimum standards for rabies control.

SECTION 3.1609. Section 826.013, Health and Safety Code, is amended to read as follows:

Sec. 826.013. COUNTIES AND MUNICIPALITIES MAY ADOPT CHAPTER. The governing body of a municipality or the commissioners court of a county may adopt this chapter and the standards adopted by the *executive commissioner* [~~board~~].

SECTION 3.1610. Section 826.014, Health and Safety Code, is amended to read as follows:

Sec. 826.014. COUNTIES MAY ADOPT ORDINANCES AND RULES. (a) The commissioners court of a county may adopt ordinances or rules that establish a local rabies control program in the county and set local standards that are compatible with and equal to or more stringent than the program established by this chapter and the *department* rules adopted *under this chapter* [~~by the board~~].

(b) County ordinances or rules adopted under this section supersede this chapter and the *department* rules *adopted under this chapter* [~~of the board~~] within that county so that dual enforcement will not occur.

SECTION 3.1611. Section 826.015, Health and Safety Code, is amended to read as follows:

Sec. 826.015. MUNICIPALITIES MAY ADOPT ORDINANCES OR RULES. (a) The governing body of a municipality may adopt ordinances or rules that establish a local rabies control program in the municipality and set local standards that are compatible with and equal to or more stringent than:

(1) the ordinances or rules adopted by the county in which the municipality is located; and

(2) the program established by this chapter and the *department* rules adopted *under this chapter* [~~by the board~~].

(b) Municipal ordinances or rules adopted under this section supersede ordinances or rules adopted by the county in which the municipality is located, this chapter, and the *department* rules *adopted under this chapter* [~~of the board~~] within that municipality so that multiple enforcement will not occur.

SECTION 3.1612. 826.017(b) and (c), Health and Safety Code, are amended to read as follows:

(b) Except as restricted by *department* [~~board~~] rule, the officer designated as the local rabies control authority may be the county health officer, municipal health officer, animal control officer, peace officer, or any entity that the commissioners court or governing body considers appropriate.

(c) Among other duties, the local rabies control authority shall enforce:

(1) this chapter and the *department* [~~board~~] rules that comprise the minimum standards for rabies control;

(2) the ordinances or rules of the municipality or county that the local rabies control authority serves; and

(3) the rules adopted by the *executive commissioner* [~~board~~] under the area rabies quarantine provisions of Section 826.045.

SECTION 3.1613. Sections 826.021(a) and (b), Health and Safety Code, are amended to read as follows:

(a) Except as otherwise provided by *department* [~~board~~] rule, the owner of a dog or cat shall have the animal vaccinated against rabies by the time the animal is four months of age and at regular intervals thereafter as prescribed by *department* [~~board~~] rule.

(b) A veterinarian who vaccinates a dog or cat against rabies shall issue to the animal's owner a vaccination certificate in a form that meets the minimum standards approved by the *executive commissioner* [~~board~~].

SECTION 3.1614. Section 826.022(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person fails or refuses to have each dog or cat owned by the person vaccinated against rabies and the animal is required to be vaccinated under:

(1) Section 826.021 and *department* [~~board~~] rules; or

(2) ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

SECTION 3.1615. Sections 826.025(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The department may provide vaccine and hyperimmune serum in accordance with *department* [~~board~~] policies or procedures for the use and benefit of a person exposed, or suspected of having been exposed, to rabies.

(b) In accordance with *department* [~~board~~] rules and eligibility standards, the department is entitled to be reimbursed by or on behalf of the person receiving the vaccine or serum for actual costs incurred in providing the vaccine or serum.

SECTION 3.1616. Sections 826.042(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt rules governing the testing of quarantined animals and the procedure for and method of quarantine.

(b) The local rabies control authority or a veterinarian shall quarantine or test in accordance with *department* [~~board~~] rules any animal that the local rabies control authority or veterinarian has probable cause to believe is rabid, may have been exposed to rabies, or may have exposed a person to rabies.

SECTION 3.1617. Section 826.044(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person fails or refuses to quarantine or present for quarantine or testing an animal that:

(1) is required to be placed in quarantine or presented for testing under Section 826.042 and *department* [~~board~~] rules; or

(2) is required to be placed in quarantine under ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

SECTION 3.1618. Sections 826.045(a), (b), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) If rabies is known to exist in an area, the *department* [~~board~~] or its designee may declare an area rabies quarantine to prevent or contain a rabies epizootic.

(b) On the declaration that a quarantine exists, the *executive commissioner* [~~board~~] shall:

(1) define the borders of the quarantine area; and

(2) adopt permanent or emergency rules.

(d) The quarantine remains in effect until the 181st day after the date on which the last case of rabies is diagnosed in a dog, cat, or other animal species that caused the *department* [~~board~~] or its designee to declare a quarantine, unless the *department* [~~board~~] or its designee, by declaration, removes the quarantine before that date.

(e) While the quarantine is in effect, the rules adopted by the *executive commissioner* [~~board~~] supersede all other applicable ordinances or rules applying to the quarantine area and apply until the *department* [~~board~~] or its designee removes the quarantine by declaration or until the rules expire or are revoked by the *executive commissioner* [~~board~~].

SECTION 3.1619. Section 826.046(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person violates or attempts to violate a *department* rule [~~of the board~~] adopted under Section 826.045 governing an area rabies quarantine.

SECTION 3.1620. Section 826.051, Health and Safety Code, is amended to read as follows:

Sec. 826.051. MINIMUM STANDARDS FOR QUARANTINE AND IMPOUNDMENT FACILITIES. (a) The *executive commissioner* [~~board~~] shall adopt rules governing the types of facilities that may be used to quarantine animals.

(b) The *executive commissioner* [~~board~~] by rule shall establish minimum standards for impoundment facilities and for the care of impounded animals.

(c) In accordance with *department* [~~board~~] rules, a local rabies control authority may contract with one or more public or private entities to provide and operate a quarantine facility.

SECTION 3.1621. Section 826.052, Health and Safety Code, is amended to read as follows:

Sec. 826.052. INSPECTIONS. An employee of the department, on the presentation of appropriate credentials to the local rabies control authority or the authority's designee,

may conduct a reasonable inspection of a quarantine or impoundment facility at a reasonable hour to determine if the facility complies with:

(1) the minimum standards adopted by the *executive commissioner* [~~board~~] for those facilities; and

(2) the requirements for animal control officer training adopted under Chapter 829.

SECTION 3.1622. Section 826.053, Health and Safety Code, is amended to read as follows:

Sec. 826.053. HEARING. (a) A person aggrieved by an action of the department in amending, limiting, suspending, or revoking any approval required of the department by this chapter may request a hearing [~~before the department~~].

(b) *A* [~~The department shall conduct the~~] hearing held under this section *must be conducted* in accordance with Chapter 2001, Government Code, and the department's formal hearing rules.

SECTION 3.1623. Section 826.054(a), Health and Safety Code, is amended to read as follows:

(a) At the request of the commissioner, the attorney general may bring suit in the name of the state to enjoin the operation of a quarantine or impoundment facility that fails to meet the minimum standards established by this chapter and *department* [~~board~~] rules.

SECTION 3.1624. Section 826.055(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person operates a facility for quarantined or impounded animals that fails to meet standards for approval established by:

(1) *department* [~~board~~] rules; or

(2) ordinances or rules adopted under this chapter by a county or municipality.

SECTION 3.1625. The heading to Section 828.014, Health and Safety Code, is amended to read as follows:

Sec. 828.014. ANIMAL FRIENDLY ACCOUNT*; DEDICATION*.

SECTION 3.1626. Section 828.014, Health and Safety Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (b–1) to read as follows:

(a) The [~~Texas Department of Health~~] animal friendly account is a separate account in the general revenue fund. The account is composed of:

(1) money deposited to the credit of the account under *former* Section 502.291, Transportation Code*, and under Section 504.605, Transportation Code*; and

(2) gifts, grants, donations, and legislative appropriations.

(b) The [~~Texas~~] Department of *State* Health *Services* administers the account.

(b–1) The *Department of State Health Services* [~~department~~] may spend money credited to the account *or money deposited to the associated trust fund account created under Section 504.6012, Transportation Code,* only to:

(1) make grants to eligible organizations that sterilize animals owned by the general public at minimal or no cost; and

(2) defray the cost of administering the account.

(c) The *Department of State Health Services* [~~Texas Board of Health:~~

[~~(1)~~] may accept gifts, donations, and grants from any source for the benefit of the account. *The executive commissioner of the Health and Human Services Commission* [~~; and~~

[~~(2)~~] by rule shall establish guidelines for spending money *described by Subsection (b–1)* [~~credited to the account~~].

SECTION 3.1627. Section 829.005, Health and Safety Code, is amended to read as

follows:

Sec. 829.005. FEE. The department and any authorized animal control course sponsor, *in accordance with department rules,* may *collect* [~~charge~~] reasonable fees to cover the cost of arranging and conducting an animal control course.

SECTION 3.1628. Sections 841.022(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The executive director of the Texas Department of Criminal Justice and the commissioner of *state health services* [~~the Department of State Health Services~~] jointly shall establish a multidisciplinary team to review available records of a person referred to the team under Section 841.021. The team must include:

(1) one person from the Department of State Health Services;

(2) two persons from the Texas Department of Criminal Justice, one of whom must be from the victim services *division* [~~office~~] of that department;

(3) one person from the Department of Public Safety;

(4) two persons from the office or office personnel; and

(5) one person from the Council on Sex Offender Treatment.

(c) Not later than the 60th day after the date the multidisciplinary team receives notice under Section 841.021(a) or (b), the team shall:

(1) assess whether the person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release or discharge;

(2) give notice of that assessment to the Texas Department of Criminal Justice or the [~~Texas~~] Department of *State* [~~Mental~~] Health *Services* [~~and Mental Retardation~~], as appropriate; and

(3) recommend the assessment of the person for a behavioral abnormality, as appropriate.

SECTION 3.1629. Section 841.150, Health and Safety Code, is amended to read as follows:

Sec. 841.150. EFFECT OF SUBSEQUENT COMMITMENT OR CONFINEMENT ON ORDER OF CIVIL COMMITMENT. (a) The duties imposed by this chapter are suspended for the duration of any confinement of a person, or if applicable any other commitment of a person to a community center, mental health facility, or state *supported living center* [~~school~~], by governmental action.

(b) In this section:

(1) "Community center" means a center established under Subchapter A, Chapter 534.

(2) "Mental health facility" has the meaning assigned by Section 571.003.

(3) "State *supported living center* [~~school~~]" has the meaning assigned by Section 531.002.

SECTION 3.1630. Section 1001.001, Health and Safety Code, is amended to read as follows:

Sec. 1001.001. DEFINITIONS. In this *title* [~~chapter~~]:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of state health services.

(3) "Council" means the State Health Services Council.

(4) "Department" means the Department of State Health Services.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3.1631. Section 1001.051(c), Health and Safety Code, is amended to read as follows:

(c) Subject to the control of the executive commissioner, the commissioner shall:

(1) act as the department's chief administrative officer;

(2) in accordance with the procedures prescribed by Section 531.00551, Government Code, assist the executive commissioner in the development and implementation of policies and guidelines needed for the administration of the department's functions;

(3) in accordance with the procedures adopted by the executive commissioner under Section 531.00551, Government Code, assist the executive commissioner in the development of rules relating to the matters within the department's jurisdiction, including the delivery of services to persons and the rights and duties of persons who are served or regulated by the department; and

(4) serve as a liaison between the department and commission.

SECTION 3.1632. Section 1001.056(c), Health and Safety Code, is amended to read as follows:

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the *Texas Workforce* [~~state~~] Commission *civil rights division* [~~on Human Rights~~] for compliance with Subsection (b)(1); and

(3) filed with the governor's office.

SECTION 3.1633. Section 1001.0711(a), Health and Safety Code, is amended to read as follows:

(a) The *executive commissioner* [~~commission~~] by rule shall establish a School Health Advisory Committee at the department to provide assistance to the council in establishing a leadership role for the department in support for and delivery of coordinated school health programs and school health services.

SECTION 3.1634. Section 1001.080(a), Health and Safety Code, is amended to read as follows:

(a) In this section, "individual's legally authorized representative" means:

(1) a parent, managing c onservator, or guardian of an individual, if the individual is a minor;

(2) a guardian of an individual, if the individual has been adjudicated incompetent to manage the individual's personal affairs; or

(3) an agent of the individual authorized under a *medical* [~~durable~~] power of attorney for health care.

SECTION 3.1635. Subchapter D, Chapter 1001, Health and Safety Code, is amended by adding Sections 1001.084 and 1001.085 to read as follows:

Sec. 1001.084. CONTRACTING AND AUDITING AUTHORITY; DELEGATION. (a) The executive commissioner, as authorized by Section 531.0055, Government Code, may delegate to the department the executive commissioner's authority under that section for contracting and auditing relating to the department's powers, duties, functions, and activities.

(b) If the executive commissioner does not make a delegation under Subsection (a), a reference in law to the department with respect to the department's contracting or auditing authority means the executive commissioner. If the executive commissioner makes a delegation under Subsection (a), a reference in law to the department's contracting or auditing authority means that authority the executive commissioner has delegated to the department.

(c) If the executive commissioner revokes all or part of a delegation made under Subsection (a), a reference in law to the department with respect to a function for which the delegation was revoked means the executive commissioner or another entity to which the executive commissioner delegates that authority.

(d) It is the legislature's intent that the executive commissioner retain the authority

over and responsibility for contracting and auditing at each health and human services agency as provided by Section 531.0055, Government Code. A statute enacted on or after January 1, 2015, that references the contracting or auditing authority of the department does not give the department direct contracting or auditing authority unless the statute expressly provides that the contracting or auditing authority:

(1) is given directly to the department; and

(2) is an exception to the exclusive contracting and auditing authority given to the executive commissioner under Section 531.0055, Government Code.

Sec. 1001.085. MANAGEMENT AND DIRECTION BY EXECUTIVE COMMISSIONER. The department's powers and duties prescribed by this chapter and other law, including enforcement activities and functions, are subject to the executive commissioner's oversight under Chapter 531, Government Code, to manage and direct the operations of the department.

SECTION 3.1636. Section 1001.202(c), Health and Safety Code, as added by Chapter 352 (H.B. 2392), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

(c) The *executive commissioner* [~~department~~] may adopt rules necessary to implement this subchapter.

SECTION 3.1637. Section 1002.052(b), Health and Safety Code, is amended to read as follows:

(b) The following ex officio, nonvoting members also serve on the board:

(1) the commissioner [~~of the department~~];

(2) the executive commissioner;

(3) the commissioner of insurance;

(4) the executive director of the Employees Retirement System of Texas;

(5) the executive director of the Teacher Retirement System of Texas;

(6) the state Medicaid director of the *commission* [~~Health and Human Services Commission~~];

(7) the executive director of the Texas Medical Board;

(8) the commissioner of *aging and disability services* [~~the Department of Aging and Disability Services~~];

(9) the executive director of the Texas Workforce Commission;

(10) the commissioner of the Texas Higher Education Coordinating Board; and

(11) a representative from each state agency or system of higher education that purchases or provides health care services, as determined by the governor.

SECTION 3.1638. Section 1002.102(b), Health and Safety Code, is amended to read as follows:

(b) The institute shall study and develop recommendations for measuring quality of care and efficiency across:

(1) all state employee and state retiree benefit plans;

(2) employee and retiree benefit plans provided through the Teacher Retirement System of Texas;

(3) the [~~state~~] medical assistance program under Chapter 32, Human Resources Code; and

(4) the child health plan *program* under Chapter 62.

SECTION 3.1639. The following provisions of the Health and Safety Code are repealed:

(1) Section 11.002;

(2) Section 11.003(a);

(3) the heading to Section 11.004;

(4) Section 11.004(a);

(5) Sections 11.0045, 11.005, 11.0055, 11.006, 11.007, 11.008, 11.009, 11.010, and 11.011;

(6) the heading to Section 11.012;

(7) Section 11.012(e);

(8) Section 11.013;

(9) Section 11.015;

(10) Section 11.0161;

(11) Section 11.017;

(12) Section 11.018;

(13) Section 12.0123, as added by Chapters 1447 and 1460, Acts of the 76th Legislature, Regular Session, 1999;

(14) Section 12.017;

(15) Subchapter C, Chapter 12;

(16) Sections 33.018(a)(2) and (3) and 33.051(1) and (2);

(17) Sections 34.001(1), (2), and (3);

(18) Sections 42.002(1) and 42.005(e);

(19) Section 47.0035;

(20) Sections 48.001(2), (3), (5), and (6);

(21) Section 61.002(1);

(22) Sections 62.002(1) and (2);

(23) Section 62.055(d);

(24) Section 62.059;

(25) Section 62.101(b–1);

(26) Section 62.1012;

(27) Section 63.001;

(28) Sections 81.043(c) and (d) and 81.050(i);

(29) Section 85.013;

(30) Sections 85.083 and 85.084;

(31) Subchapter F, Chapter 85;

(32) Sections 85.271(1) and (3);

(33) Sections 87.001(5) and (10);

(34) Section 88.001(12);

(35) Section 92.008;

(36) Section 93.011;

(37) Sections 96.001(1) and (2);

(38) Sections 98.001(3), (4), and (5);

(39) Section 101.0075;

(40) Section 103.0105;

(41) Sections 103A.001(1) and (3);

(42) Sections 104.002(1), (2), (3), and (4);

(43) Section 105.008;

(44) Chapter 112;

(45) Sections 115.001(2) and (3);

(46) Sections 117.001(1) and (3);

(47) Sections 141.013(b) and 141.017(e);

(48) Sections 142.001(10) and (11–b);

(49) Section 142.015;

(50) Section 142.016;

(51) Section 144.082(e);

(52) Section 146.019(s);

(53) Section 161.0901;

(54) Section 162.017;

(55) Sections 181.001(b)(1) and (2–b);

(56) Section 241.024;

(57) Section 241.181, as added by Chapter 217 (H.B. 15), Acts of the 83rd Legislature, Regular Session, 2013;

(58) Section 242.004;

(59) Section 242.094(e), as added by Chapter 583 (S.B. 28), Acts of the 73rd Legislature, Regular Session, 1993;

(60) Section 244.002(2);

(61) Section 244.008;

(62) Section 245.002(3);

(63) Section 245.008;

(64) Sections 247.006 and 247.047;

(65) Section 248.029(e);

(66) Section 251.001(1);

(67) Sections 252.045 and 252.099;

(68) Section 254.051(f);

(69) Sections 311.004(b) and 311.031(1);

(70) Sections 312.002(1) and (2);

(71) Section 321.002(e);

(72) Section 341.001(1);

(73) Section 345.043(b);

(74) Sections 401.003(2), 401.249(d), and 401.501(2);

(75) Sections 431.002(3), (4), (7), and (12), 431.045(d), 431.055(e), 431.2021, 431.243, 431.247(a), 431.2471, 431.275, and 431.277;

(76) Sections 432.003(1), (2), and (4) and 432.022(e);

(77) Sections 433.003(4) and 433.095(e);

(78) Sections 436.002(4), (5), (13), and (17);

(79) Sections 437.001(1), (2), (3), and (3–a);

(80) Section 438.041(1);

(81) Section 438.042(b), as added by Chapter 885 (H.B. 1682), Acts of the 72nd Legislature, Regular Session, 1991;

(82) Section 438.101(1);

(83) Section 438.151;

(84) Section 439.004;

(85) Sections 440.003(2), (3), (4), and (15);

(86) Section 441.001;

(87) Chapter 461;

(88) Section 462.001(4);

(89) Chapter 463;

(90) Sections 464.001(2) and 464.013;

(91) Sections 466.002(2) and (3);

(92) Section 466.023(g);

(93) Subchapters A and C, Chapter 468;

(94) Section 485.001(3);

(95) Section 486.001(a)(2);

(96) Section 501.001(1);

(97) Sections 502.003(2) and (8);

(98) Section 502.0141(e);

(99) Section 503.001(1);

(100) Sections 505.004(2) and (6) and 505.011(f);

(101) Sections 506.004(2) and (6) and 506.011(f);

(102) Sections 507.004(2) and (6) and 507.010(f);

(103) Chapter 535;

(104) Sections 552.0011(1) and (5);

(105) the headings to Subchapters A and B, Chapter 553;

(106) the heading to Subchapter A, Chapter 554;

(107) Sections 555.001(5) and (9);

(108) Section 571.003(1);

(109) Sections 577.0011 and 577.006(d);

(110) Sections 591.003(2) and (21) and 591.012;

(111) Section 592.101;

(112) Section 593.079;

(113) Sections 756.081(2) and (3);

(114) Sections 773.003(3), (4), and (5), 773.005, and 773.066(f);

(115) Section 781.001(3);

(116) Section 782.002(b), as added by Chapter 1027 (H.B. 1623), Acts of the 80th Legislature, Regular Session, 2007;

(117) Section 782.003(a), as added by Chapter 1027 (H.B. 1623), Acts of the 80th Legislature, Regular Session, 2007;

(118) Section 821.051(3);

(119) Section 822.101(2);

(120) Sections 823.001(2) and (3);

(121) Sections 826.002(2) and (4);

(122) Section 828.015;

(123) Section 1001.076; and

(124) Sections 1002.001(2), (3), and (4).

SECTION 3.1640. The repeal by this Act of Chapter 463, Health and Safety Code, does not apply to an offense committed under that chapter before the effective date of this Act. An offense committed under Chapter 463, Health and Safety Code, is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

ARTICLE 4. HUMAN RESOURCES CODE

SECTION 4.001. The heading to Title 2, Human Resources Code, is amended to read as follows:

TITLE 2. [~~DEPARTMENT OF~~] HUMAN SERVICES AND [~~DEPARTMENT OF~~] PROTECTIVE [~~AND REGULATORY~~] SERVICES *IN GENERAL*

SECTION 4.002. Chapter 11, Human Resources Code, is amended to read as follows:

CHAPTER 11. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. *In* [~~Except as provided by Section 40.001, in~~] this title:

(1) [~~"Board" means the Texas Board of Human Services.~~

[~~(2) "Department" means the Texas Department of Human Services.~~

[~~(3) "Commissioner" means the Commissioner of Human Services.~~

[~~(4)~~] "Assistance" means all forms of assistance and services for needy persons authorized by Subtitle C.

(2) "Commission" means the Health and Human Services Commission.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) [~~(5)~~] "Financial assistance" means money payments for needy persons authorized by Chapter 31.

(5) [~~(6)~~] "Medical assistance" means assistance for needy persons authorized by Chapter 32.

Sec. 11.002. PURPOSE OF TITLE; CONSTRUCTION. (a) The purpose of this title is to establish a program of social security to provide necessary and prompt assistance to the citizens of this state who are entitled to avail themselves of its provisions.

(b) This title shall be liberally construed in order that its purposes may be accomplished as equitably, economically, and expeditiously as possible.

Sec. 11.003. RESPONSIBILITY OF COUNTIES AND MUNICIPALITIES NOT AFFECTED. No provision of this title is intended to release the counties and municipalities in this state from the specific responsibilities they have with regard to the support of public welfare, child welfare, and relief services. Funds which the counties and municipalities may appropriate for the support of those programs may be administered through the [~~department's~~] local or regional offices *of the commission or Department of Aging and Disability Services*, and if administered in that manner must be devoted exclusively to the programs in the county or municipality making the appropriation.

Sec. 11.004. POWERS AND FUNCTIONS NOT AFFECTED. The provisions of this title are not intended to interfere with the powers and functions of the *commission, the health and human services agencies, as defined by Section 531.001, Government Code* [~~Texas Rehabilitation Commission, the Texas Commission for the Blind, the division of maternal and child health of the Texas Department of Health~~], or county juvenile boards.

SECTION 4.003. Chapter 12, Human Resources Code, is amended to read as follows:

CHAPTER 12. PENAL PROVISIONS

Sec. 12.001. PROHIBITED ACTIVITIES. (a) A person who is not licensed to practice

law in Texas commits an offense if the person charges a fee for representing or aiding an applicant or recipient in procuring assistance from the *state agency administering the assistance* [~~department~~].

(b) A person commits an offense if the person advertises, holds himself or herself out for, or solicits the procurement of assistance from the *state agency administering the assistance* [~~department~~].

(c) An offense under this section is a Class A misdemeanor.

Sec. 12.002. UNLAWFUL USE OF FUNDS. (a) A person charged with the duty or responsibility of administering, disbursing, auditing, or otherwise handling the grants, funds, or money provided for in this title commits an offense if the person misappropriates the grants, funds, or money or by deception or fraud wrongfully distributes the grants, funds, or money to any person.

(b) An offense under this section is a felony punishable by confinement in the Texas Department of Criminal Justice for a term of not less than two or more than seven years.

Sec. 12.003. DISCLOSURE OF INFORMATION PROHIBITED. (a) Except for purposes directly connected with the administration of the [~~department's~~] assistance programs *of the commission or Department of Aging and Disability Services, as applicable*, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the *commission or* department or acquired by employees of the *commission or* department in the performance of their official duties.

(b) An offense under this section is a Class A misdemeanor.

SECTION 4.004. The heading to Subtitle B, Title 2, Human Resources Code, is amended to read as follows:

SUBTITLE B. *ADMINISTRATIVE PROVISIONS AND GENERAL FUNCTIONS RELATING TO* [~~STRUCTURE AND FUNCTIONS OF DEPARTMENT OF~~] HUMAN SERVICES

SECTION 4.005. The heading to Chapter 21, Human Resources Code, is amended to read as follows:

CHAPTER 21. ADMINISTRATIVE PROVISIONS *RELATING TO AGENCIES ADMINISTERING ASSISTANCE PROGRAMS* [~~FOR DEPARTMENT OF HUMAN SERVICES~~]

SECTION 4.006. Section 21.007, Human Resources Code, is transferred to Subchapter C, Chapter 161, Human Resources Code, redesignated as Section 161.0541, Human Resources Code, and amended to read as follows:

Sec. *161.0541* [~~21.007~~]. *MAINTENANCE OF* MERIT SYSTEM. [~~The department may establish a merit system for its employees.~~] The merit system *established as provided by Section 161.054* may be maintained in conjunction with other state agencies that are required by federal law to operate under a merit system.

SECTION 4.007. Sections 21.011, 21.012, and 21.013, Human Resources Code, are amended to read as follows:

Sec. 21.011. *ANNUAL REPORT ON DEPARTMENT OF AGING AND DISABILITY SERVICES* [~~REPORTS~~]. [~~(a)~~] On or before December 31 of each year the *Department of Aging and Disability Services* [~~commissioner~~] shall prepare and submit to the *commission* [~~board~~] a full report on the operation and administration of the department *under this title* together with the *department's* [~~commissioner's~~] recommendations for changes. [~~The report must include information relating to the status of the client-centered outcome measures developed by the department under Section 21.00605(b) and the department's progress in improving those outcome measures.~~] The *commission* [~~board~~] shall submit

the report to the governor and the legislature.

Sec. 21.012. CONFIDENTIALITY OF INFORMATION. (a) The *executive commissioner* [~~department~~] shall establish [~~and enforce~~] reasonable rules governing the custody, use, and preservation of the [~~department's~~] records, papers, files, and communications *of the commission and the Department of Aging and Disability Services under this title.* The *commission and the* department shall:

(1) enforce the agency's rules; and

(2) provide safeguards which restrict the use or disclosure of information concerning applicants for or recipients of the *commission's and the* department's assistance programs to purposes directly connected with the administration of the programs.

(b) If under a provision of law lists of the names and addresses of recipients of the *commission's or the* department's assistance programs are furnished to or held by a governmental agency other than the *commission or the* department, that agency *or the person with responsibility for adopting rules for that agency* shall adopt rules necessary to prevent the publication of the lists or the use of the lists for purposes not directly connected with the administration of the assistance programs.

Sec. 21.013. OATHS AND ACKNOWLEDGMENTS. A local representative of the *commission or the Department of Aging and Disability Services* [~~department~~] who is responsible for investigating and determining the eligibility of an applicant for assistance authorized in this title may administer oaths and take acknowledgments concerning all matters relating to the administration of this title. The representative shall sign the oaths or acknowledgments and indicate *the representative's* [~~his or her~~] position and title but need not seal the instruments. The *representative* [~~agent~~] has the same authority as a notary public coextensive with the limits of the state for the purpose of administering the provisions of this title.

SECTION 4.008. The heading to Chapter 22, Human Resources Code, is amended to read as follows:

CHAPTER 22. GENERAL FUNCTIONS *RELATING TO* [~~OF DEPARTMENT OF~~] HUMAN SERVICES

SECTION 4.009. Section 22.0001, Human Resources Code, is amended to read as follows:

Sec. 22.0001. *COMMISSIONER'S* POWERS AND DUTIES*; EFFECT OF CONFLICT WITH OTHER LAW* [~~OF COMMISSIONER OF HEALTH AND HUMAN SERVICES~~]. [~~The commissioner of health and human services has the powers and duties relating to the board and commissioner as provided by Section 531.0055, Government Code.~~] To the extent a power or duty given to the [~~board or~~] commissioner *of aging and disability services* by this title or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

SECTION 4.010. Section 22.001, Human Resources Code, is amended to read as follows:

Sec. 22.001. GENERAL POWERS AND DUTIES OF *COMMISSION* [~~THE DEPARTMENT~~]. (a) The *executive commissioner* [~~department~~] is responsible for *supervising the administration of* [~~administering~~] the welfare functions authorized in this title.

(b) *The commission* [~~The department~~] shall administer *medical* assistance to needy persons [~~who are aged, blind, or disabled~~] and *financial and medical assistance* to [~~needy~~] families with dependent children.

(b-1) The *executive commissioner* [~~department~~] shall [~~also administer or~~] supervise general relief services. [~~The department may administer state child day-care services.~~]

(c) The *commission* [~~department~~] shall assist other governmental agencies in performing services in conformity with the purposes of this title when so requested and shall cooperate with the agencies when expedient.

(d) The *commission* [~~department~~] shall conduct research and compile statistics on public welfare programs in the state. The research must include all phases of dependency and delinquency and related problems. The *commission* [~~department~~] shall cooperate with other public and private agencies in developing plans for the prevention and treatment of conditions giving rise to public welfare problems.

SECTION 4.011. Sections 22.0011 and 22.0015, Human Resources Code, are amended to read as follows:

Sec. 22.0011. *DEFINITIONS* [~~DEFINITION~~]. In this chapter:

(1) "Department" means the Department of Aging and Disability Services.

(2) "Long-term [~~, except in Section 22.032, "long-term~~] care services" means the provision of personal care and assistance related to health and social services given episodically or over a sustained period to assist individuals of all ages and their families to achieve the highest level of functioning possible, regardless of the setting in which the assistance is given.

Sec. 22.0015. EVALUATION AND IMPROVEMENT OF PROGRAMS. The *commission and the* department shall conduct research, analysis, and reporting of *the* [~~its~~] programs *administered by each agency under this title* to evaluate and improve the programs. The *commission and the* department may contract with one or more independent entities to assist the *commission or the* department, *as applicable,* with the research, analysis, and reporting required by this section.

SECTION 4.012. Sections 22.002 and 22.003, Human Resources Code, are amended to read as follows:

Sec. 22.002. ADMINISTRATION OF FEDERAL WELFARE PROGRAMS. (a) The *commission* [~~department~~] is the state agency designated to cooperate with the federal government in the administration of Titles IV, XIX, and XX of the federal Social Security Act. The *commission* [~~department~~] shall administer other titles added to the act after January 1, 1979, unless another state agency is designated by law to perform the additional functions. The *commission* [~~department~~] shall cooperate with federal, state, and local governmental agencies in the enforcement and administration of the federal act, and *the executive commissioner* shall promulgate rules to effect that cooperation.

(b) The *commission* [~~department~~] shall cooperate with the United States Department of Health *and Human Services*[~~, Education, and Welfare~~] and other federal agencies in a reasonable manner and in conformity with the provisions of this title to the extent necessary to qualify for federal assistance for persons entitled to benefits under the federal Social Security Act. The *commission* [~~department~~] shall make reports periodically in compliance with federal regulations.

(c) The *commission* [~~department~~] may establish and maintain programs of assistance and services authorized by federal law and designed to help needy families and individuals attain and retain the capability of independence and self-care. Notwithstanding any other provision of law, the *commission* [~~department~~] may extend the scope of its programs to the extent necessary to ensure that federal matching funds are available, if the *commission* [~~department~~] determines that the extension of scope is feasible and within the limits of appropriated funds.

(d) If the *commission* [~~department~~] determines that a provision of state welfare law conflicts with a provision of federal law, the *executive commissioner* [~~department~~] may promulgate policies and rules necessary to allow the state to receive and expend federal matching funds to the fullest extent possible in accordance with the federal statutes and the provisions of this title and the state constitution and within the limits of appropriated funds.

(e) The *commission* [~~department~~] may accept, expend, and transfer federal and state funds appropriated for programs authorized by federal law. The *commission* [~~department~~] may accept, expend, and transfer funds received from a county, municipality, or public or private agency or from any other source, and the funds shall be deposited in the state treasury subject to withdrawal on order of the *executive* commissioner in accordance with the *commission's* [~~department's~~] rules.

(f) The *commission* [~~department~~] may enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized in Subsection (c) [~~of this section~~]. The agreements or contracts between the *commission* [~~department~~] and other state agencies are not subject to *Chapter 771, Government Code* [~~the Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes)~~].

(g) In administering social service programs authorized by the Social Security Act, the *commission* [~~department~~] may prepay an agency or facility for expenses incurred under a contract with the *commission* [~~department~~] to provide a social service.

(h) The *executive commissioner by rule* [~~department~~] may set and *the commission may* charge reasonable fees for services provided in administering social service programs authorized by the Social Security Act. The *executive commissioner* [~~department~~] shall set the amount of each fee according to the cost of the service provided and the ability of the recipient to pay.

(i) The *commission* [~~department~~] may not deny services administered under this section to any person because of that person's inability to pay for services.

Sec. 22.003. RESEARCH AND DEMONSTRATION PROJECTS. (a) The *commission and the* department may conduct research and demonstration projects that in the judgment of the *executive* commissioner will assist in promoting the purposes of the *commission's and the* department's assistance programs. The *commission and the* department may conduct the projects independently or in cooperation with a public or private agency.

(b) The *executive commissioner* [~~department~~] may *authorize the* use *of* state or federal funds available for *commission or department* [~~its~~] assistance programs or for research and demonstration projects to support the projects. The projects must be consistent with the state and federal laws making the funds available.

SECTION 4.013. Sections 22.0031(a) and (d), Human Resources Code, are amended to read as follows:

(a) The *commission* [~~department~~] shall establish programs of case management for high-risk pregnant women and high-risk children to age one as provided under Section 1915(g) of the federal Social Security Act (42 U.S.C. Section 1396n).

(d) The *commission* [~~department~~] shall use existing funds of the *commission* [~~department~~] or any other lawful source to fund and support the projects for high-risk pregnant women and high-risk children.

SECTION 4.014. Section 22.004, Human Resources Code, is amended to read as follows:

Sec. 22.004. PROVISION OF LEGAL SERVICES. (a) On request, the *commission* [~~department~~] may provide legal services to an applicant for or recipient of assistance at a hearing before the *commission* [~~department~~].

(b) The services must be provided by an attorney licensed to practice law in Texas or by a law student acting under the supervision of a law teacher or a legal services organization, and the attorney or law student must be approved by the *commission* [~~department~~].

(c) The *executive commissioner* [~~department~~] shall adopt a reasonable fee schedule for the legal services. The fees may not exceed those customarily charged by an attorney for similar services for a private client. The fees may be paid only from funds appropriated to the *commission* [~~department~~] for the purpose of providing these legal services.

SECTION 4.015. The heading to Section 22.005, Human Resources Code, is amended to read as follows:

Sec. 22.005. *CUSTODIAN OF ASSISTANCE* FUNDS.

SECTION 4.016. Section 22.005(f), Human Resources Code, is amended to read as follows:

(f) The comptroller is the designated custodian of all funds administered by the *commission and the* department and received by the state from the federal government or

any other source for the purpose of implementing the provisions of the Social Security Act. The comptroller may receive the funds, pay them into the proper fund or account of the general fund of the state treasury, provide for the proper custody of the funds, and make disbursements of the funds on the order of the *commission or the* department and on warrant of the comptroller.

SECTION 4.017. Section 22.007, Human Resources Code, is amended to read as follows:

Sec. 22.007. PUBLIC INFORMATION CONTRACT REQUIREMENT. (a) Each contract between the *commission or the* department and a provider of services *under this title* must contain a provision that authorizes the *commission or the* department to display at the service provider's place of business public awareness information on services provided by the *commission or the* department.

(b) Notwithstanding Subsection (a) [~~of this section~~], the *commission or* department may not require a physician to display in the physician's private offices public awareness information on services provided by the *commission or* department.

SECTION 4.018. Section 22.008(a), Human Resources Code, is amended to read as follows:

(a) The *executive commissioner* [~~department~~] shall *adopt rules* [~~develop enforcement guidelines~~] for *the department's* [~~its~~] community care program that relate to the service delivery standards required of persons who contract with the department to carry out its community care program. The department shall apply the *rules* [~~guidelines~~] consistently across the state.

SECTION 4.019. Sections 22.009(a), (b), (c), (d), (e), and (g), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall appoint advisory committees [~~on the recommendation of the commissioner~~] to assist the *executive commissioner, commission, and department* [~~board~~] in performing *their* [~~its~~] duties.

(b) The *executive commissioner* [~~board~~] shall appoint each advisory committee to 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 *executive commissioner* [~~board~~] shall specify each advisory committee's purpose, powers, and duties and shall require each committee to report to the *executive commissioner* [~~board~~] in a manner specified by the *executive commissioner* [~~board~~] concerning the committee's activities and the results of its work.

(d) The *executive commissioner* [~~board~~] shall establish procedures for receiving reports concerning activities and accomplishments of advisory committees established to advise the *executive commissioner, commission,* [~~board~~] or department. The *executive commissioner* [~~board on the recommendation of the commissioner~~] may appoint additional members to those committees and establish additional duties of those committees as the *executive commissioner* [~~board~~] determines to be necessary.

(e) The *executive commissioner* [~~board~~] shall adopt rules to implement this section. Those rules must provide that during the development of rules relating to an area in which an advisory committee exists the committee must be allowed to assist in the development of and to comment on the rules before the rules are finally adopted. [~~The rules may allow the department to bypass this procedure only in an emergency situation. However, the department shall submit emergency rules to the appropriate advisory committee for review at the first committee meeting that occurs after the rules are adopted.~~]

(g) Subsections (c) through (f) [~~of this section~~] apply to each [~~department~~] advisory committee created under this section [~~or under other law~~].

SECTION 4.020. Sections 22.011 through 22.017, Human Resources Code, are amended to read as follows:

Sec. 22.011. MEMORANDUM OF UNDERSTANDING ON SERVICES TO [~~DIS-~~

~~ABLED~~] PERSONS *WITH DISABILITIES*. (a) The *commission, the* department, the [~~Texas~~] Department of *State* Health *Services*, the [~~Texas~~] Department of *Assistive and Rehabilitative Services, the Department of Family and Protective Services* [~~Mental Health and Mental Retardation, the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Texas Commission for the Deaf and Hard of Hearing~~], and the Texas Education Agency shall *enter into* [~~adopt~~] a joint memorandum of understanding to facilitate the coordination of services to [~~disabled~~] persons *with disabilities*. The memorandum shall:

(1) clarify the financial and service responsibilities of each agency in relation to [~~disabled~~] persons *with disabilities*; and

(2) address how the agency will share data relating to services delivered to [~~disabled~~] persons *with disabilities* by each agency.

(b) These agencies in the formulation of this memorandum of understanding shall consult with and solicit input from advocacy and consumer groups.

(c) Not later than the last month of each state fiscal year, the [~~department and the other~~] agencies shall review and update the memorandum.

(d) *The executive commissioner and the commissioner of education* [~~Each agency~~] by rule shall adopt the memorandum of understanding and all revisions to the memorandum.

Sec. 22.013. MEMORANDUM OF UNDERSTANDING ON PUBLIC AWARENESS INFORMATION. (a) The *commission, the* department, the [~~Texas~~] Department of *State* Health *Services*, [~~the Texas Department of Mental Health and Mental Retardation,~~] and the *Department of Assistive and Rehabilitative Services* [~~Texas Rehabilitation Commission~~] shall *enter into* [~~adopt~~] a joint memorandum of understanding that authorizes and requires the exchange and distribution among the agencies of public awareness information relating to services provided by or through the agencies.

(b) Not later than the last month of each state fiscal year, the [~~department and the other~~] agencies shall review and update the memorandum.

(c) *The executive commissioner* [~~Each agency~~] by rule shall adopt the memorandum of understanding and all revisions to the memorandum.

Sec. 22.014. MEMORANDUM OF UNDERSTANDING ON HOSPITAL AND LONG-TERM CARE SERVICES. (a) The *commission, the* department, *and* the [~~Texas~~] Department of *State* Health *Services*[~~, and the Texas Department of Mental Health and Mental Retardation~~] shall *enter into* [~~adopt~~] a memorandum of understanding that:

(1) clearly defines the responsibilities of each agency in providing, regulating, and funding hospital or long-term care services; and

(2) defines the procedures and standards that each agency will use to provide, regulate, and fund hospital or long-term care services.

(b) The memorandum must provide that no new rules or regulations that would increase the costs of providing the required services or would increase the number of personnel in hospital or long-term care facilities may be promulgated by *the executive commissioner* [~~either the department, the Department of Health, or the Department of Mental Health and Mental Retardation~~] unless the *executive* commissioner [~~of health~~] certifies that the new rules or regulations are urgent as well as necessary to protect the health or safety of recipients of hospital or long-term care services.

(c) The memorandum must provide that any rules or regulations proposed by the *commission, the* department, *or* the Department of *State* Health *Services*[~~, or the Department of Mental Health and Mental Retardation~~] which would increase the costs of providing the required services or which would increase the number of personnel in hospital or long-term care facilities must be accompanied by a fiscal note prepared by the agency proposing said rules and submitted to the *executive commissioner* [~~department~~]. The fiscal note should set forth the expected impact which the proposed rule or regulation will have on the cost of providing the required service and the anticipated impact of the proposed rule or regulation on the number of personnel in

hospital or long-term care facilities. The memorandum must provide that in order for a rule to be finally adopted the *commission* [~~department~~] must provide written verification that funds are available to adequately reimburse hospital or long-term care service providers for any increased costs resulting from the rule or regulation. The *commission* [~~department~~] is not required to provide written verification if the *executive* commissioner [~~of health~~] certifies that a new rule or regulation is urgent as well as necessary to protect the health or safety of recipients of hospital or long-term care services.

(d) The memorandum must provide that upon final adoption of any rule increasing the cost of providing the required services, the *executive commissioner* [~~department~~] must establish reimbursement rates sufficient to cover the increased costs related to the rule. The *executive commissioner* [~~department~~] is not required to establish reimbursement rates sufficient to cover the increased cost related to a rule or regulation if the *executive* commissioner [~~of health~~] certifies that the rule or regulation is urgent as well as necessary to protect the health or safety of recipients of hospital or long-term care services.

(e) The memorandum must provide that Subsections (b) through (d) [~~of this section~~] do not apply if the rules are required by state or federal law or federal regulations.

(f) These agencies in the formulation of this memorandum of understanding shall consult with and solicit input from advocacy and consumer groups.

(g) Not later than the last month of each state fiscal year, the [~~department and the other~~] agencies shall review and update the memorandum.

(h) *The executive commissioner* [~~Each agency~~] by rule shall adopt the memorandum of understanding and all revisions to the memorandum.

Sec. 22.015. REPORTING OF PHYSICIAN MISCONDUCT OR MALPRACTICE. (a) If the *commission or the* department receives an allegation that a physician employed by or under contract with the *commission or the* department *under this title* has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 164.051, Occupations Code, the *commission or the* department, *as applicable,* shall report the information to the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] in the manner provided by Section 154.051, Occupations Code.

(b) The *commission or the* department shall provide the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] with a copy of any report or finding relating to an investigation of an allegation reported to the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~].

Sec. 22.016. SPECIAL PURCHASING PROCEDURES. The department shall *coordinate with the commission in complying* [~~comply~~] with any special purchasing procedures requiring competitive review under Subtitle D, Title 10, Government Code, *for purchasing under this title.*

Sec. 22.017. PROGRAM ACCESSIBILITY. The *commission* [~~department~~] shall prepare and maintain a written plan that describes how persons who do not speak English or who have physical, mental, or developmental disabilities can be provided reasonable access to the *commission's and the* department's programs *under this title. The commission may solicit the assistance of a health and human services agency in the preparation or maintenance of the plan.*

SECTION 4.021. Sections 22.018(a), (b), and (c), Human Resources Code, are amended to read as follows:

(a) The department and the chief administrative law judge of the State Office of Administrative Hearings shall *enter into* [~~adopt~~] a memorandum of understanding under which the State Office of Administrative Hearings, on behalf of the department, conducts all contested case hearings authorized or required by law to be conducted *under this title* by the department under the administrative procedure law, Chapter 2001, Government Code.

(b) The memorandum of understanding shall require the chief administrative law judge, the department, and the *executive* commissioner to cooperate in connection with a contested case hearing and may authorize the State Office of Administrative Hearings to

perform any administrative act, including giving of notice, that is required to be performed by the department or commissioner *of aging and disability services.*

(c) The memorandum of understanding shall address whether the administrative law judge who conducts a contested case hearing for the State Office of Administrative Hearings on behalf of the department shall:

(1) enter the final decision in the case after completion of the hearing; or

(2) propose a decision to the department or the commissioner *of aging and disability services* for final consideration.

SECTION 4.022. Section 22.019, Human Resources Code, is amended to read as follows:

Sec. 22.019. DUE PROCESS PROCEDURES. (a) The *commission and the* department may not retroactively apply a rule, standard, guideline, or policy interpretation *under this title.*

(b) *Any* [~~The department shall adopt any~~] changes in *agency* [~~departmental~~] policy *shall be adopted* in accordance with the *rulemaking* [~~rule-making~~] provisions of Chapter 2001, Government Code. *Periodic* [~~The department shall use periodic~~] bulletins and indexes *shall be used* to notify contractors of changes in policy and to explain the changes. *A* [~~The department may not adopt a~~] change in *agency* [~~departmental~~] policy *may not be adopted if it* [~~that~~] takes effect before the date on which [~~the department notifies~~] contractors *are notified* as prescribed by this subsection.

(c) The *executive commissioner* [~~board~~] shall adopt a rule requiring the *commission or the* department, *as applicable,* to respond in writing to each written inquiry from a contractor *under this title* not later than the 14th day after the date on which the *commission or the* department receives the inquiry.

SECTION 4.023. Section 22.020, Human Resources Code, is amended to read as follows:

Sec. 22.020. AUDIT PROCEDURE. At any time during an audit, the *commission or the* department, *as applicable,* shall permit a contractor *under this title* to submit additional or alternative documentation to prove that services were delivered to an eligible client. Any recovery of costs by the *commission or the* department from the contractor for using additional or alternative documentation may not exceed the amount the contractor would otherwise be entitled to receive under the contract as administrative costs.

SECTION 4.024. Section 22.021(a), Human Resources Code, is amended to read as follows:

(a) *Funds* [~~If funds are~~] appropriated to the *commission or the* department for the general support or development of a service *under this title* that is needed throughout the state[~~, the department~~] shall *be allocated* [~~allocate those funds~~] equitably across the state.

SECTION 4.025. Section 22.022, Human Resources Code, is amended to read as follows:

Sec. 22.022. RESIDENCY REQUIREMENTS. To the extent permitted by law the *commission and the* department shall only provide services *under this title* to legal residents of the United States or the State of Texas.

SECTION 4.026. Sections 22.023(b), (c), (d), and (e), Human Resources Code, are amended to read as follows:

(b) Subject to the limitations in Subsection (c) [~~of this section~~], the *commission* [~~department~~] may purchase and pay the premiums for a conversion policy or other health insurance coverage for a person who is diagnosed as having AIDS, HIV, or other terminal or chronic illness and whose income level is less than 200 percent of the federal poverty level, based on the federal Office of Management and Budget poverty index in effect at the time coverage is provided, even though a person may be eligible for benefits under Chapter 32 [~~of this code~~]. Health insurance coverage for which premiums may be paid

under this section includes coverage purchased from an insurance company authorized to do business in this state, a group hospital *service* [~~services~~] corporation operating under Chapter 842, Insurance Code, a health maintenance organization operating under Chapter 843, Insurance Code, or an insurance pool created by the federal or state government or a political subdivision of the state.

(c) If a person is eligible for benefits under Chapter 32 [~~of this code~~], the *commission* [~~department~~] may not purchase or pay premiums for a health insurance policy under this section if the premiums to be charged for the health insurance coverage are greater than premiums paid for benefits under Chapter 32 [~~of this code~~]. The *commission* [~~department~~] may not purchase or pay premiums for health insurance coverage under this section for a person at the same time that that person is covered by benefits under Chapter 32 [~~of this code~~].

(d) The *commission* [~~department~~] shall pay for that coverage with money made available to *the commission* [~~it~~] for that purpose.

(e) The *executive commissioner* [~~board~~] by rule may adopt necessary rules, criteria, and plans and may enter into necessary contracts to carry out this section.

SECTION 4.027. Sections 22.024 and 22.025, Human Resources Code, are amended to read as follows:

Sec. 22.024. DEVELOPMENT OF SERVICE PLAN FOR ELDERLY *PERSONS* OR *PERSONS WITH DISABILITIES* [~~DISABLED~~]. If *the commission, the department, the Department of State Health Services, the Department of Assistive and Rehabilitative Services* [~~the Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Commission for the Deaf and Hard of Hearing, Texas Department on Aging~~], or another agency funded in the General Appropriations Act under appropriations for health, welfare, and rehabilitation agencies receives funds to provide case management services to [~~the~~] elderly *persons* or *persons with disabilities* [~~disabled~~], the agency shall provide information to its staff concerning the services other agencies provide to those populations. The agency's staff shall use that information to develop a comprehensive service plan for its clients.

Sec. 22.025. ERROR–RATE REDUCTION. (a) The *commission* [~~department~~] shall:

(1) set progressive goals for improving the *commission's* [~~department's~~] error rates in the *financial assistance program under Chapter 31* [~~aid to families with dependent children~~] and *supplemental nutrition assistance program* [~~food stamp programs~~]; and

(2) develop a specific schedule to meet those goals.

(c) As appropriate, the *commission* [~~department~~] shall include in its employee evaluation process a rating system that emphasizes error-rate reduction and workload.

(d) The *commission* [~~department~~] shall take appropriate action if a region has a higher than average error rate and that rate is not reduced in a reasonable period.

SECTION 4.028. Sections 22.0251 through 22.0255, Human Resources Code, are amended to read as follows:

Sec. 22.0251. TIMELY DETERMINATION OF OVERPAYMENTS. (a) Subject to the approval of the *executive* commissioner [~~of health and human services~~], the *commission* [~~department~~] shall:

(1) determine and record the time taken by the *commission* [~~department~~] to establish an overpayment claim in the *supplemental nutrition assistance* [~~food stamp~~] program or the program of financial assistance under Chapter 31;

(2) set progressive goals for reducing the time described by Subdivision (1); and

(3) adopt a schedule to meet the goals set under Subdivision (2).

(b) The *commission* [~~department~~] shall submit to the governor and the Legislative Budget Board an annual report detailing the *commission's* [~~department's~~] progress in reaching its goals under Subsection (a)(2). The report may be consolidated with any other report relating to the same subject that the *commission* [~~department~~] is required to submit under other law.

Sec. 22.0252. TELEPHONE COLLECTION PROGRAM. (a) The *commission* [~~department~~] shall use the telephone to attempt to collect reimbursement from a person who receives a benefit granted in error under the *supplemental nutrition assistance* [~~food stamp~~] program or the program of financial assistance under Chapter 31.

(b) The *commission* [~~department~~] shall submit to the governor and the Legislative Budget Board an annual report on the operation and success of the telephone collection program. The report may be consolidated with any other report relating to the same subject that the *commission* [~~department~~] is required to submit under other law.

(c) The *commission* [~~department~~] shall ensure that the telephone collection program attempts to collect reimbursement for all identified delinquent payments for which 15 days or more have elapsed since the initial notice of delinquency was sent to the recipient.

(d) The *commission* [~~department~~] shall use an automated collections system to monitor the results of the telephone collection program. The system must:

(1) accept data from the accounts receivable tracking system used by the *commission* [~~department~~];

(2) automate recording tasks performed by a collector, including providing access to *commission* [~~department~~] records regarding the recipient and recording notes and actions resulting from a call placed to the recipient;

(3) automatically generate a letter to a recipient following a telephone contact that confirms the action to be taken regarding the delinquency;

(4) monitor the receipt of scheduled payments from a recipient for repayment of a delinquency; and

(5) generate reports regarding the effectiveness of individual collectors and of the telephone collection program.

Sec. 22.0253. PARTICIPATION IN FEDERAL TAX REFUND OFFSET PROGRAM. The *commission* [~~department~~] shall participate in the Federal Tax Refund Offset Program (FTROP) to attempt to recover benefits granted by the *commission* [~~department~~] in error under the *supplemental nutrition assistance* [~~food stamp~~] program. The *commission* [~~department~~] shall submit as many claims that meet program criteria as possible for offset against income tax returns.

Sec. 22.0254. PROSECUTION OF FRAUDULENT CLAIMS. (a) The *commission* [~~department~~] shall keep a record of the dispositions of referrals made by the *commission* [~~department~~] to a district attorney concerning fraudulent claims for benefits under the *supplemental nutrition assistance* [~~food stamp~~] program or the program of financial assistance under Chapter 31.

(b) The *commission* [~~department~~] may:

(1) request status information biweekly from the appropriate district attorney on each major fraudulent claim referred by the *commission* [~~department~~];

(2) request a written explanation from the appropriate district attorney for each case referred in which the district attorney declines to prosecute; and

(3) encourage the creation of a special welfare fraud unit in each district attorney's office that serves a municipality with a population of more than 250,000, to be financed by amounts provided by the *commission* [~~department~~].

(c) The *executive commissioner* [~~department~~] by rule may define what constitutes a major fraudulent claim under Subsection (b)(1).

Sec. 22.0255. *ELECTRONIC BENEFITS TRANSFER CARD;* RETURNED–MAIL REDUCTION. (a) The *commission* [~~department~~] shall develop and implement policies and procedures designed to improve the *commission's* [~~department's~~] electronic benefits transfer cards used for federal and state entitlement programs administered by the *commission* [~~department~~].

(b) The *commission* [~~department~~] shall set an annual goal of reducing the amount of returned mail it receives under the programs described by Subsection (a) so that the

percentage rate of returned mail is within one percent of the percentage rate of returned mail reported annually for the credit card and debit card industries.

SECTION 4.029. Sections 22.026 through 22.028, Human Resources Code, are amended to read as follows:

Sec. 22.026. REDUCTION OF CLIENT FRAUD. The *commission and the* department shall:

(1) ensure that errors attributed to client fraud are appropriate; and

(2) take immediate and appropriate action to limit any client fraud that occurs.

Sec. 22.027. FRAUD PREVENTION. (e) The *commission, the* department, and the comptroller shall coordinate their efforts to cross-train agency staff whose duties include fraud prevention and detection to enable the staff to identify and report possible fraudulent activity in programs, taxes, or funds administered by *each of those* [~~the~~] other *agencies* [~~agency~~].

(f) A local law enforcement agency that seizes an electronic benefits transfer (EBT) card issued by the *commission* [~~department~~] to a recipient of an entitlement program administered by the *commission* [~~department~~] shall immediately notify the *commission* [~~department~~] of the seizure and return the card to the *commission* [~~department~~]. The *commission* [~~department~~] shall send letters to local law enforcement agencies or post materials in the buildings in which those agencies are located to ensure that local law enforcement officials are aware of this requirement.

Sec. 22.028. ELECTRONIC BENEFITS TRANSFER: MONITORING. (a) The private electronic benefits transfer (EBT) operator with which the *commission* [~~department~~] contracts to administer the EBT system[~~,~~] shall establish procedures to maintain records that monitor all debit transactions relating to EBT client accounts under this section. The EBT operator shall deliver copies of the records to the *commission* [~~department~~] and the comptroller not later than the first day of each month. The *commission* [~~department~~] shall immediately review the records and assess the propriety of the debit transactions.

(b) After reviewing the records under Subsection (a), the *commission* [~~department~~] shall take necessary or advisable action to ensure compliance with EBT rules by the EBT operator, retailers, and clients.

(c) No later than the first day of each month, the *commission* [~~department~~] shall send the comptroller a report listing the accounts on which enforcement actions or other steps were taken by the *commission* [~~department~~] in response to the records received from the EBT operator under this section, and the action taken by the *commission* [~~department~~]. The comptroller shall promptly review the report and, as appropriate, may solicit the advice of the Medicaid and Public Assistance Fraud Oversight Task Force regarding the results of the *commission's* [~~department's~~] enforcement actions.

SECTION 4.030. Sections 22.029(a) and (c), Human Resources Code, are amended to read as follows:

(a) In order to enhance the state's ability to detect and prevent fraud in the payment of claims under federal and state entitlement programs, the *commission* [~~Health and Human Services Commission~~] shall implement a data matching project as described by Subsection (b). The costs of developing and administering the data matching project shall be paid entirely from amounts recovered by participating agencies as a result of potential fraudulent occurrences or administrative errors identified by the project.

(c) Each agency participating in a matching cycle shall document actions taken to investigate and resolve fraudulent issues noted on the list provided by the commission. The commission shall compile the documentation furnished by participating agencies for each matching cycle[~~, and shall report the results of the project to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board not later than December 1, 1996~~].

SECTION 4.031. Section 22.0292, Human Resources Code, is amended to read as follows:

Sec. 22.0292. INFORMATION MATCHING SYSTEM RELATING TO IMMIGRANTS

AND FOREIGN VISITORS. (a) The *commission* [~~department~~] shall, through the use of a computerized matching system, compare *commission* [~~department~~] information relating to applicants for and recipients of *supplemental nutrition assistance program benefits* [~~food stamps~~] and financial assistance under Chapter 31 with information obtained from the *United States* Department of State [~~of the United States~~] and the United States Department of Justice relating to immigrants and visitors to the United States for the purpose of preventing individuals from unlawfully receiving public assistance benefits administered by the *commission* [~~department~~].

(b) The *commission* [~~department~~] may enter into an agreement with the *United States* Department of State [~~of the United States~~] and the United States Department of Justice as necessary to implement this section.

(c) The *commission* [~~department~~] and federal agencies sharing information under this section shall protect the confidentiality of the shared information in compliance with all existing state and federal privacy guidelines.

(d) The *commission* [~~department~~] shall submit to the governor and the Legislative Budget Board an annual report on the operation and success of the information matching system required by this section. The report may be consolidated with any other report relating to the same subject matter the *commission* [~~department~~] is required to submit under other law.

SECTION 4.032. Sections 22.030 through 22.032, Human Resources Code, are amended to read as follows:

Sec. 22.030. AGREEMENTS FOR PURCHASE OF SERVICES FOR CHILDREN. (a) To ensure the maximum use of available federal matching funds for child care services and other support services under Section 31.010, the *commission and any other agency providing the services* [~~Department of Human Services~~] shall enter into agreements with the appropriate local community organizations to receive donations to be used for the purchase of services for which matching federal funds are available.

(b) *An agency described under Subsection (a)* [~~The Department of Human Services~~] shall cooperate with each local community organization to develop guidelines for the use of that community's donation to provide the services described in Subsection (a) [~~of this section~~].

Sec. 22.031. UNANNOUNCED INSPECTIONS. The *commission and the* department may make any inspection of a facility or program under the *agency's* [~~department's~~] jurisdiction *under this title* without announcing the inspection.

Sec. 22.032. USE OF EARNED FEDERAL FUNDS. Subject to the General Appropriations Act, the *commission* [~~department~~] may use earned federal funds derived from recovery of amounts paid or benefits granted by the *commission* [~~department~~] as a result of fraud to pay the costs of the *commission's* [~~department's~~] activities relating to preventing fraud.

SECTION 4.033. Sections 22.035(a), (b), (e), (f), (g), (i), (j), (k), and (l), Human Resources Code, are amended to read as follows:

(a) A work group to be known as the Children's Policy Council shall assist the *department* [~~Department of Aging and Disability Services~~], the *commission* [~~Health and Human Services Commission~~], the Department of State Health Services, the Department of Assistive and Rehabilitative Services, and the Department of Family and Protective Services in developing, implementing, and administering family support policies for children with disabilities relating to:

(1) long-term services and supports;

(2) health services; and

(3) mental health services.

(b) The executive commissioner [~~of the Health and Human Services Commission~~] shall appoint the members of the work group, which must include the following:

(1) a person who is younger than 22 years of age and is a consumer of long-term care and health programs for children;

(2) an individual who is younger than 25 years of age and who receives or has received mental health services;

(3) relatives of consumers of long-term care and health programs for children 26 years of age or younger;

(4) a representative from an organization that is an advocate for consumers of long-term care and health programs for children;

(5) a person from a private entity that provides long-term care and health programs for children;

(6) a person from a public entity that provides long-term care and health programs for children;

(7) a person with expertise in the availability of funding and the application of funding formulas for children's long-term care and health services;

(8) a representative from a faith-based organization;

(9) a representative from a nonspecialized community services organization; and

(10) a representative from a business that is not related to providing services to persons with disabilities.

(e) The *commission* [~~Health and Human Services Commission~~] shall provide administrative support, including staff, to the work group.

(f) A member of the work group serves at the will of the executive commissioner [~~of the Health and Human Services Commission~~].

(g) The executive commissioner [~~of the Health and Human Services Commission~~] shall appoint a member of the work group to serve as a presiding officer.

(i) A member of the work group receives no additional compensation for serving on the work group. Consumers and relatives of consumers serving on the work group shall be reimbursed for travel and other expenses necessary for participation as provided in the General Appropriations Act. Other members of the work group may not be reimbursed for travel or other expenses incurred while conducting the business of the work group. Reimbursement under this subsection shall be paid equally out of funds appropriated to the *department* [~~Department of Aging and Disability Services~~] and funds appropriated to the Department of State Health Services.

(j) The work group may study and make recommendations in the following areas:

(1) access of a child or a child's family to effective case management services, including case management services with a single case manager, parent case managers, or independent case managers;

(2) the transition needs of children who reach an age at which they are no longer eligible for services at the Department of State Health Services, the Texas Education Agency, and other applicable state agencies;

(3) the blending of funds, including case management funding, for children needing long-term care, health services, and mental health services;

(4) collaboration and coordination of children's services between the *department* [~~Department of Aging and Disability Services~~], the Department of State Health Services, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and any other agency determined to be applicable by the work group;

(5) budgeting and the use of funds appropriated for children's long-term care services, health services, and mental health services;

(6) services and supports for families providing care for children with disabilities;

(7) effective permanency planning for children who reside in institutions or who are at risk of placement in an institution;

(8) barriers to enforcement of regulations regarding institutions that serve children with disabilities; and

(9) the provision of services under the medical assistance program to children younger than 23 years of age with disabilities or special health care needs under a waiver granted under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)).

(k) Not later than September 1 of each even-numbered year, the work group shall report on its findings and recommendations to the legislature and the executive commissioner [~~of the Health and Human Services Commission~~].

(*l*) After evaluating and considering recommendations reported under Subsection (k), the executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules to implement guidelines for providing long-term care, health services, and mental health services to children with disabilities.

SECTION 4.034. Section 22.036, Human Resources Code, is amended to read as follows:

Sec. 22.036. PROGRAMS FOR [~~DEAF-BLIND MULTIHANDICAPPED~~] INDIVIDUALS *WHO ARE DEAF-BLIND WITH MULTIPLE DISABILITIES* AND THEIR PARENTS. (a) The department shall establish programs to serve [~~deaf-blind multihandicapped~~] individuals *who are deaf-blind with multiple disabilities* by helping them attain self-sufficiency and independent living.

(b) The department shall establish a program of parental counseling for the parents of [~~deaf-blind multihandicapped~~] individuals *who are deaf-blind with multiple disabilities*. The counseling program may be provided on an individual or group basis and must include programs, activities, and services necessary to foster greater understanding and to improve relationships among professionals, parents, and [~~deaf-blind multihandicapped~~] individuals *who are deaf-blind with multiple disabilities*.

(c) The department shall establish a summer outdoor training program for [~~deaf-blind multihandicapped~~] individuals *who are deaf-blind with multiple disabilities*. The outdoor training program must be designed to help meet the unique needs of [~~deaf-blind multihandicapped~~] individuals *who are deaf-blind with multiple disabilities* for the purpose of broadening their educational experiences and improving their ability to function more independently.

(d) The *executive commissioner* [~~department~~] shall establish regulations for implementing and administering the programs.

(e) The department may contract for services or goods with private or public entities for purposes of this section.

(f) From information collected from the programs, the department shall determine the need for related future services and the most efficient and effective method of delivering the future services.

SECTION 4.035. Section 22.039(a)(1), Human Resources Code, is amended to read as follows:

(1) "Long-term care facility" means a nursing institution, an assisted living facility, or an intermediate care facility [~~for the mentally retarded~~] licensed under Chapter 242, 247, or 252, Health and Safety Code.

SECTION 4.036. Section 22.039(c), Human Resources Code, as amended by Chapters 879 (S.B. 223) and 980 (H.B. 1720), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted to read as follows:

(c) The department shall semiannually provide training for surveyors and providers on subjects that address the 10 most common violations by long-term care facilities of federal or state law. The department may charge providers a fee not to exceed $50 per person for the training.

SECTION 4.037. Sections 22.040 and 22.041, Human Resources Code, are amended to read as follows:

Sec. 22.040. DETERMINATION OF ELIGIBILITY FOR COMMUNITY CARE SERVICES FOR ELDERLY PERSONS OR PERSONS WITH DISABILITIES. The *executive*

commissioner [~~department~~] by rule shall develop and *the department shall* implement a plan to assist elderly persons or persons with disabilities requesting community care services in receiving those services as quickly as possible when those services become available. The plan must require the department to:

(1) forecast participant openings that will become available in a community care program serving the elderly person or person with a disability during the next fiscal quarter because of program expansion or case closures;

(2) contact an individual on an interest list and begin the program eligibility determination process at least 30 days before an opening is forecasted to become available in the program; and

(3) ensure that an individual determined to be eligible for services does not begin receiving services until after the opening actually becomes available.

Sec. 22.041. THIRD-PARTY INFORMATION. Notwithstanding any other provision of this code, the *commission* [~~department~~] may use information obtained from a third party to verify the assets and resources of a person for purposes of determining the person's eligibility and need for medical assistance, financial assistance, or nutritional assistance. Third-party information includes information obtained from:

(1) a consumer reporting agency, as defined by Section 20.01, Business & Commerce Code;

(2) an appraisal district; or

(3) the Texas Department of Motor Vehicles vehicle registration record database.

SECTION 4.038. Chapter 23, Human Resources Code, is amended to read as follows:

CHAPTER 23. SUSPENSION OF DRIVER'S OR RECREATIONAL LICENSE FOR FAILURE TO REIMBURSE *COMMISSION* [~~DEPARTMENT~~]

Sec. 23.001. DEFINITIONS. In this chapter:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority;

(B) is subject before expiration to suspension, revocation, forfeiture, or termination by an issuing licensing authority; and

(C) a person must obtain to:

(i) operate a motor vehicle; or

(ii) engage in a recreational activity, including hunting and fishing, for which a license or permit is required.

(2) "Order suspending a license" means an order issued by the *commission* [~~department~~] directing a licensing authority to suspend a license.

Sec. 23.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. In this chapter, "licensing authority" means:

(1) the Parks and Wildlife Department; and

(2) the Department of Public Safety of the State of Texas.

Sec. 23.003. SUSPENSION OF LICENSE. The *commission* [~~department~~] may issue an order suspending a license as provided by this chapter of a person who, after notice:

(1) has failed to reimburse the *commission* [~~department~~] for an amount in excess of $250 granted in error to the person under the *supplemental nutrition assistance* [~~food stamp~~] program or the program of financial assistance under Chapter 31;

(2) has been provided an opportunity to make payments toward the amount owed under a repayment schedule; and

(3) has failed to comply with the repayment schedule.

Sec. 23.004. INITIATION OF PROCEEDING. (a) The *commission* [~~department~~] may initiate a proceeding to suspend a person's license by filing a petition with the *commission's appeals* [~~department's hearings~~] division.

(b) The proceeding shall be conducted by the *commission's appeals* [~~department's hearings~~] division. The proceeding is a contested case under Chapter 2001, Government Code, except that Section 2001.054 does not apply.

(c) The *executive* commissioner or the *executive* commissioner's designated representative shall render a final decision *or order* in the proceeding. *A reference to the commission in this chapter with respect to a final decision or order in the proceeding means the executive commissioner or the executive commissioner's designated representative.*

Sec. 23.005. CONTENTS OF PETITION. A petition under this chapter must state that license suspension is authorized under Section 23.003 and allege:

(1) the name and, if known, social security number of the person;

(2) the type of license the person is believed to hold and the name of the licensing authority; and

(3) the amount owed to the *commission* [~~department~~].

Sec. 23.006. NOTICE. (a) On initiating a proceeding under Section 23.004, the *commission* [~~department~~] shall give the person named in the petition:

(1) notice of the person's right to a hearing before the *commission's appeals* [~~hearings~~] division [~~of the department~~];

(2) notice of the deadline for requesting a hearing; and

(3) a form requesting a hearing.

(b) Notice under this section may be served as in civil cases generally.

(c) The notice must state that an order suspending a license shall be rendered on the 60th day after the date of service of the notice unless by that date:

(1) the person pays the amount owed to the *commission* [~~department~~];

(2) the person presents evidence of a payment history satisfactory to the *commission* [~~department~~] in compliance with a reasonable repayment schedule; or

(3) the person appears at a hearing before the *commission's appeals* [~~hearings~~] division and shows that the request for suspension should be denied or stayed.

Sec. 23.007. HEARING ON PETITION TO SUSPEND LICENSE. (a) A request for a hearing and motion to stay suspension must be filed with the *commission* [~~department~~] not later than the 20th day after the date of service of the notice under Section 23.006.

(b) If a request for a hearing is filed, the *commission's appeals* [~~hearings~~] division [~~of the department~~] shall:

(1) promptly schedule a hearing;

(2) notify the person and an appropriate representative of the *commission* [~~department~~] of the date, time, and location of the hearing; and

(3) stay suspension pending the hearing.

Sec. 23.008. ORDER SUSPENDING LICENSE. (a) On making the findings required by Section 23.003, the *commission* [~~department~~] shall render an order suspending a license.

(b) The *commission* [~~department~~] may stay an order suspending a license conditioned on the person's compliance with a reasonable repayment schedule that is incorporated in the order. An order suspending a license with a stay of the suspension may not be served on the licensing authority unless the stay is revoked as provided by this chapter.

(c) A final order suspending a license rendered by the *commission* [~~department~~] shall be forwarded to the appropriate licensing authority.

(d) If the *commission* [~~department~~] renders an order suspending a license, the person may also be ordered not to engage in the licensed activity.

(e) If the *commission's appeals division* [~~department~~] finds that the petition for suspension should be denied, the petition shall be dismissed without prejudice, and an order suspending a license may not be rendered.

Sec. 23.009. DEFAULT ORDER. The *commission* [~~department~~] shall consider the allegations of the petition for suspension to be admitted and shall render an order suspending a license if the person fails to:

(1) respond to a notice issued under Section 23.006;

(2) request a hearing; or

(3) appear at a hearing.

Sec. 23.010. REVIEW OF FINAL ADMINISTRATIVE ORDER. An order issued by the *commission* [~~department~~] under this chapter is a final agency decision and is subject to review as provided by Chapter 2001, Government Code.

Sec. 23.011. ACTION BY LICENSING AUTHORITY. (a) On receipt of a final order suspending a license, the licensing authority shall immediately determine if the authority has issued a license to the person named on the order and, if a license has been issued:

(1) record the suspension of the license in the licensing authority's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license if required by law for other cases in which a license is suspended.

(b) A licensing authority shall implement the terms of a final order suspending a license without additional review or hearing. The authority may provide notice as appropriate to the license holder or to others concerned with the license.

(c) A licensing authority may not modify, remand, reverse, vacate, or stay an order suspending a license issued under this chapter and may not review, vacate, or reconsider the terms of a final order suspending a license.

(d) A person who is the subject of a final order suspending a license is not entitled to a refund for any fee or deposit paid to the licensing authority.

(e) A person who continues to engage in the licensed activity after the implementation of the order suspending a license by the licensing authority is liable for the same civil and criminal penalties provided for engaging in the licensed activity without a license or while a license is suspended that apply to any other license holder of that licensing authority.

(f) A licensing authority is exempt from liability to a license holder for any act authorized under this chapter performed by the authority.

(g) Except as provided by this chapter, an order suspending a license or dismissing a petition for the suspension of a license does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license.

(h) The denial or suspension of a driver's license under this chapter is governed by this chapter and not by Subtitle B, Title 7, Transportation Code.

Sec. 23.012. MOTION TO REVOKE STAY. (a) The *commission* [~~department~~] may file a motion with the *commission's appeals* [~~department's hearings~~] division to revoke the stay of an order suspending a license if the person does not comply with the terms of a reasonable repayment plan entered into by the person.

(b) Notice to the person of a motion to revoke stay under this section may be given by personal service or by mail to the address provided by the person, if any, in the order suspending a license. The notice must include a notice of hearing before the *appeals* [~~hearings~~] division. The notice must be provided to the person not less than 10 days before the date of the hearing.

(c) A motion to revoke stay must allege the manner in which the person failed to comply with the repayment plan.

(d) If the *commission* [~~department~~] finds that the person is not in compliance with the terms of the repayment plan, the *commission* [~~department~~] shall revoke the stay of the order suspending a license and render a final order suspending a license.

Sec. 23.013. VACATING OR STAYING ORDER SUSPENDING [~~A~~] LICENSE. (a) The *commission* [~~department~~] may render an order vacating or staying an order suspending a license if the person has paid all amounts owed to the *commission* [~~department~~] or has established a satisfactory payment record.

(b) The *commission* [~~department~~] shall promptly deliver an order vacating or staying an order suspending a license to the appropriate licensing authority.

(c) On receipt of an order vacating or staying an order suspending a license, the licensing authority shall promptly reinstate and return the affected license to the person if the person is otherwise qualified for the license.

(d) An order rendered under this section does not affect the right of the *commission* [~~department~~] to any other remedy provided by law, including the right to seek relief under this chapter. An order rendered under this section does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license as otherwise provided by law.

Sec. 23.014. FEE BY LICENSING AUTHORITY. A licensing authority may charge a fee to a person who is the subject of an order suspending a license in an amount sufficient to recover the administrative costs incurred by the authority under this chapter.

Sec. 23.015. COOPERATION BETWEEN LICENSING AUTHORITIES AND *COMMISSION* [~~DEPARTMENT~~]. (a) The *commission* [~~department~~] may request from each licensing authority the name, address, social security number, license renewal date, and other identifying information for each individual who holds, applies for, or renews a license issued by the authority.

(b) A licensing authority shall provide the requested information in the manner agreed to by the *commission* [~~department~~] and the licensing authority.

(c) The *commission* [~~department~~] may enter into a cooperative agreement with a licensing authority to administer this chapter in a cost-effective manner.

(d) The *commission* [~~department~~] may adopt a reasonable implementation schedule for the requirements of this section.

Sec. 23.016. RULES, FORMS, AND PROCEDURES. The *executive commissioner* [~~department~~] by rule shall prescribe forms and procedures for the implementation of this chapter.

SECTION 4.039. Section 31.001, Human Resources Code, is amended to read as follows:

Sec. 31.001. *TEMPORARY ASSISTANCE FOR NEEDY* [~~AID TO~~] FAMILIES [~~WITH DEPENDENT CHILDREN~~]. The *commission* [~~department~~] shall provide financial assistance and services to families with dependent children in accordance with the provisions of this chapter. The *commission* [~~department~~] shall give first priority in administering this chapter to assisting an adult recipient of or unemployed applicant for the financial assistance and services in finding and retaining a job.

SECTION 4.040. Section 31.002(b), Human Resources Code, is amended to read as follows:

(b) In this chapter, the term "dependent child" also applies to a child:

(1) who meets the specifications set forth in *Subsections (a)(1)-(4)* [~~Subdivisions (1)-(4) of the preceding subsection~~];

(2) who has been removed from the home of a relative specified in *Subsection (a)(5)* [~~Subdivision (5) of the preceding subsection~~] as a result of a judicial determination that the child's residence there is contrary to his or her welfare;

(3) whose placement and care are the responsibility of the [~~department, the~~] Department of *Family and* Protective [~~and Regulatory~~] Services[~~;~~] or an agency with which

the [~~department or the~~] Department of *Family and* Protective [~~and Regulatory~~] Services has entered into an agreement for the care and supervision of the child;

(4) who has been placed in a foster home or child-care institution by the [~~department or the~~] Department of *Family and* Protective [~~and Regulatory~~] Services; and

(5) for whom the state may receive federal funds for the purpose of providing foster care in accordance with rules promulgated by the *executive commissioner* [~~department~~].

SECTION 4.041. Section 31.0021(b), Human Resources Code, is amended to read as follows:

(b) "Nonrecipient parent" does not include:

(1) a minor parent who is not the head of household;

(2) a person who is ineligible for financial assistance because of the person's immigration status; or

(3) a parent who cares for a [~~disabled~~] family member *with a disability* living in the home if the family member does not attend school full-time and the need for the care is supported by medical documentation.

SECTION 4.042. Section 31.003, Human Resources Code, is amended to read as follows:

Sec. 31.003. AMOUNT OF FINANCIAL ASSISTANCE. (a) The *executive commissioner* [~~department~~] shall adopt rules governing the determination of the amount of financial assistance to be granted for the support of a dependent child. The amount granted, when combined with the income and other resources available for the child's support, must be sufficient to provide the child with a subsistence compatible with decency and health.

(b) In considering the amount of income or other resources available to a child or a relative claiming financial assistance on the child's behalf, the *commission* [~~department~~] shall also consider reasonable expenses attributable to earning the income. The *commission* [~~department~~] may permit all or part of the earned or other income to be set aside for the future identifiable needs of the child, subject to limitations prescribed by the *executive commissioner* [~~department~~].

(c) The *commission's* [~~department's~~] agents employed in the region or county in which the dependent child resides shall determine the amount to be paid in accordance with the rules promulgated by the *executive commissioner* [~~department~~].

SECTION 4.043. Sections 31.0031(a), (c), (d), (e), (f), (g), and (h), Human Resources Code, are amended to read as follows:

(a) The *commission* [~~department~~] shall require each adult recipient to sign a bill of responsibilities that defines the responsibilities of the state and of the recipient and encourages personal responsibility. The *commission* [~~department~~] shall explain to the applicant the work requirements and time-limited benefits in addition to the other provisions of the agreement before the applicant signs the agreement. The *commission* [~~department~~] shall provide each applicant with a copy of the signed agreement. The agreement shall include pertinent case information, including the case number and a listing of the state's benefits.

(c) The *executive commissioner* [~~department~~] shall adopt rules governing sanctions and penalties under this section to or for:

(1) a person who fails to cooperate with each applicable requirement of the responsibility agreement prescribed by this section; and

(2) the family of a person who fails to cooperate with each applicable requirement of the responsibility agreement.

(d) The responsibility agreement shall require that:

(1) the parent of a dependent child cooperate with the *commission* [~~department~~] and the Title IV–D agency if necessary to establish the paternity of the dependent child and to establish or enforce child support;

(2) if adequate and accessible providers of the services are available in the geographic area and subject to the availability of funds, each dependent child, as appropriate, complete early and periodic screening, diagnosis, and treatment checkups on schedule and receive the immunization series prescribed by Section 161.004, Health and Safety Code, unless the child is exempt under that section;

(3) each adult recipient, or teen parent recipient who has completed the requirements regarding school attendance in Subdivision (6), not voluntarily terminate paid employment of at least 30 hours each week without good cause in accordance with rules adopted by the *executive commissioner* [~~department~~];

(4) each adult recipient for whom a needs assessment is conducted participate in an activity to enable that person to become self-sufficient by:

(A) continuing the person's education or becoming literate;

(B) entering a job placement or employment skills training program;

(C) serving as a volunteer in the person's community; or

(D) serving in a community work program or other work program approved by the *commission* [~~department~~];

(5) each caretaker relative or parent receiving assistance not use, sell, or possess marihuana or a controlled substance in violation of Chapter 481, Health and Safety Code, or abuse alcohol;

(6) each dependent child younger than 18 years of age or teen parent younger than 19 years of age attend school regularly, unless the child has a high school diploma or high school equivalency certificate or is specifically exempted from school attendance under Section 25.086, Education Code;

(7) each recipient comply with *commission* [~~department~~] rules regarding proof of school attendance; and

(8) each recipient attend appropriate parenting skills training classes, as determined by the needs assessment.

(e) In conjunction with the Texas Education Agency, the *executive commissioner* [~~department~~] by rule shall ensure compliance with the school attendance requirements of Subsection (d)(6) by establishing criteria for:

(1) determining whether a child is regularly attending school;

(2) exempting a child from school attendance in accordance with Subchapter C, Chapter 25, Education Code; and

(3) determining when an absence is excused.

(f) The *executive commissioner* [~~department~~] by rule may provide for exemptions from Subsection (d)(4) or for a teen parent under Subsection (d)(6). The *commission* [~~department~~] may not require participation in an activity under Subsection (d)(4) or for a teen parent under Subsection (d)(6) if funding for support services is unavailable.

(g) In this section:

(1) "Caretaker relative" means a person who is listed *under Section 31.002(a)(5) in whose home residence a dependent child lives* [~~as a relative eligible to receive assistance under 42 U.S.C. Section 602(a)~~].

(2) "Payee" means a person who resides in a household with a dependent child and who is within the degree of relationship with the child that is required of a caretaker *relative* but whose needs are not included in determining the amount of financial assistance provided for the person's household.

(h) The *commission* [~~department~~] shall require each payee to sign a bill of responsibilities that defines the responsibilities of the state and of the payee. The responsibility agreement must require that a payee comply with the requirements of Subsections (d)(1), (2), (5), (6), and (7).

SECTION 4.044. Section 31.0032, Human Resources Code, is amended to read as

follows:

Sec. 31.0032. PAYMENT OF ASSISTANCE FOR PERFORMANCE. (a) Except as provided by Section 231.115, Family Code, if after an investigation the *commission* [~~department~~] or the Title IV–D agency determines that a person is not cooperating with a requirement of the responsibility agreement required under Section 31.0031, the *commission* [~~department~~] shall immediately apply a sanction terminating the total amount of financial assistance provided under this chapter to or for the person and the person's family.

(a–1) The *commission* [~~department~~] shall apply a sanction or penalty imposed under Subsection (a) for a period ending when the person demonstrates cooperation with the requirement of the responsibility agreement for which the sanction was imposed or for a one-month period, whichever is longer.

(b) The *commission* [~~department~~] shall immediately notify the caretaker relative, second parent, or payee receiving the financial assistance if the *commission* [~~department~~] will not make the financial assistance payment for the period prescribed by Subsection (a–1) because of a person's failure to cooperate with the requirements of the responsibility agreement during a month.

(c) To the extent allowed by federal law, the *commission* [~~Health and Human Services Commission or any health and human services agency, as defined by Section 531.001, Government Code,~~] may deny medical assistance for a person who is eligible for financial assistance but to whom that assistance is not paid because of the person's failure to cooperate. Medical assistance to the person's family may not be denied for the person's failure to cooperate. Medical assistance may not be denied to a person receiving assistance under this chapter who is under the age of 19, a pregnant adult, or any other person who may not be denied medical assistance under federal law.

(d) This section does not prohibit the Texas Workforce Commission, the *commission* [~~Health and Human Services Commission~~], or any health and human services agency, as defined by Section 531.001, Government Code, from providing child care or any other related social or support services for an individual who is eligible for financial assistance but to whom that assistance is not paid because of the individual's failure to cooperate.

(e) The *executive commissioner* [~~department~~] by rule shall establish procedures to determine whether a person has cooperated with the requirements of the responsibility agreement.

SECTION 4.045. Sections 31.0033(a), (b), (c), and (d), Human Resources Code, are amended to read as follows:

(a) If the *commission* [~~department~~] or Title IV–D agency determines that a person has failed to cooperate with the requirements of the responsibility agreement under Section 31.0031, the person determined to have failed to cooperate or, if different, the person receiving the financial assistance may request a hearing to show good cause for failure to cooperate not later than the 13th day after the date the notice is sent under Section 31.0032. If the person determined to have failed to cooperate or, if different, the person receiving the financial assistance requests a hearing to show good cause not later than the 13th day after the date on which the notice is sent under Section 31.0032, the *commission* [~~department~~] may not withhold or reduce the payment of financial assistance until the *commission* [~~department~~] determines whether the person had good cause for the person's failure to cooperate. On a showing of good cause for failure to cooperate, the person may receive a financial assistance payment for the period in which the person failed to cooperate, but had good cause for that failure to cooperate.

(b) The *commission* [~~department~~] shall promptly conduct a hearing if a timely request is made under Subsection (a).

(c) If the *commission* [~~department~~] finds that good cause for the person's failure to cooperate was not shown at a hearing, the *commission* [~~department~~] may not make a financial assistance payment in any amount to the person for the person or the person's family for the period prescribed by Section 31.0032(a–1).

(d) The *executive commissioner* [~~department~~] by rule shall establish criteria for good

cause failure to cooperate and guidelines for what constitutes a good faith effort on behalf of a recipient under this section.

SECTION 4.046. Sections 31.0035 and 31.0036, Human Resources Code, are amended to read as follows:

Sec. 31.0035. TRANSITIONAL CHILD–CARE SERVICES. (a) The *Texas Workforce Commission* [~~department~~] shall provide necessary transitional child-care services, in accordance with *Texas Workforce Commission* [~~department~~] rules and federal law, to a person who was receiving financial assistance under this chapter but is no longer eligible to receive the assistance because:

(1) the person's household income has increased; or

(2) the person has exhausted the person's benefits under Section 31.0065.

(b) Except as provided by Section 31.012(c), the *Texas Workforce Commission* [~~department~~] may provide the child-care services only until the earlier of:

(1) the end of the applicable period prescribed by Section 31.0065 for the provision of transitional benefits; or

(2) the first anniversary of the date on which the person becomes ineligible for financial assistance because of increased household income.

(c) The *Texas Workforce Commission* [~~department~~] by rule shall adopt a system of *copayments* [~~co-payments~~] in order to have a person who receives child-care services under this section contribute an amount toward the cost of the services according to the person's ability to pay.

(d) The *Texas Workforce Commission* [~~department~~] by rule shall provide for sanctions for a person who is financially able to contribute the amount required by Subsection (c) but fails to pay.

Sec. 31.0036. DEPENDENT CHILD'S INCOME. The *commission* [~~department~~] may not consider any income earned by a dependent child who is attending school and whose income is derived from the child's part-time employment for purposes of determining:

(1) the amount of financial assistance granted to an individual under this chapter for the support of dependent children; or

(2) whether the family meets household income and resource requirements for eligibility for financial assistance under this chapter.

SECTION 4.047. Section 31.0038(a), Human Resources Code, is amended to read as follows:

(a) Subject to the limitations prescribed by Subsection (b), income earned by an individual who marries an individual receiving financial assistance at the time of the marriage may not be considered by the *commission* [~~department~~] during the six-month period following the date of the marriage for purposes of determining:

(1) the amount of financial assistance granted to an individual under this chapter for the support of dependent children; or

(2) whether the family meets household income and resource requirements for financial assistance under this chapter.

SECTION 4.048. Sections 31.0039 and 31.004, Human Resources Code, are amended to read as follows:

Sec. 31.0039. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. For purposes of determining the amount of financial assistance granted to an individual under this chapter for the support of dependent children or determining whether the family meets household income and resource requirements for financial assistance under this chapter, the *commission* [~~department~~] may not consider the right to assets held in or the right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Educa-

tion Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account; or

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

Sec. 31.004. FOSTER CARE. The Department of *Family and* Protective [~~and Regulatory~~] Services may accept and spend funds available from any source to provide foster care in facilities approved by the Department of *Family and* Protective [~~and Regulatory~~] Services for dependent children who meet the specifications set out in Section 31.002(b).

SECTION 4.049. Sections 31.0041(a), (c), and (d), Human Resources Code, are amended to read as follows:

(a) To the extent funds are appropriated for this purpose, the *commission* [~~department~~] may provide supplemental financial assistance in addition to the amount of financial assistance granted for the support of a dependent child under Section 31.003 to a person who:

(1) is 45 years of age or older;

(2) is the grandparent of the dependent child, as defined by Section 31.002, who lives at the person's residence;

(3) is the primary caretaker of the dependent child;

(4) has a family income that is at or below 200 percent of the federal poverty level; and

(5) does not have resources that exceed the amount allowed for financial assistance under this chapter.

(c) The *commission* [~~department~~] shall inform an applicant for financial assistance under this chapter who meets the eligibility requirements under Subsection (a) of the availability of supplemental financial assistance.

(d) The *commission* [~~department~~] shall maintain complete records and compile statistics regarding the number of households that receive supplemental financial assistance under this section.

SECTION 4.050. Sections 31.005(a), (b), and (d), Human Resources Code, are amended to read as follows:

(a) If after an investigation the *commission* [~~department~~] determines that a family with a dependent child is needy and that the child resides with the family, the *commission* [~~department~~] shall provide financial assistance and services for the support of the family.

(b) The *commission* [~~department~~] shall formulate policies for studying and improving the child's home conditions and shall plan services for the protection of the child and for the child's health and educational needs.

(d) The *commission* [~~department~~] shall develop a plan for the coordination of the services provided for dependent children under this chapter and other child welfare services *provided by the state* [~~for which the department is responsible~~].

SECTION 4.051. Sections 31.0051, 31.006, and 31.0065, Human Resources Code, are amended to read as follows:

Sec. 31.0051. MINOR PARENT RESIDING WITH RELATIVES. If the *commission* [~~department~~] determines based on documentation provided that a minor caretaker who is receiving financial assistance and services under this chapter on behalf of a dependent child benefits from residing with an adult family member who is also receiving assistance under this chapter, the *commission* [~~department~~] shall provide assistance and services to both persons as if they were living separately.

Sec. 31.006. WELFARE AND RELATED SERVICES. (a) The *commission* [~~department~~] shall develop and implement a program of welfare and related services for each dependent child which, in light of the particular home conditions and other needs of the child, will best promote the welfare of the child and his or her family and will help to

maintain and strengthen family life by assisting the child's parents or relatives to attain and retain their capabilities for maximum self-support and personal independence consistent with the maintenance of continued parental care and protection.

(b) The *commission* [~~department~~] shall coordinate the services provided under the program with other services provided by the *commission* [~~department~~] and by other public and private welfare agencies, *including other state agencies,* for the care and protection of children.

(c) The *executive commissioner and the Texas Workforce Commission* [~~department~~] may promulgate rules which will enable *the Health and Human Services Commission and the Texas Workforce Commission* [~~it~~] to fully participate in work and training programs authorized by federal law, to provide for all services required or deemed advisable under the provisions of the program, and to accept, transfer, and expend funds made available from public or private sources for the purpose of carrying out the provisions of this section.

Sec. 31.0065. TIME-LIMITED BENEFITS. (a) The *commission* [~~department~~] may provide financial assistance under this chapter only in accordance with the time limits specified by this section. The *executive commissioner* [~~department~~] by rule may provide for exceptions to these time limits if severe personal hardship or community economic factors prevent the recipient from obtaining employment or if the state is unable to provide support services.

(b) The *commission* [~~department~~] shall limit financial assistance and transitional benefits in accordance with the following schedule:

(1) financial assistance is limited to a cumulative total of 12 months and transitional benefits are limited to 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) a high school diploma, a high school equivalency certificate, or a certificate or degree from a two-year or four-year institution of higher education or technical or vocational school; or

(B) recent work experience of 18 months or more;

(2) financial assistance is limited to a cumulative total of 24 months and transitional benefits are limited to 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) completed three years of high school; or

(B) recent work experience of not less than six or more than 18 months; and

(3) financial assistance is limited to a cumulative total of 36 months and transitional benefits of 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) completed less than three years of high school; and

(B) less than six months of work experience.

(c) If the recipient has completed less than three years of high school and has less than six months work experience, the *commission* [~~department~~] shall perform an in-depth assessment of the needs of that person and that person's family. If the recipient cooperates with the *commission's* [~~department's~~] assessment, the time period prescribed by Subsection (b)(3) begins on the first anniversary of the date on which the *commission* [~~department~~] completes the assessment, as determined by the *commission* [~~department~~].

(d) The computation of time limits under Subsection (b) begins when the adult or teen parent recipient receives notification *in accordance with the procedures* under Section 31.012(b) of the availability of an opening in and eligibility for *a Temporary Assistance for Needy Families employment program established under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.)* [~~the job opportunity and basic skills (JOBS) program Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682)~~].

(e) In implementing the time-limited benefits program, the *commission* [~~department~~]:

(1) shall provide that a participant in the program may reapply with the *commis-*

sion [~~department~~] for financial assistance on or after the fifth anniversary of the date on which the participant is totally disqualified from receiving assistance because of the application of Subsection (b); and

(2) shall establish the criteria for determining what constitutes severe personal hardship under Subsection (a).

(f) If the *commission* [~~department~~] is imposing time-limited benefits on an individual, the *commission* [~~department~~] shall consider:

(1) the assessment of the individual's need that was conducted by the *commission* [~~department~~], provided that if the needs assessment indicates discrepancies between a client's self-reported educational level and the client's functional abilities, the time limits shall be based upon the functional educational level; and

(2) the prevailing economic and employment conditions in the area of the state where the individual resides.

SECTION 4.052. Section 31.0066(a), Human Resources Code, is amended to read as follows:

(a) The *executive commissioner and* [~~department,~~] the Texas Workforce Commission[~~, and the Health and Human Services Commission~~] shall jointly adopt rules prescribing circumstances that constitute a hardship for purposes of exempting a recipient of financial assistance from the application of time limits imposed by federal law on the receipt of benefits.

SECTION 4.053. Sections 31.007, 31.008, and 31.0095, Human Resources Code, are amended to read as follows:

Sec. 31.007. FINANCIAL ASSISTANCE TO INDIVIDUALS IN INSTITUTIONS. A person who is in an institution is eligible to receive financial assistance under this chapter if the person would be eligible to receive the financial assistance if *the person* [~~he~~] were not in an institution and if the payments are made in accordance with the *commission's* [~~department's~~] rules promulgated in conformity with federal law and rules.

Sec. 31.008. COUNSELING AND GUIDANCE SERVICES. (a) If the *commission* [~~department~~] believes that financial assistance to a family with a dependent child is not being, or may not be, used in the best interest of the child, the *commission* [~~department~~] may provide counseling and guidance services to the relative receiving financial assistance with respect to the use of the funds and the management of other funds in the child's best interest.

(b) The *commission* [~~department~~] may advise the relative that continued failure to use the funds in the child's best interest will result in the funds being paid to a substitute payee. If the *commission* [~~department~~] determines that protective payments are required to safeguard the best interest of the child, the *commission* [~~department~~] may pay the funds to a substitute payee on a temporary basis in accordance with the *commission's* [~~department's~~] rules.

(c) If the situation in the home which made the protective payments necessary does not improve, and if the *commission* [~~department~~] determines that the relative with whom the child is living is unable or does not have the capacity to use the funds for the best interest of the child, then the *commission, with the assistance of other appropriate state agencies,* [~~department~~] may make arrangements with the family for other plans for the care of the child. The other plans may include:

(1) removing the child to the home of another relative;

(2) appointment of a guardian or legal representative for the relative with whom the child is living;

(3) imposition of criminal or civil penalties if a court determines that the relative is not using, or has not used, the payments for the benefit of the child; or

(4) referral of the case to a court for the removal of the child and the placement of the child in a foster home.

(d) The *commission* [~~department~~] may make payments on behalf of a dependent child residing in a foster family home or a child-care institution in accordance with the provi-

sions of this chapter and *commission* [~~the~~] rules [~~of the department~~].

Sec. 31.0095. NEEDS ASSESSMENT. The *commission* [~~Health and Human Services Commission~~] shall assist a recipient or a nonrecipient parent in assessing the particular needs of that person and the person's family upon notification of entry into a Temporary Assistance for Needy Families employment program established under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.). The Texas Workforce Commission and the recipient or the nonrecipient parent shall develop an employability plan to help the recipient or nonrecipient parent achieve independence from public assistance granted to the recipient and the recipient's family, or to the child of the nonrecipient parent, as applicable.

SECTION 4.054. Sections 31.010(b), (d), and (e), Human Resources Code, are amended to read as follows:

(b) The *Texas Workforce Commission* [~~department~~] shall consider the needs assessment and employability plan developed under Section 31.0095 in determining the support services needed.

(d) The *Texas Workforce Commission* [~~department~~] by rule shall provide for implementation of the support services.

(e) The *Texas Workforce Commission* [~~department~~] may contract with other state agencies, community colleges, technical schools, residence training facilities, or public or private entities to provide support services under this section.

SECTION 4.055. The heading to Section 31.012, Human Resources Code, is amended to read as follows:

Sec. 31.012. MANDATORY WORK OR PARTICIPATION IN EMPLOYMENT ACTIVITIES THROUGH *TEMPORARY ASSISTANCE FOR NEEDY FAMILIES EMPLOYMENT* [~~THE JOB OPPORTUNITIES AND BASIC SKILLS~~] PROGRAM.

SECTION 4.056. Sections 31.012(a), (b), (c), (d), and (e), Human Resources Code, are amended to read as follows:

(a) The *Health and Human Services Commission* [~~department~~] shall require that, during any one-month period in which an adult is receiving financial assistance under this chapter, the adult shall during that period:

(1) work not less than 30 hours a week; or

(2) participate for not less than 20 hours a week in an activity established under *a Temporary Assistance for Needy Families employment program established under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.)* [~~the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682)~~].

(b) The *Texas Workforce Commission* [~~department~~] by rule shall establish criteria for good cause failure to cooperate and for notification procedures regarding participation in work or employment activities under this section.

(c) A person who is the caretaker of a [~~physically or mentally disabled~~] child *with a physical disability or mental, intellectual, or developmental disability* who requires the caretaker's presence is not required to participate in a program under this section. A single person who is the caretaker of a child is exempt until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of one. Notwithstanding Sections 31.0035(b) and 32.0255(b), the *Health and Human Services Commission* [~~department~~] shall provide to a person who is exempt under this subsection and who voluntarily participates in a program under Subsection (a)(2) six months of transitional benefits in addition to the applicable limit prescribed by Section 31.0065.

(d) A state program operated under this section shall be administered by the division of workforce development of the Texas Workforce Commission [~~when the program is transferred to that commission~~].

(e) The *Texas Workforce Commission* [~~department~~] shall allow a person who is participating in work or employment activities under this section to complete those

activities if the person becomes ineligible to receive financial assistance under this chapter because the person receives child support in an amount that makes the person ineligible for that assistance. The *Texas Workforce Commission* [~~department~~] shall provide to the person necessary child care services until the date on which the person completes work or employment activities under this section.

SECTION 4.057. Section 31.0124, Human Resources Code, is amended to read as follows:

Sec. 31.0124. REFERRAL TO EDUCATIONAL PROGRAMS. The *Texas Workforce Commission* [~~department~~] shall determine whether a person who registers to participate in *a Temporary Assistance for Needy Families employment program established under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.)* [~~the job opportunities and basic skills training program~~] needs and is eligible for adult education *and literacy programs* [~~services~~] provided under *Chapter 315, Labor* [~~Section 11.2093, Education~~] Code. If the person is eligible for the adult education *and literacy programs* [~~services~~], the *Texas Workforce Commission* [~~department~~] shall determine the person's needs and goals and refer the person to the appropriate adult education *and literacy program* [~~service~~] provided under *Chapter 315, Labor* [~~Section 11.2093, Education~~] Code.

SECTION 4.058. Sections 31.0126(b), (c), and (e), Human Resources Code, are amended to read as follows:

(b) The *Texas Workforce Commission* [~~department~~] shall develop the programs prescribed by this section in accordance with federal law as a part of *a Temporary Assistance for Needy Families employment program established under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.)* [~~the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682)~~].

(c) In adopting rules governing a program prescribed by this section, the executive commissioner [~~of the Health and Human Services Commission~~] shall:

(1) establish the criteria for determining which recipients and nonrecipient parents who are eligible to participate in the Temporary Assistance for Needy Families employment programs established under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.), may be required to participate in a particular program; and

(2) ensure that a recipient or a nonrecipient parent who is incapable of participating in a particular program is not required to participate in that program.

(e) The *Texas Workforce Commission* [~~department~~] shall submit a waiver application or a renewal waiver application that a federal agency may require before a local workforce development board can implement one or more of the programs prescribed by this section in a workforce development area.

SECTION 4.059. Sections 31.0127(a), (b), (c), (d), (h), and (i), Human Resources Code, are amended to read as follows:

(a) The Health and Human Services Commission *shall* [~~is the state agency designated to~~] coordinate *with the Texas Workforce Commission for the provision of* [~~between the department and another state agency providing~~] child care services, Temporary Assistance for Needy Families *employment* [~~work~~] programs, and *supplemental nutrition assistance program employment and training* [~~Food Stamp Employment and Training~~] services to an individual or family who has been referred for programs and services by the *Health and Human Services Commission* [~~department~~]. The purpose of this section is to accomplish the following:

(1) increase the self-sufficiency of recipients of Temporary Assistance for Needy Families and improve the delivery of services to those recipients; and

(2) improve the effectiveness of job-training programs funded under the *Workforce Investment Act of 1998* [~~Job Training Partnership Act~~] (29 U.S.C. Section *2801* [~~1501~~] et seq.) or a successor program in obtaining employment for individuals receiving Temporary Assistance for Needy Families cash assistance.

(b) The Health and Human Services Commission shall require *the Texas Workforce Commission* [~~a state agency providing program services described by Subsection (a)~~] to comply with Chapter 531, Government Code, solely for:

(1) the promulgation of rules relating to the programs described by Subsection (a);

(2) the expenditure of funds relating to the programs described by Subsection (a), within the limitations established by and subject to the General Appropriations Act and federal and other law applicable to the use of the funds;

(3) data collection and reporting relating to the programs described by Subsection (a); and

(4) evaluation of services relating to the programs described by Subsection (a).

(c) The *Health and Human Services Commission* [~~department~~] and *the Texas Workforce Commission* [~~a state agency providing program services described by Subsection (a)~~] shall jointly develop and adopt a memorandum of understanding[~~, subject to the approval of the Health and Human Services Commission~~]. The memorandum of understanding must:

(1) outline measures to be taken to increase the number of individuals receiving Temporary Assistance for Needy Families cash assistance who are using job-training programs funded under the *Workforce Investment Act of 1998* [~~Job Training Partnership Act~~] (29 U.S.C. Section *2801* [~~1501~~] et seq.), or a successor program; and

(2) identify specific measures to improve the delivery of services to clients served by programs described by Subsection (a).

(d) Not later than January 15 of each odd-numbered year, the Health and Human Services Commission shall provide a report to the governor, the lieutenant governor, and the speaker of the house of representatives that:

(1) evaluates the efficiency and effectiveness of client services in the Temporary Assistance for Needy Families program;

(2) evaluates the status of the coordination among agencies and compliance with this section;

(3) recommends measures to increase self-sufficiency of recipients of Temporary Assistance for Needy Families cash assistance and to improve the delivery of services to these recipients; and

(4) evaluates the effectiveness of job-training programs funded under the *Workforce Investment Act of 1998* [~~Job Training Partnership Act~~] (29 U.S.C. Section *2801* [~~1501~~] et seq.) or a successor program in obtaining employment outcomes for recipients of Temporary Assistance for Needy Families cash assistance.

(h) This section does not authorize the Health and Human Services Commission to transfer programs to or from the *commission* [~~department~~] and another agency serving clients of the Temporary Assistance for Needy Families program or the federal *supplemental nutrition assistance* [~~food stamp~~] program administered under Chapter 33 without explicit legislative authorization.

(i) The *executive commissioner may not promulgate rules relating to eligibility for the* [~~Health and Human Services Commission and any state agency providing~~] program services described by Subsection (a) *and the Texas Workforce Commission* may not promulgate rules in accordance with Subsection (b)(1) without holding a public hearing.

SECTION 4.060. Sections 31.0128, 31.0129, and 31.0135, Human Resources Code, are amended to read as follows:

Sec. 31.0128. COORDINATED INTERAGENCY PLAN. (a) The *commission* [~~department~~] and the Texas Workforce Commission shall jointly develop [~~and adopt~~] a memorandum of understanding *establishing*[~~, subject to the approval of the Health and Human Services Commission. The memorandum of understanding must establish~~] guidelines for a coordinated interagency case management plan to:

(1) identify each recipient of financial assistance who has, in comparison to other recipients, higher levels of barriers to employment; and

(2) provide coordinated services that address those barriers to assist the recipient in finding and retaining employment.

(b) The *commission* [~~department~~] and the Texas Workforce Commission shall:

(1) jointly develop [~~and adopt~~] a memorandum of understanding[~~, subject to the approval of the Health and Human Services Commission,~~] that establishes a coordinated interagency case management plan consistent with the guidelines established under Subsection (a); and

(2) using existing resources, [~~by rule~~] implement *in accordance with agency rules* the plan to the maximum extent possible through local [~~department and commission~~] offices *of the agency* in local workforce development areas in which a local workforce development board is not established.

(c) *The executive commissioner and the Texas Workforce Commission* [~~Each agency~~] by rule shall adopt the memoranda of understanding required by this section and all revisions to the memoranda.

(d) In a local workforce development area in which a local workforce development board is established, the Texas Workforce Commission shall require in the [~~commission's~~] contract *between the Texas Workforce Commission and* [~~with~~] the board that the board, in cooperation with local *Health and Human Services Commission* [~~department~~] offices, develop and implement a coordinated interagency case management plan consistent with the guidelines established under Subsection (a).

(e) On the [~~department's~~] formulation of recommendations and strategies *by the Health and Human Services Commission* under Section 31.0129(b), the *commission* [~~department~~] and the Texas Workforce Commission shall, as necessary, revise and update a memorandum of understanding and coordinated interagency case management plan under this section to include the recommendations and strategies.

Sec. 31.0129. COORDINATED PLAN TO IMPROVE INTERAGENCY TRANSITIONS. (a) The *Health and Human Services Commission* [~~department~~], the Texas Workforce Commission, and representatives of local workforce development boards shall conduct a survey of best practices used to transition clients between local *Health and Human Services Commission* [~~department~~] offices and workforce centers.

(b) The *Health and Human Services Commission* [~~department~~] shall:

(1) analyze information collected by a survey under Subsection (a); and

(2) formulate recommendations and strategies to improve practices used to transition clients between local *commission* [~~department~~] offices and workforce centers.

(c) Using existing resources, the *Health and Human Services Commission* [~~department~~] and local workforce development boards shall adopt policies to implement the recommendations and strategies contained in the revised and updated memorandum of understanding under Section 31.0128.

Sec. 31.0135. PARENTING SKILLS TRAINING. (a) The *commission* [~~department~~], in cooperation with the Texas Education Agency, the Department of *Family and* Protective [~~and Regulatory~~] Services, the Texas *A&M AgriLife* [~~Agricultural~~] Extension Service, or any other public or private entity, shall develop a parenting skills training program to assist a recipient of assistance under this chapter, including a child who receives assistance on behalf of a dependent child. The program shall include nutrition education, budgeting and survival skills, and instruction on the necessity of physical and emotional safety for children.

(b) The *commission* [~~department~~] shall require that a caretaker relative or parent who is receiving assistance under this chapter on behalf of a dependent child receive appropriate parenting skills training as needed. The training must include one or more components of the parenting skills training program that the *commission* [~~department~~] determines will be useful to the caretaker relative or parent.

(c) In this section, "caretaker relative" means a person who is listed *under Section 31.002(a)(5) in whose home residence a dependent child lives* [~~as a relative eligible to receive assistance under 42 U.S.C. Section 602(a)~~].

SECTION 4.061. Sections 31.015(a), (c), (d), (e), and (f), Human Resources Code, are amended to read as follows:

(a) Subject to available federal funding, the *commission* [~~department~~] shall develop and implement a healthy marriage development program for recipients of financial assistance under this chapter.

(c) The *commission* [~~department~~] shall provide to a recipient of financial assistance under this chapter additional financial assistance of not more than $20 for the recipient's participation in a course offered through the healthy marriage development program up to a maximum payment of $60 a month.

(d) The *commission* [~~department~~] may provide the courses or may contract with any person, including a community or faith-based organization, for the provision of the courses. The *commission* [~~department~~] must provide all participants with an option of attending courses in a non-faith-based organization.

(e) The *executive commissioner* [~~department~~] shall develop rules as necessary for the administration of the healthy marriage development program.

(f) The *commission* [~~department~~] must ensure that the courses provided by the *commission* [~~department~~] and courses provided through contracts with other organizations will be sensitive to the needs of individuals from different religions, races, and genders.

SECTION 4.062. Sections 31.016, 31.017, and 31.018, Human Resources Code, are amended to read as follows:

Sec. 31.016. SERVICE REFERRALS FOR CERTAIN RECIPIENTS. To the extent practicable using existing revenue, the *executive commissioner* [~~department~~], by rule, shall develop and *the commission shall* implement a plan to:

(1) identify recipients of financial assistance that are at risk of exhausting their benefits under Section 31.0065; and

(2) provide referrals for the recipient and the recipient's family to appropriate preventive and support services, including faith-based services.

Sec. 31.017. HEALTHY MARRIAGES AND STRONG FAMILIES GRANT PROGRAM. (a) The *commission* [~~Health and Human Services Commission~~] may administer a grant program to provide grants in amounts not to exceed $50,000 to programs that provide marriage education services and support the development of healthy marriages or strengthening of families. Grant recipients may use grant money to provide direct services to participants, develop a program, enlarge program capacity, or pay other program expenses, including provider training and technical assistance expenses.

(b) In selecting grant recipients, the *commission* [~~Health and Human Services Commission~~] shall give preference to applicants:

(1) whose programs will contribute to the geographic diversity of program locations; or

(2) who operate small programs, but who seek to maximize service delivery and build capacity.

(c) The *commission* [~~Health and Human Services Commission~~] shall require that each grant recipient provide program services at no cost to participants.

(d) The *commission* [~~Health and Human Services Commission~~] may contract with private entities to provide marriage education training and curriculum, technical assistance, and other support to grant recipients. In selecting entities to provide these services, the commission shall consider whether a prospective provider has knowledge and understanding of the needs of grant recipients operating programs in different areas of this state.

(e) The executive commissioner [~~of the Health and Human Services Commission~~] may adopt rules to implement this section.

Sec. 31.018. MARRIAGE AND FAMILY PROGRAM FUNDING. (a) To the extent

authorized by federal law, the *commission* [~~Health and Human Services Commission~~] shall spend a minimum of one percent of money received under the federal Temporary Assistance for Needy Families block grant during each state fiscal year to fund programs that support the development of healthy marriages or the strengthening of families, including the healthy marriage development program under Section 31.015 and the healthy marriages and strong families grant program under Section 31.017.

(b) Using not more than 10 percent of the money required to be spent as provided by Subsection (a), the *commission* [~~Health and Human Services Commission~~], through a contract or agreement with a public senior college or university, as defined by Section 61.003, Education Code, shall establish a process for evaluating the best practices and outcomes of programs funded under Subsection (a).

SECTION 4.063. Sections 31.031(a), (b), (c), (d), (e), and (f), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule shall prescribe the form for applications for assistance authorized by this chapter and the manner of their submission.

(b) The *commission* [~~department~~] may require the applicant to state the amount of property in which he or she has an interest, the amount of income which he or she has at the time the application is filed, and other information.

(c) The *commission* [~~department~~] shall require the applicant to provide proof to the *commission* [~~department~~] that each person who will receive assistance under this chapter is:

(1) a United States citizen or has a satisfactory immigration status *under Title IV, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. Sections 1601–1646)* [~~as defined in Title IV, Social Security Act (42 U.S.C. Section 602(a)(33)), in effect as of the effective date of this Act~~]; and

(2) a resident of this state.

(d) The *commission* [~~department~~] shall require the applicant to provide proof to the *commission* [~~department~~] that each child five years of age or younger, or a child who is not enrolled in public school, for whom the applicant will receive assistance:

(1) has been immunized in accordance with Section 161.004, Health and Safety Code;

(2) is currently receiving an immunization series in accordance with Section 161.004, Health and Safety Code, if the child is of sufficient age; or

(3) is exempted under Section 161.004(d), Health and Safety Code.

(e) An applicant who cannot provide the proof required by Subsection (d) at the time of application shall provide the proof not later than the 180th day after the date the *commission* [~~department~~] determines the applicant is eligible for financial assistance.

(f) The *commission* [~~department~~] shall provide the applicant with information regarding immunization services available in the applicant's residential area. If the applicant does not read or comprehend English, the *commission* [~~department~~] shall provide the information in a language that the applicant reads or comprehends.

SECTION 4.064. Sections 31.0315(d) and (e), Human Resources Code, are amended to read as follows:

(d) The *commission* [~~department~~] may waive the requirements of this section if it determines that there exists a reasonable explanation why it is impossible to provide the information required under Subsection (a), (b), or (c) or if it would not be in the best interests of the child to provide the information. In determining whether the best interests of the child warrant waiving the information requirements of this section, the *commission* [~~department~~] shall consider all relevant provisions of federal law and regulations.

(e) The *commission* [~~department~~] shall forward to the attorney general's office information received under this section.

SECTION 4.065. Section 31.032, Human Resources Code, is amended to read as

follows:

Sec. 31.032. INVESTIGATION AND DETERMINATION OF ELIGIBILITY. (a) On receipt of an application for assistance authorized by this chapter, the *commission* [~~department~~] shall investigate and record the applicant's circumstances in order to ascertain the facts supporting the application and to obtain other information it may require.

(b) After completing its investigation, the *commission* [~~department~~] shall determine whether the applicant is eligible for the assistance, the type and amount of assistance, the date on which the assistance shall begin, and the manner in which payments shall be made.

(c) The *commission* [~~department~~] shall promptly notify the applicant of its final action.

(d) In determining whether an applicant is eligible for assistance, the *commission* [~~department~~] shall exclude from the applicant's available resources:

(1) $1,000 for the applicant's household, including a household in which there is a person with a disability or a person who is at least 60 years of age; and

(2) the fair market value of the applicant's ownership interest in a motor vehicle, but not more than [~~the amount determined according to the following schedule:~~

[~~(A) $4,550 on or after September 1, 1995, but before October 1, 1995;~~

[~~(B) $4,600 on or after October 1, 1995, but before October 1, 1996;~~

[~~(C) $5,000 on or after October 1, 1996, but before October 1, 1997; and~~

[~~(D)~~] $5,000 plus or minus an amount to be determined annually beginning on October 1, 1997, to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

(e) If federal regulations governing the maximum allowable resources under the *supplemental nutrition assistance* [~~food stamp~~] program, 7 *C.F.R.* [~~CFR~~] Part 273, are revised, the *executive commissioner* [~~department~~] shall adjust the standards that determine available resources under Subsection (d) to reflect those revisions.

SECTION 4.066. Sections 31.0322(a), (c), (d), (e), and (g), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~], the Texas Workforce Commission, and the Title IV–D agency by rule shall adopt procedures under which requirements relating to financial assistance and related services, including time limits, child support enforcement, paternity establishment, work activity, and residency, may be waived or modified for an individual who is a victim of family violence if application of the requirements would:

(1) adversely affect the individual's ability to attain financial independence;

(2) make it more difficult for the individual to escape family violence; or

(3) place the individual at greater risk for additional family violence.

(c) The *commission* [~~department~~], the Texas Workforce Commission, and the Title IV–D agency may not deny an individual access to education, training, employment, or other services because the individual is a victim of family violence.

(d) The *commission* [~~department~~] shall coordinate the development and implementation of procedures under this section in collaboration with the Texas Workforce Commission, the Title IV–D agency, and at least one statewide advocacy group for victims of family violence.

(e) The *commission* [~~department~~], the Texas Workforce Commission, the Title IV–D agency, and each local workforce development board, using existing resources, shall provide not less than four hours of training regarding family violence to each employee or other person who on behalf of the *commission* [~~department~~], *Texas Workforce Commission* [~~commission~~], agency, or board:

(1) provides information relating to requirements described by Subsection (a) and

the availability of waivers or modifications of those requirements to an individual seeking or receiving financial assistance;

(2) recommends or grants waivers or modifications authorized by this section of requirements described by Subsection (a);

(3) recommends or imposes sanctions for noncooperation or noncompliance with requirements described by Subsection (a); or

(4) assesses employment readiness or provides employment planning or employment retention services to an individual receiving financial assistance.

(g) Before the application of a sanction or penalty based on an individual's failure to cooperate with the *commission* [~~department~~] or Title IV–D agency, as required by Section 31.0031(d)(1), or failure to comply with the work or participation requirements imposed by Section 31.012, the agency recommending or applying the sanction or penalty must make reasonable attempts to contact the individual to determine the cause of the failure to cooperate or comply. If the agency determines that family violence contributed to the failure, the agency shall ensure that a person trained in family violence issues in accordance with Subsection (e) interviews the individual to identify the types of services necessary to assist the individual in safely and successfully entering the workforce.

SECTION 4.067. Sections 31.0324(b) and (c), Human Resources Code, are amended to read as follows:

(b) The *executive commissioner* [~~department~~] by rule shall develop and *the commission shall* implement a process that provides for the grandparent of a child receiving financial assistance under this chapter to serve as a protective payee to:

(1) receive and use the assistance on behalf of the child; and

(2) apply for financial assistance and be interviewed instead of the child's parent at any subsequent review of eligibility required by the *commission* [~~department~~].

(c) The *commission.*[~~department~~] shall[~~:~~

[~~(1)~~] limit the use of the process established by Subsection (b) to situations in which the *commission* [~~department~~] determines the parent is not using the assistance for the child's needs as required by Section 31.0355(a),[~~;~~] and *the executive commissioner shall*

[~~(2)~~] establish by rule the circumstances under which the grandparent may be removed as a protective payee.

SECTION 4.068. Sections 31.0326, 31.033, 31.034, and 31.035, Human Resources Code, are amended to read as follows:

Sec. 31.0326. VERIFICATION OF IDENTITY AND PREVENTION OF DUPLICATE PARTICIPATION. The *commission* [~~Health and Human Services Commission~~] shall use appropriate technology to:

(1) confirm the identity of applicants for benefits under the financial assistance program; and

(2) prevent duplicate participation in the program by a person.

Sec. 31.033. REINVESTIGATION AND REDETERMINATION OF ELIGIBILITY. (a) The *commission* [~~department~~] may require periodic reconsideration of continued eligibility for assistance.

(b) After reconsideration of continuing eligibility, the *commission* [~~department~~] may change the amount of assistance or withdraw it if the *commission* [~~department~~] finds that the recipient's circumstances have altered sufficiently to warrant that action.

(c) The *commission* [~~department~~] may cancel or suspend assistance for a period of time if the *commission* [~~department~~] finds that the recipient is currently ineligible to receive it.

(d) The *commission* [~~department~~] shall notify the recipient immediately of its decision to change or withdraw assistance.

(e) A recipient of assistance must notify the *commission* [~~department~~] immediately if he or she comes into possession of income or resources in excess of the amount previ-

ously reported.

Sec. 31.034. APPEAL FROM LOCAL *ELIGIBILITY OFFICES* [~~ADMINISTRATIVE UNITS~~]. (a) An applicant for or recipient of financial assistance authorized by this chapter may appeal to the *commission* [~~department~~] an action or failure to act by a local *eligibility office* [~~administrative unit~~] relating to the financial assistance. The *commission* [~~department~~] shall grant the applicant or recipient an opportunity for a hearing after reasonable notice.

(b) An applicant or recipient, or his or her authorized agent, may submit a written request for the information contained in the [~~unit's~~] records *of the local eligibility office* on which the action being appealed is based, and the *local eligibility office* [~~unit~~] shall advise the person making the request of the information within a reasonable time prior to the hearing. Information not provided to the requesting party may not be considered by the *commission* [~~department~~] at the hearing as a basis for decision.

Sec. 31.035. METHOD OF PAYMENT. (a) The *commission* [~~department~~] shall periodically furnish the comptroller with a list of persons eligible for financial assistance under this chapter and the amount to which each person is entitled.

(b) The comptroller shall draw *payments* [~~warrants~~] for the specified amounts on the proper accounts [~~of the Texas Department of Human Services fund~~] and shall transmit the *payments* [~~warrants~~] to the *commission* [~~commissioner~~]. The *commission* [~~commissioner~~] shall supervise the delivery of the *payments* [~~warrants~~] to the persons entitled to them.

SECTION 4.069. Sections 31.0355(a) and (c), Human Resources Code, are amended to read as follows:

(a) Financial assistance granted to a person under this chapter may be used only to purchase goods and services that are considered essential and necessary for the welfare of the family, including food, clothing, housing, utilities, child care, and incidentals such as transportation and medicine or medical supplies or equipment not covered by Medicaid. The *executive commissioner* [~~department~~] by rule shall define what constitutes essential and necessary goods and services for purposes of this subsection.

(c) The *commission* [~~department~~] shall encourage housing authorities, utility companies, public transportation companies, and other nonfood retailers to accept payment for goods and services described by Subsection (a) through the state's electronic benefits transfer (EBT) system.

SECTION 4.070. Sections 31.036, 31.037, 31.038, 31.039, and 31.042, Human Resources Code, are amended to read as follows:

Sec. 31.036. ELIGIBILITY OF PERSON LEAVING THE STATE. A recipient of assistance who moves out of the state is no longer eligible for the assistance. However, a recipient's temporary absence from the state for reasons and for periods of time approved by the *commission* [~~department~~] does not terminate the recipient's eligibility for assistance.

Sec. 31.037. PAYMENT OF FINANCIAL ASSISTANCE FUNDS ON DEATH OF RECIPIENT. (a) If a person dies during a month for which the person is eligible for financial assistance and has not *spent all of that month's financial assistance payment* [~~endorsed or cashed the warrant issued for financial assistance during that month~~], the *commission* [~~department~~] may pay financial assistance to the person who was responsible for caring for the recipient at the time of his or her death and who is responsible for paying the obligations incurred by the recipient.

(b) The *executive commissioner* [~~department~~] shall adopt rules prescribing the method of determining the person entitled to receive the deceased recipient's financial assistance, the manner of payment of the funds, and limitations on the payments.

(c) Payments to persons responsible for deceased recipients under this section may be made only in the manner and to the extent permissible under the laws and regulations governing the disbursement of funds received through the *United States* Department of Health *and Human Services* [~~, Education, and Welfare~~].

Sec. 31.038. CANCELLATION OF *UNUSED BENEFITS* [~~UNCASHED WARRANTS~~]. The *commission* [~~department~~] may cancel [~~a~~] financial assistance *benefits* [~~warrant~~] that *have* [~~has~~] not been *spent* [~~cashed~~] within a reasonable period of time after issuance. The cancellation must be performed in the manner required by rules of the comptroller.

Sec. 31.039. ISSUANCE OF REPLACEMENT *FINANCIAL* ASSISTANCE WARRANTS *AND ELECTRONIC BENEFITS TRANSFER CARDS. (a)* The comptroller may issue a replacement financial assistance warrant to a recipient who has failed to receive or has lost the original warrant in accordance with Section 403.054, Government Code.

(b) The commission may issue a replacement electronic benefits transfer card to a recipient who failed to receive or lost the original card.

Sec. 31.042. PRORATION OF FINANCIAL ASSISTANCE. If at any time state funds are not available to pay in full all financial assistance authorized in this chapter, the *executive commissioner* [~~department~~] may direct the proration of the financial assistance.

SECTION 4.071. Sections 31.043(a) and (b), Human Resources Code, are amended to read as follows:

(a) To extend the period of supported employment for families who receive financial assistance under this chapter, the *commission* [~~department~~] may use a form of fill-the-gap budgeting or another method under which the *commission* [~~department~~] disregards earnings of family members who obtain employment while receiving the assistance.

(b) The *commission* [~~department~~] may limit the percentage of earnings disregarded, impose a time limit on how long the earnings are disregarded, or gradually reduce the percentage of earnings disregarded in order to remain within available funding.

SECTION 4.072. Section 31.044(b), Human Resources Code, is amended to read as follows:

(b) The *commission* [~~department~~] shall close an account that has not been used by the account holder during the preceding 12 months.

SECTION 4.073. Sections 32.003(1) and (4), Human Resources Code, are amended to read as follows:

(1) *"Health and human services agencies" has the meaning assigned by Section 531.001, Government Code* [~~"Board" means the Health and Human Services Commission or the governing body of an agency operating part of the medical assistance program, as appropriate~~].

(4) "Medical assistance" *and "Medicaid" include* [~~includes~~] all of the health care and related services and benefits authorized or provided under federal law for needy individuals of this state.

SECTION 4.074. Section 32.021, Human Resources Code, is amended by amending Subsections (a), (b), (c), (d), (e), (f), (h), (l), (m), (o), (p), (q), and (r) and adding Subsection (a–1) to read as follows:

(a) The *commission* [~~department~~] is the *single* state agency designated to administer the medical assistance program provided in this chapter *in accordance with 42 U.S.C. Section 1396a(a)(5). Subject to applicable federal law, the commission may delegate the operation of a part of the medical assistance program to another state agency. Notwithstanding any delegation, the commission retains ultimate authority over the medical assistance program.*

(a–1) To the extent the commission delegates the operation of a part of the medical assistance program to another state agency, or to the extent that state law assigns a function of the medical assistance program to another health and human services agency operating under the commission's oversight, a reference in this chapter to the commission with respect to that part of the medical assistance program means the state agency to which the operation of that part is delegated or assigned.

(b) The *commission* [~~department~~] shall enter into agreements with any federal agency designated by federal law to administer medical assistance when the *commission* [~~depart-~~

~~ment~~] determines the agreements to be compatible with the state's participation in the medical assistance program and within the limits of appropriated funds. The *commission* [~~department~~] shall cooperate with federal agencies designated by federal law to administer medical assistance in any reasonable manner necessary to qualify for federal funds.

(c) The *executive commissioner* [~~department~~] shall establish methods of administration and adopt necessary rules for the proper and efficient operation of the *medical assistance* program.

(d) The *commission* [~~department~~] shall include in its contracts for the delivery of medical assistance by nursing facilities provisions for monetary penalties to be assessed for violations as required by 42 U.S.C. Section 1396r, including without limitation the Omnibus Budget Reconciliation Act (OBRA), *Pub.* [~~P.~~] L. *No.* 100–203, Nursing Home Reform Amendments of 1987, provided that the *executive commissioner* [~~department~~] shall:

(1) provide for an informal dispute resolution process in the *commission* [~~Health and Human Services Commission~~] as provided by Section 531.058, Government Code; and

(2) develop rules to adjudicate claims in contested cases, including claims unresolved by the informal dispute resolution process of the *commission* [~~Health and Human Services Commission~~].

(e) Rules governing the application of penalties shall include the following:

(1) specific and objective criteria which describe the scope and severity of a contract violation which results in a recommendation for each specific penalty. Penalties must be appropriate to the violation, and the most severe financial penalties must be reserved for situations which create an immediate and serious threat to the health and safety of residents; "immediate and serious threat" means a situation in which there is a high probability that serious harm or injury to *residents* [~~patients~~] could occur at any time or already has occurred and may well occur again if *residents* [~~patients~~] are not protected effectively from the harm or if the threat is not removed;

(2) a system to ensure standard and consistent application of penalties among surveyors and different areas of the state;

(3) due process for nursing facilities providers, including an appeals procedure consistent with Chapter 2001, Government Code; and

(4) per diem and/or minimum penalties. The *executive commissioner* [~~department~~] may by rule prescribe a minimum penalty period; however, once a facility gives the *Department of Aging and Disability Services* [~~department~~] notice that deficiencies have been corrected, if surveyors are unable to revisit the facility within five days and the deficiencies are later shown to be corrected, the per diem penalties cease as of the day the facility gave notice to the *Department of Aging and Disability Services* [~~department~~] or on the last day of the minimum penalty period established by the *executive commissioner* [~~department~~], whichever is later.

(f) To encourage facilities to provide the best possible care, the *commission* [~~department~~] shall develop an incentive program to recognize facilities providing the highest quality care to Medicaid residents.

(h) Medicaid nursing facilities shall also comply with state licensure rules, which may be more stringent than the requirements for certification. The *Department of Aging and Disability Services* [~~department~~] shall use appropriate civil, administrative, or criminal remedies authorized by state or federal law with respect to a facility that is in violation of a certification or licensing requirement.

(l) The *commission* [~~department~~] may not include as a reimbursable item to a nursing facility an administrative or civil penalty assessed against the facility under this chapter or under Chapter 242, Health and Safety Code.

(m) Notwithstanding any provision of law to the contrary, the *commission* [~~department~~] shall terminate a nursing facility's provider agreement if the *Department of Aging*

and Disability Services [~~department~~] has imposed required Category 2 or Category 3 remedies on the facility three times within a 24-month period. The executive commissioner [~~of the Health and Human Services Commission~~] by rule shall establish criteria under which the requirement to terminate the provider agreement may be waived. In this subsection, "Category 2 remedies" and "Category 3 remedies" have the meanings assigned by 42 C.F.R. Section 488.408.

(o) In any circumstance in which a nursing facility would otherwise be required to admit a resident transferred from another facility, because of an emergency or otherwise, the nursing facility may not admit a resident whose needs cannot be met through service from the facility's staff or in cooperation with community resources or other providers under contract. If a nursing facility refuses to admit a resident under this subsection, the nursing facility shall provide a written statement of the reasons for the refusal to the *Department of Aging and Disability Services* [~~department~~] within a period specified by [~~department~~] rule. A nursing facility that fails to provide the written statement, or that includes false or misleading information in the statement, is subject to monetary penalties assessed in accordance with this chapter.

(p) In order to increase the personal needs allowance under Section *32.024(w)* [~~32.024(v), as added by Chapter 1333, Acts of the 76th Legislature, Regular Session, 1999~~], the *commission* [~~department~~] shall develop an early warning system to detect fraud in the handling of the personal needs allowance and other funds of residents of long-term care facilities.

(q) The *commission* [~~department~~] shall include in its contracts for the delivery of medical assistance by nursing facilities clearly defined minimum standards that relate directly to the quality of care for residents of those facilities. [~~The department shall consider the recommendations made by the nursing facility quality assurance team under Section 32.060 in establishing the standards.~~] The *commission* [~~department~~] shall include in each contract:

(1) specific performance measures by which the *commission* [~~department~~] may evaluate the extent to which the nursing facility is meeting the standards; and

(2) provisions that allow the *commission* [~~department~~] to terminate the contract if the nursing facility is not meeting the standards.

(r) The *commission* [~~department~~] may not award a contract for the delivery of medical assistance to a nursing facility that does not meet the minimum standards that would be included in the contract as required by Subsection (q). The *commission* [~~department~~] shall terminate a contract for the delivery of medical assistance by a nursing facility that does not meet or maintain the minimum standards included in the contract in a manner consistent with the terms of the contract.

SECTION 4.075. Sections 32.0211 and 32.0212, Human Resources Code, are amended to read as follows:

Sec. 32.0211. RESTRICTIONS ON *EXECUTIVE COMMISSIONERS, FORMER* MEMBERS OF *A* [~~THE~~] BOARD, COMMISSIONERS, AND THEIR *BUSINESS* PARTNERS. (a) After service in the *commission or a health and human services agency, including an agency that formerly operated part of the medical assistance program but that has been abolished,* [~~department~~] ends, a former *executive commissioner,* member of the board, or [~~a former~~] commissioner *of the applicable agency* may not knowingly represent a person before an agency or court:

(1) in a matter related to the medical assistance program in which the *agency the person served* [~~department~~] or the federal government has a direct interest and in which the *executive commissioner,* board member, or commissioner participated personally while employed with the *agency* [~~department~~]; or

(2) for two years after the date on which service ends in a matter related to the medical assistance program if the *commission, the health and human services agency,* [~~department~~] or the federal government has a direct interest in the matter, the matter was pending during *the executive commissioner's or commissioner's* [~~his~~] last year of service to the *applicable agency* [~~department~~], and the matter was one for which the *executive commissioner* [~~board member~~] or commissioner had responsibility.

(b) Subsection (a) [~~of this section~~] does not apply to a former *executive commissioner,* board member, or commissioner who holds one of the following positions and is acting in the scope of that position:

(1) employee or officer of federal, state, or local government;

(2) employee of a nonprofit hospital or medical research organization; or

(3) employee of an accredited degree-granting college or university.

(c) *The* [~~A~~] current *executive commissioner* [~~board member~~] or *a current* commissioner *of a health and human services agency* may not knowingly participate in the course of *the executive commissioner's or commissioner's* [~~his~~] service in a matter related to the medical assistance program in which the *agency the person serves* [~~department~~] or the federal government has a direct interest and in which *the executive commissioner or commissioner, or the executive commissioner's or commissioner's spouse* [~~he, his spouse~~], minor child, or business partner, has a substantial financial interest.

(d) A business partner of a current *executive commissioner* [~~board member~~] or *a current* commissioner *of a health and human services agency* may not knowingly represent a person before an agency or court in a matter related to the medical assistance program:

(1) in which the *executive commissioner* [~~board member~~] or commissioner participates or has participated personally and substantially; or

(2) that is under the official responsibility of the *executive commissioner* [~~board member~~] or commissioner.

(e) *A past* [~~Past~~] or present *executive commissioner, a past* board *member of a health and human services agency, including an abolished agency,* [~~members~~] or *a past or present commissioner of a health and human services agency is* [~~commissioners are~~] subject to a civil penalty of $5,000 for each violation of this section. A partner of a current *executive commissioner* [~~board member~~] or commissioner is subject to a civil penalty of $2,500 for each violation of this section. Each appearance before an agency or court constitutes a separate offense.

(f) If it appears that this section has been violated, the *commission* [~~department~~] may request the attorney general to conduct a suit in the name of the State of Texas to enjoin the prohibited activity and to recover the penalty provided for in this section.

Sec. 32.0212. DELIVERY OF MEDICAL ASSISTANCE. Notwithstanding any other law and subject to Section 533.0025, Government Code, the *commission* [~~department~~] shall provide medical assistance for acute care services through the Medicaid managed care system implemented under Chapter 533, Government Code, or another Medicaid capitated managed care program.

SECTION 4.076. Sections 32.0213(a), (c), (d), and (e), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule shall establish procedures for:

(1) controlling the number of Medicaid beds in nursing facilities;

(2) decertification of unused Medicaid beds in nursing facilities; and

(3) reallocation of nursing *facility* [~~home~~] beds decertified under Subdivision (2) to other nursing facilities.

(c) The *executive commissioner* [~~department~~] may exempt a nursing facility from the procedures established under this section if the facility:

(1) is affiliated with a state-supported medical school;

(2) is located on land owned or controlled by the state-supported medical school; and

(3) serves as a teaching facility for physicians and related health care professionals.

(d) The executive commissioner [~~of the Health and Human Services Commission~~] by rule may require an applicant for Medicaid beds in a nursing facility under a Medicaid bed waiver application to provide a performance bond in the amount of $500,000 or

other financial security as determined by the *Department of Aging and Disability Services* [~~department~~] to ensure that the applicant provides the Medicaid beds granted to the applicant under the waiver within the time frame required by the *Department of Aging and Disability Services* [~~department~~]. A performance bond provided under this subsection must:

(1) be executed by a corporate *surety* [~~entity~~] in accordance with Subchapter A, Chapter 3503, Insurance Code;

(2) be in a form approved by the *Department of Aging and Disability Services* [~~department~~]; and

(3) clearly and prominently display on the face of the bond or on an attachment to the bond:

(A) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or

(B) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

(e) The *executive commissioner* [~~department~~] may not require an applicant for Medicaid beds in a nursing facility to obtain a performance bond from a specific insurance or surety agency, agent, or broker.

SECTION 4.077. Section 32.0214(a), Human Resources Code, is amended to read as follows:

(a) If the *commission* [~~department~~] determines that it is cost-effective and feasible and subject to Subsection (b), the *commission* [~~department~~] shall require each recipient of medical assistance to designate a primary care provider with whom the recipient will have a continuous, ongoing professional relationship and who will provide and coordinate the recipient's initial and primary care, maintain the continuity of care provided to the recipient, and initiate any referrals to other health care providers.

SECTION 4.078. Sections 32.0215(a), (b), (d), and (e), Human Resources Code, are amended to read as follows:

(a) The *commission* [~~department~~] may include in a contract for the delivery of medical assistance by a home or community care provider a provision for monetary penalties to be assessed for a contract violation or any violation of home or community care requirements, as required by 42 U.S.C. Section 1396t(j).

(b) The *executive commissioner* [~~department~~] shall *adopt* [~~develop~~] rules governing the application of civil money penalties, including rules prescribing:

(1) criteria that describe when and how a civil money penalty may be assessed and the amount of the penalty;

(2) a system to ensure standard and consistent application of the penalties throughout the state; and

(3) an administrative appeals process to adjudicate claims in contested cases in accordance with Chapter 2001, Government Code.

(d) A penalty must be appropriate to the violation. The *commission* [~~department~~] may assess incrementally more severe penalties for repeated or uncorrected violations.

(e) The *commission* [~~department~~] shall review a penalized provider within 10 working days after the provider notifies the *Department of Aging and Disability Services* [~~department~~] that the deficiency that caused the imposition of the penalty has been corrected. If the *commission* [~~department~~] is unable to review the provider within that 10–working-day period, the penalty ceases on the earlier of the last day of the minimum penalty period or the date the provider gives notice to the *Department of Aging and Disability Services* [~~department~~].

SECTION 4.079. Sections 32.022, 32.023, and 32.0231, Human Resources Code, are amended to read as follows:

Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES. (a) The *executive* [~~board, on the recommendation of the~~] commissioner[~~,~~] shall appoint a medical care advisory committee to advise the *executive commissioner* [~~board~~] and the *commission* [~~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 persons in the state. To ensure that qualified applicants receive services, the committee shall consider changes in the process the *commission* [~~department~~] uses to determine eligibility.

(b) The *executive commissioner* [~~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 *executive commissioner* [~~department~~] shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, and continuity.

(d) The *executive* [~~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 *executive* [~~board, on the recommendation of the~~] commissioner[~~,~~] shall appoint a hospital payment advisory committee. The committee shall advise the *executive commissioner* [~~board~~] and the *commission* [~~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 *executive commissioner* [~~board~~] shall appoint to the committee persons with knowledge of and an interest in hospital payment issues.

Sec. 32.023. COOPERATION WITH OTHER STATE AGENCIES. (a) The *commission's* [~~department's~~] plan for administering medical assistance must include procedures for using health services administered by other state agencies pursuant to cooperative arrangements.

(b) The *commission* [~~department~~] may enter into agreements with appropriate state agencies that will enable the *commission* [~~department~~] to implement Title XIX of the federal Social Security Act *(42 U.S.C. Section 1396 et seq.)* to provide medical assistance for individuals in institutions or in alternate care arrangements. The agreements must comply with federal law and rules. The *commission* [~~department~~] may make medical assistance payments in accordance with the agreements. The agreements are not subject to *Chapter 771, Government Code* [~~the Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes)~~].

(c) State agencies responsible for the administration or supervision of facilities to which medical assistance payments may be made under federal law shall enter into the agreements with the *commission* [~~department~~] and maintain compliance with the agreements so that the *commission* [~~department~~] may receive federal matching funds to support the medical assistance program.

(d) The *commission* [~~department~~] may pay medical assistance to other facilities as required under federal law and rules.

Sec. 32.0231. ANNOUNCEMENT OF FUNDING OR PROGRAM CHANGE. (a) The *executive commissioner* [~~department~~] shall publish notice in the Texas Register of:

(1) any attempt to obtain a waiver of federal regulations in the medical assistance program;

(2) any attempt to obtain or the receipt of funding under Title XIX of the federal Social Security Act (42 U.S.C. Section *1396* [~~301~~] et seq.) for a pilot program; and

(3) any amendment to the state medical assistance plan.

(b) The notice must include the name and telephone number of a *commission* [~~department~~] employee who can provide information relating to the matter for which notice was published under this section.

(c) The *commission* [~~department~~] shall provide to any requestor information relating to a matter for which notice was published, including the effect and cost of the change, any possible cost savings, the criteria for receiving services, and the number of people to be served.

SECTION 4.080. Sections 32.024(a), (b), (c), (c–1), (d), (e), (f), (g), (h), (l), (n), (o), (p), (q), (r), (s), (t), (t–1), (u), (v), (w), (x), (y), (z), (z–1), (aa), (bb), (cc), (ff), (gg), (ii), and (jj), Human Resources Code, are amended to read as follows:

(a) The *commission* [~~department~~] shall provide medical assistance to all persons who receive financial assistance from the state under Chapter 31 [~~of this code~~] and to other related groups of persons if the provision of medical assistance to those persons is required by federal law and rules as a condition for obtaining federal matching funds for the support of the medical assistance program.

(b) The *commission* [~~department~~] may provide medical assistance to other persons who are financially unable to meet the cost of medical services if federal matching funds are available for that purpose. The *executive commissioner* [~~department~~] shall adopt rules governing the eligibility of those persons for the services.

(c) The *executive commissioner* [~~department~~] shall establish standards governing the amount, duration, and scope of services provided under the medical assistance program. The standards may not be lower than the minimum standards required by federal law and rule as a condition for obtaining federal matching funds for support of the program[~~; and may not be lower than the standards in effect on August 27, 1967. Standards or payments for the vendor drug program may not be lower than those in effect on January 1, 1973~~].

(c–1) The *commission* [~~department~~] shall ensure that money spent for purposes of the demonstration project for women's health care services under former Section 32.0248[~~, Human Resources Code,~~] or a similar successor program is not used to perform or promote elective abortions, or to contract with entities that perform or promote elective abortions or affiliate with entities that perform or promote elective abortions.

(d) The *executive commissioner* [~~department~~] may establish standards that increase the amount, duration, and scope of the services provided only if federal matching funds are available for the optional services and payments and if the *executive commissioner* [~~department~~] determines that the increase is feasible and within the limits of appropriated funds. The *executive commissioner* [~~department~~] may establish and maintain priorities for the provision of the optional medical services.

(e) The *commission* [~~department~~] may not authorize the provision of any service to any person under the program unless federal matching funds are available to pay the cost of the service.

(f) The *executive commissioner* [~~department~~] shall set the income eligibility cap for persons qualifying for nursing *facility* [~~home~~] care at an amount that is not less than $1,104 and that does not exceed the highest income for which federal matching funds are payable. The *executive commissioner* [~~department~~] shall set the cap at a higher amount than the minimum provided by this subsection if appropriations made by the legislature for a fiscal year will finance benefits at the higher cap for at least the same number of recipients of the benefits during that year as were served during the preceding fiscal year, as estimated by the *commission* [~~department~~]. In setting an income eligibility cap under this subsection, the *executive commissioner* [~~department~~] shall consider the cost of the adjustment required by Subsection (g) [~~of this section~~].

(g) During a fiscal year for which the cap described by Subsection (f) [~~of this section~~] has been set, the *executive commissioner* [~~department~~] shall adjust the cap in accordance with any percentage change in the amount of benefits being paid to social security recipients during the year.

(h) Subject to the amount of the cap set as provided by Subsections (f) and (g) [~~of this section~~], and to the extent permitted by federal law, the income eligibility cap for *the* community care for aged and disabled persons *program* shall be the same as the income eligibility cap for nursing *facility* [~~home~~] care. The *executive commissioner* [~~department~~] shall ensure that the eligibility requirements for persons receiving other services under the medical assistance program are not affected.

(l) The *executive commissioner* [~~department~~] shall set the income eligibility cap for medical assistance for pregnant women and infants up to age one at not less than 130 percent of the federal poverty guidelines.

(n) The *executive commissioner,* [~~department~~] in *the* [~~its~~] adoption of rules and standards governing the scope of hospital and long-term services, shall authorize the providing of respite care by hospitals.

(o) The *executive commissioner* [~~department~~], in *the* [~~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* [~~Minimum Licensing Standards~~] as mandated by Chapter 242, Health and Safety Code, and the Medicaid standards for nursing *facility* [~~home~~] certification, as promulgated by the *executive commissioner* [~~department~~].

(p) The *commission* [~~department~~] shall provide home respiratory therapy services for ventilator-dependent persons to the extent permitted by federal law.

(q) The *commission* [~~department~~] shall provide physical therapy services.

(r) The *commission* [~~department~~], from funds otherwise appropriated to the *commission* [~~department~~] for the early and periodic screening, diagnosis, and treatment program, shall provide to a child who is 14 years of age or younger, permanent molar sealants as dental service under that program as follows:

(1) sealant shall be applied only to the occlusal buccal and lingual pits and fissures of a permanent molar within four years of its eruption;

(2) teeth to be sealed must be free of proximal caries and free of previous restorations on the surface to be sealed;

(3) if a second molar is the prime tooth to be sealed, a non-restored first molar may be sealed at the same sitting, if the fee for the first molar sealing is no more than half the usual sealant fee;

(4) the sealing of premolars and primary molars will not be reimbursed; and

(5) replacement sealants will not be reimbursed.

(s) The *executive commissioner* [~~department~~], in *the* [~~its~~] rules governing the early and periodic screening, diagnosis, and treatment program, shall:

(1) revise the periodicity schedule to allow for periodic visits at least as often as the frequency recommended by the American Academy of Pediatrics and allow for interperiodic screens without prior approval when there are indications that it is medically necessary; and

(2) require, as a condition for eligibility for reimbursement under the program for the cost of services provided at a visit or screening, that a child younger than 15 years of age be accompanied at the visit or screening by:

(A) the child's parent or guardian; or

(B) another adult, including an adult related to the child, authorized by the child's parent or guardian to accompany the child.

(t) The *executive commissioner* [~~department~~] by rule shall require a physician, nursing facility, health care provider, or other responsible party to obtain authorization from the

commission [~~department~~] or a person authorized to act on behalf of the *commission* [~~department~~] on the same day or the next business day following the day of transport when an ambulance is used to transport a recipient of medical assistance under this chapter in circumstances not involving an emergency and the request is for the authorization of the provision of transportation for only one day. If the request is for authorization of the provision of transportation on more than one day, the *executive commissioner* [~~department~~] by rule shall require a physician, nursing facility, health care provider, or other responsible party to obtain a single authorization before an ambulance is used to transport a recipient of medical assistance under this chapter in circumstances not involving an emergency. The rules must provide that:

(1) except as provided by Subdivision (3), a request for authorization must be evaluated based on the recipient's medical needs and may be granted for a length of time appropriate to the recipient's medical condition;

(2) except as provided by Subdivision (3), a response to a request for authorization must be made not later than 48 hours after receipt of the request;

(3) a request for authorization must be immediately granted and must be effective for a period of not more than 180 days from the date of issuance if the request includes a written statement from a physician that:

(A) states that alternative means of transporting the recipient are contraindicated; and

(B) is dated not earlier than the 60th day before the date on which the request for authorization is made;

(4) a person denied payment for ambulance services rendered is entitled to payment from the nursing facility, health care provider, or other responsible party that requested the services if:

(A) payment under the medical assistance program is denied because of lack of prior authorization; and

(B) the person provides the nursing facility, health care provider, or other responsible party with a copy of the bill for which payment was denied;

(5) a person denied payment for services rendered because of failure to obtain prior authorization or because a request for prior authorization was denied is entitled to appeal the denial of payment to the *commission* [~~department~~]; and

(6) the *commission* [~~department~~] or a person authorized to act on behalf of the *commission* [~~department~~] must be available to evaluate requests for authorization under this subsection not less than 12 hours each day, excluding weekends and state holidays.

(t–1) The *executive commissioner* [~~department~~], in *the* [~~its~~] rules governing the medical transportation program, may not prohibit a recipient of medical assistance from receiving transportation services through the program to obtain renal dialysis treatment on the basis that the recipient resides in a nursing facility.

(u) The *executive commissioner* [~~department~~] by rule shall require a health care provider who arranges for durable medical equipment for a child who receives medical assistance under this chapter to:

(1) ensure that the child receives the equipment prescribed, the equipment fits properly, if applicable, and the child or the child's parent or guardian, as appropriate considering the age of the child, receives instruction regarding the equipment's use; and

(2) maintain a record of compliance with the requirements of Subdivision (1) in an appropriate location.

(v) The *executive commissioner* [~~department~~] by rule shall provide a screening test for hearing loss in accordance with Chapter 47, Health and Safety Code, and any necessary diagnostic follow-up care related to the screening test to a child younger than 30 days old who receives medical assistance.

(w) The *executive commissioner* [~~department~~] shall set a personal needs allowance of

not less than $60 a month for a resident of a convalescent or nursing *facility* [~~home~~] or related institution licensed under Chapter 242, Health and Safety Code, *assisted living* [~~personal care~~] facility, *ICF–IID* [~~ICF–MR~~] facility, or other similar long-term care facility who receives medical assistance. The *commission* [~~department~~] may send the personal needs allowance directly to a resident who receives Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.). This subsection does not apply to a resident who is participating in a medical assistance waiver program administered by the *commission* [~~department~~].

(x) The *commission* [~~department~~] shall provide dental services annually to a resident of a nursing facility who is a recipient of medical assistance under this chapter. The dental services must include:

(1) a dental examination by a licensed dentist;

(2) a prophylaxis by a licensed dentist or licensed dental hygienist, if practical considering the health of the resident; and

(3) diagnostic dental x-rays, if possible.

(y) The *commission* [~~department~~] shall provide medical assistance to a person in need of treatment for breast or cervical cancer who is eligible for that assistance under the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Pub. L. No. 106–354) for a continuous period during which the person requires that treatment. The *executive commissioner* [~~department~~] shall simplify the provider enrollment process for a provider of that medical assistance and shall adopt rules to provide for certification of presumptive eligibility of a person for that assistance. In determining a person's eligibility for medical assistance under this subsection, the *executive commissioner* [~~department~~], to the extent allowed by federal law, may not require a personal interview.

(z) In *the executive commissioner's* [~~its~~] rules and standards governing the vendor drug program, the *executive commissioner* [~~department~~], to the extent allowed by federal law and if the *executive commissioner* [~~department~~] determines the policy to be cost-effective, may ensure that a recipient of prescription drug benefits under the medical assistance program does not, unless authorized by the *commission* [~~department~~] in consultation with the recipient's attending physician or advanced practice nurse, receive under the medical assistance program:

(1) more than four different outpatient brand-name prescription drugs during a month; or

(2) more than a 34–day supply of a brand-name prescription drug at any one time.

(z–1) Subsection (z) does not affect any other limit on prescription medications otherwise prescribed by *commission* [~~department~~] rule.

(aa) The *commission* [~~department~~] shall incorporate physician-oriented instruction on the appropriate procedures for authorizing ambulance service into current medical education courses.

(bb) The *commission* [~~department~~] may not provide an erectile dysfunction medication under the Medicaid vendor drug program to a person required to register as a sex offender under Chapter 62, Code of Criminal Procedure, to the maximum extent federal law allows the *commission* [~~department~~] to deny that medication.

(cc) In this subsection, "deaf" and "hard of hearing" have the meanings assigned by Section 81.001. Subject to the availability of funds, the *commission* [~~department~~] shall provide interpreter services as requested during the receipt of medical assistance under this chapter to:

(1) a person receiving that assistance who is deaf or hard of hearing; or

(2) a parent or guardian of a person receiving that assistance if the parent or guardian is deaf or hard of hearing.

(ff) The *executive commissioner* [~~department~~] shall establish a separate provider type for prosthetic and orthotic providers for purposes of enrollment as a provider of and reimbursement under the medical assistance program. The *executive commissioner*

[~~department~~] may not classify prosthetic and orthotic providers under the durable medical equipment provider type.

(gg) Notwithstanding any other law, including Sections 843.312 and 1301.052, Insurance Code, the *commission* [~~department~~] shall ensure that advanced practice registered nurses and physician assistants may be selected by and assigned to recipients of medical assistance as the primary care providers of those recipients. The *commission* [~~department~~] must require that advanced practice registered nurses and physician assistants be treated in the same manner as primary care physicians with regard to:

(1) selection and assignment as primary care providers; and

(2) inclusion as primary care providers in any directory of providers of medical assistance maintained by the *commission* [~~department~~].

(ii) The *commission* [~~department~~] shall provide medical assistance reimbursement to a pharmacist who is licensed to practice pharmacy in this state, is authorized to administer immunizations in accordance with rules adopted by the Texas State Board of Pharmacy, and administers an immunization to a recipient of medical assistance to the same extent the *commission* [~~department~~] provides reimbursement to a physician or other health care provider participating in the medical assistance program for the administration of that immunization.

(jj) The *executive commissioner* [~~department~~] shall establish a separate provider type for prescribed pediatric extended care centers licensed under Chapter 248A, Health and Safety Code, for purposes of enrollment as a provider for and reimbursement under the medical assistance program.

SECTION 4.081. Section 32.024(i), Human Resources Code, as amended by Chapters 198 (H.B. 2292) and 1251 (S.B. 1862), Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(i) [~~Subject to appropriated state funds, the~~] The *executive commissioner* [~~department~~] in *adopting* [~~its adoption of~~] rules may establish a medically needy program that serves pregnant women, children, and caretakers who have high medical expenses, subject to *the* availability of appropriated funds.

SECTION 4.082. Sections 32.0241, 32.0242, and 32.0243, Human Resources Code, are amended to read as follows:

Sec. 32.0241. REVIEW OF WAIVER REQUEST. The *commission* [~~department~~] shall, at least biennially, review the feasibility of requesting a waiver for the elderly under Section 1915(c), federal Social Security Act (42 U.S.C. Section 1396n), if the reimbursement rates for nursing *facilities* [~~homes~~] under the medical assistance program have increased since the preceding review.

Sec. 32.0242. VERIFICATION OF CERTAIN INFORMATION. To the extent possible, the *commission* [~~department~~] shall verify an applicant's residential address at the time the application for medical assistance is filed.

Sec. 32.0243. PERIODIC REVIEW OF ELIGIBILITY FOR CERTAIN RECIPIENTS. (a) The *commission* [~~department~~], in cooperation with the United States Social Security Administration, shall periodically review the eligibility of a recipient of medical assistance who is eligible on the basis of the recipient's eligibility for Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq., as amended.

(b) In reviewing the eligibility of a recipient as required by Subsection (a), the *commission* [~~department~~] shall ensure that only recipients who reside in this state and who continue to be eligible for Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq., as amended, remain eligible for medical assistance.

SECTION 4.083. The heading to Section 32.0244, Human Resources Code, is amended to read as follows:

Sec. 32.0244. NURSING *FACILITY* [~~HOME~~] BEDS IN CERTAIN COUNTIES.

SECTION 4.084. Sections 32.0244(a), (c), and (d), Human Resources Code, are amended to read as follows:

(a) At the request of the commissioners court of a county in which not more than two nursing facilities are certified to participate in the state Medicaid program, and subject to Subsection (d), the *commission* [~~department~~] may contract for additional nursing *facility* [~~home~~] beds under the state Medicaid program in the county without regard to the occupancy rate of available Medicaid beds.

(c) A commissioners court shall determine whether to proceed with a request after considering all comments and proposals received in response to the notices provided under Subsection (b). If the commissioners court proceeds with the request, the court may recommend that the *commission* [~~department~~] contract with a specific nursing facility that submitted a proposal. In determining whether to proceed with the request and whether to recommend a specific nursing facility, the commissioners court shall consider:

(1) the demographic and economic needs of the county;

(2) the quality of existing nursing facility services under the state Medicaid program in the county;

(3) the quality of the proposals submitted; and

(4) the degree of community support for additional nursing facility services.

(d) The *commission* [~~department~~] may not contract under this section for more than 120 additional nursing *facility* [~~home~~] beds per county per year and may not exceed 500 additional nursing *facility* [~~home~~] beds statewide in a calendar year.

SECTION 4.085. Section 32.0245, Human Resources Code, is amended to read as follows:

Sec. 32.0245. NURSING *FACILITY* [~~HOME~~] BEDS FOR CERTAIN FACILITIES TREATING ALZHEIMER'S DISEASE. The *commission* [~~department~~] shall waive for a nursing facility a restriction imposed by state law on the authority to contract under the state Medicaid program for nursing *facility* [~~home~~] beds based on the percentage of beds that are occupied in a geographical area if the facility:

(1) is affiliated with a medical school operated by the state;

(2) is participating in a research program for the care and treatment of persons with Alzheimer's disease; and

(3) is designed to separate and treat Alzheimer's disease by stage or functional level.

SECTION 4.086. Section 32.02451, Human Resources Code, is amended to read as follows:

Sec. 32.02451. ADDITIONAL PERSONAL NEEDS ALLOWANCE FOR GUARDIANSHIP EXPENSES OF CERTAIN RECIPIENTS. (a) In this section, "applied income" has the meaning assigned by Section *1155.201, Estates* [~~670, Texas Probate~~] Code.

(b) To the extent allowed by federal law, the *commission* [~~department~~], in computing the applied income of a recipient of medical assistance, shall deduct in the manner provided by this section an additional personal needs allowance from the earned and unearned income of the recipient or, if applicable, the recipient and the recipient's spouse, for compensation and costs ordered to be deducted under Section *1155.202, Estates* [~~670, Texas Probate~~] Code. Subject to Subsection (f), a deduction ordered by the court under Section *1155.202, Estates* [~~670, Texas Probate~~] Code, is effective beginning on the later of:

(1) the month in which the order is signed; or

(2) the first month of medical assistance eligibility for which the recipient is subject to a copayment.

(c) The *commission* [~~department~~] shall compute the applied income of a recipient of medical assistance as follows:

(1) the *commission* [~~department~~] shall deduct from the earned and unearned income the personal needs allowance authorized by Section 32.024(w) before making any other deduction;

(2) if after the deduction under Subdivision (1) the recipient has remaining income, the *commission* [~~department~~] shall deduct the lesser of the following:

(A) the amount of the remaining income; or

(B) the amount of the additional personal needs allowance for compensation and costs ordered to be deducted under Section *1155.202, Estates* [~~670, Texas Probate~~] Code; and

(3) if after the deductions under Subdivisions (1) and (2) the recipient has remaining income, the *commission* [~~department~~] shall deduct any other authorized allowances.

(d) The amount of income remaining, if any, after the *commission* [~~department~~] makes the deductions as provided by Subsection (c) is the amount of the applied income of the recipient of medical assistance.

(e) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules providing a procedure by which a recipient of medical assistance for whom amounts are ordered deducted under Section *1155.202, Estates* [~~670, Texas Probate~~] Code, may submit to the *commission* [~~department~~] a copy of the court order issued under that section to receive a deduction of those amounts from the recipient's income as provided by this section.

(f) The *commission* [~~department~~] may not allow a deduction for the additional personal needs allowance for compensation and costs ordered to be deducted under Section *1155.202, Estates* [~~670, Texas Probate~~] Code, if the order is issued after the recipient of medical assistance dies.

SECTION 4.087. Sections 32.0247(b), (c), (d), and (e), Human Resources Code, are amended to read as follows:

(b) The *commission* [~~department~~] shall provide medical assistance, in accordance with *commission* [~~department~~] rules, to an independent foster care adolescent who:

(1) is not otherwise eligible for medical assistance; and

(2) is not covered by a health benefits plan offering adequate benefits, as determined by the *commission* [~~Health and Human Services Commission~~].

(c) *To the extent allowed by federal law, the executive commissioner* [~~The department~~] shall by rule establish a specific set of income, assets, or resources allowable for recipients under this section. The income level shall not be less than 200 percent or more than 400 percent of the federal poverty level. Allowable asset or resource levels shall not be less than:

(1) the levels allowed for individuals who are in foster care; and

(2) the levels allowed for a person under 19 years of age who is eligible for the medical assistance program.

(d) In setting allowable income, asset, or resource levels, the *executive commissioner* [~~department~~] shall, *to the extent allowed by federal law,* exclude:

(1) any financial benefit used for the purpose of educational or vocational training, such as scholarships, student loans, or grants;

(2) any financial benefit used for the purpose of housing; and

(3) any grants or subsidies obtained as a result of the Foster Care Independence Act of 1999 (Pub. L. No. 106–169).

(e) The Department of *Family and* Protective [~~and Regulatory~~] Services shall certify the income, assets, or resources of each individual on the date the individual exits substitute care. An individual qualifying for medical assistance as established by this section shall remain eligible for 12 calendar months after certification and after each recertification.

SECTION 4.088. Section 32.02471(b), Human Resources Code, is amended to read as follows:

(b) The *commission* [~~department~~] shall provide medical assistance to a person who:

(1) is 21 years of age or older but younger than 23 years of age;

(2) would be eligible to receive assistance as an independent foster care adolescent under Section 32.0247 if the person were younger than 21 years of age; and

(3) is enrolled in an institution of higher education, as defined by Section 61.003(8), Education Code, or a private or independent institution of higher education, as defined by Section 61.003(15), Education Code, that is located in this state and is making satisfactory academic progress as determined by the institution.

SECTION 4.089. Section 32.025, Human Resources Code, is amended to read as follows:

Sec. 32.025. APPLICATION FOR MEDICAL ASSISTANCE. (a) A recipient of benefits under Chapter 31 [~~of this code~~] or supplemental security income from the federal government is automatically eligible for medical assistance, and an application for benefits under these programs constitutes an application for medical assistance.

(b) The *executive commissioner* [~~department~~] shall prescribe application forms for persons who are not recipients of benefits under Chapter 31 [~~of this code~~] or supplemental security income from the federal government and shall adopt rules for processing the applications.

(c) The *commission* [~~department~~] shall inform applicants for nursing *facility* [~~home~~] care of any community services which might be available under the community care for the aged and disabled program.

(d) The *executive commissioner* [~~department~~] shall adopt an application form and procedures for a request for medical assistance provided to a child under 19 years of age. To the extent allowed by federal law and except as otherwise provided by this section, the application form and procedures must be the same as the form and procedures adopted under Section 62.103, Health and Safety Code. The *executive commissioner* [~~department~~] shall coordinate the form and procedures adopted under this subsection with the form and procedures adopted under Section 62.103, Health and Safety Code, to ensure that there is a single consolidated application for a child under 19 years of age to seek medical assistance or to request coverage under the state child health plan under Chapter 62, Health and Safety Code.

(e) The *executive commissioner* [~~department~~] shall permit an application requesting medical assistance for a child under 19 years of age to be conducted by mail instead of through a personal appearance at *an* [~~a department~~] office, unless the *executive commissioner* [~~department~~] determines that the information needed to verify eligibility cannot be obtained in that manner. The *executive commissioner* [~~department~~] by rule may develop procedures requiring an application for a child described by this subsection to be conducted through a personal interview with a *commission* [~~department~~] representative only if the *executive commissioner* [~~department~~] determines that information needed to verify eligibility cannot be obtained in any other manner.

(f) The *executive* commissioner by rule may develop procedures by which:

(1) any office of a health and human services agency may accept an application requesting medical assistance for a child under 19 years of age; and

(2) the *commission* [~~department~~] may contract with hospital districts, hospitals, including state-owned teaching hospitals, federally qualified health centers, and county health departments to accept applications requesting medical assistance for a child under 19 years of age.

SECTION 4.090. Sections 32.0251, 32.0255, 32.026, 32.0261, and 32.02611, Human Resources Code, are amended to read as follows:

Sec. 32.0251. ELIGIBILITY NOTIFICATION AND REVIEW FOR CERTAIN CHILDREN. (a) The *executive commissioner* [~~department~~] shall establish and *the commission shall* implement procedures under which the *commission* [~~department~~] automatically reviews a child's eligibility for medical assistance if:

(1) the child originally establishes eligibility for medical assistance on the basis of receipt of financial assistance under Chapter 31, as provided by Section 32.025(a); and

(2) that receipt of financial assistance under Chapter 31 ceases.

(b) If the review required by this section indicates that the child may be eligible for medical assistance on a basis other than receipt of financial assistance under Chapter 31, the *commission* [~~department~~] may provide for provisional eligibility for medical assistance for the child pending a recertification review. The provisional eligibility period authorized by this subsection may not exceed one month.

(c) In addition to the review required by this section, the *commission* [~~department~~] shall also promote continued medical assistance for a child described by Subsection (a) through:

(1) revising client education and notification policies relating to a child's eligibility for medical assistance; and

(2) providing specific notification of a child's potential eligibility for medical assistance to the child's parent or other caretaker at the time the parent or caretaker is notified of:

(A) a scheduled eligibility recertification review; or

(B) the termination of financial assistance.

Sec. 32.0255. TRANSITIONAL MEDICAL ASSISTANCE. (a) The *commission* [~~state~~] shall provide transitional medical assistance, in accordance with state rules and federal law, to a person who was receiving financial assistance under Chapter 31 but is no longer eligible to receive the assistance because:

(1) the person's household income has increased; or

(2) the person has exhausted the person's benefits under Section 31.0065.

(b) Except as provided by Section 31.012(c), the *commission* [~~state~~] may provide the medical assistance only until the earlier of:

(1) the end of the applicable period prescribed by Section 31.0065 for the provision of transitional benefits; or

(2) the first anniversary of the date on which the person becomes ineligible for financial assistance because of increased household income.

Sec. 32.026. CERTIFICATION OF ELIGIBILITY AND NEED FOR MEDICAL ASSISTANCE. (a) The *executive commissioner* [~~department~~] shall promulgate rules for determining and certifying a person's eligibility and need for medical assistance.

(b) The *executive commissioner* [~~department~~] shall promulgate rules to provide for determination and certification of presumptive eligibility for any pregnant woman who applies for Medicaid and who meets the basic eligibility requirements under Title XIX of the federal Social Security Act *(42 U.S.C. Section 1396 et seq.)*.

(c) Medical assistance payments may not be made on a person's behalf until the person's eligibility and need for medical assistance have been certified in accordance with *commission* [~~the department's~~] rules.

(d) In adopting rules under this section, the *executive commissioner* [~~department~~] shall ensure, to the extent allowed by federal law, that documentation and verification procedures used in determining and certifying the eligibility and need for medical assistance of a child under 19 years of age, including the documentation and verification procedures used to evaluate the assets and resources of the child, the child's parents, or the child's other caretaker for that purpose, *if applicable,* are the same as the documentation and verification procedures used to determine and certify a child's eligibility for coverage under Chapter 62, Health and Safety Code, except that the documentation and verification procedures adopted in accordance with this subsection may not be more stringent than the documentation and verification procedures existing on January 1, 2001, for determination and certification of a child's eligibility for coverage under Chapter 62, Health and Safety Code.

(d–1) In adopting rules under this section, the executive commissioner [~~of the Health and Human Services Commission~~] shall, to the extent allowed by federal law, develop

and implement an expedited process for determining eligibility for and enrollment in the medical assistance program for an active duty member of the United States armed forces, reserves, or National Guard or of the state military forces, or the spouse or dependent of that person.

(e) The *executive commissioner* [~~department~~] shall permit a recertification review of the eligibility and need for medical assistance of a child under 19 years of age to be conducted by telephone or mail instead of through a personal appearance at *an* [~~a department~~] office, unless the *commission* [~~department~~] determines that the information needed to verify eligibility cannot be obtained in that manner. The *executive commissioner* [~~department~~] by rule may develop procedures to determine whether there is a need for a recertification review of a child described by this subsection to be conducted through a personal interview with a *commission* [~~department~~] representative. Procedures developed under this subsection shall be based on objective, risk-based factors and conditions and shall focus on a targeted group of recertification reviews for which there is a high probability that eligibility will not be recertified.

(f) In adopting rules under this section, the *executive commissioner* [~~department~~] shall ensure, to the extent allowed by federal law, that forms and procedures used in conducting a recertification review of the eligibility and need for medical assistance of a child under 19 years of age, including documentation and verification procedures, are the same as the forms and procedures used to determine and certify a child's renewal of coverage under Chapter 62, Health and Safety Code.

(g) Notwithstanding any other provision of this code, the *commission* [~~department~~] may use information obtained from a third party to verify the assets and resources of a person for purposes of determining the person's eligibility and need for medical assistance *to the extent that verification is applicable under federal law*. Third-party information includes information obtained from:

(1) a consumer reporting agency, as defined by Section 20.01, Business & Commerce Code;

(2) an appraisal district; or

(3) the Texas Department of Motor Vehicles vehicle registration record database.

Sec. 32.0261. CONTINUOUS ELIGIBILITY. The *executive commissioner* [~~department~~] shall adopt rules in accordance with 42 U.S.C. Section 1396a(e)(12), as amended, to provide for a period of continuous eligibility for a child under 19 years of age who is determined to be eligible for medical assistance under this chapter. The rules shall provide that the child remains eligible for medical assistance, without additional review by the *commission* [~~department~~] and regardless of changes in the child's resources or income, until the earlier of:

(1) the end of the six-month period following the date on which the child's eligibility was determined; or

(2) the child's 19th birthday.

Sec. 32.02611. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. (a) Except as provided by Subsection (b), in determining eligibility and need for medical assistance, the *commission* [~~department~~] may not consider as assets or resources, *to the extent applicable under federal law,* a right to assets held in or a right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Education Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account; or

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

(b) In determining eligibility and need for medical assistance for an applicant who may be eligible on the basis of the applicant's eligibility for medical assistance for the aged, blind, or disabled under 42 U.S.C. Section 1396a(a)(10), the *commission* [~~department~~] may consider as assets or resources, *to the extent applicable under federal law,* a

right to assets held in or a right to receive payments or benefits under any fund, plan, or tuition program described by Subsection (a).

(c) Notwithstanding Subsection (b), the *commission* [~~department~~] shall seek a federal waiver authorizing the *commission* [~~department~~] to exclude, for purposes of determining the eligibility of an applicant described by that subsection *and to the extent included under federal law*, the right to assets held in or a right to receive payments or benefits under any fund, plan, or tuition program described by Subsection (a) if the fund, plan, or tuition program was established before the 21st birthday of the beneficiary of the fund, plan, or tuition program.

SECTION 4.091. Sections 32.02613(a), (l), (m), and (o), Human Resources Code, are amended to read as follows:

(a) For purposes of this section, "long-term care services and support" includes home health care, assisted living, and nursing *facility* [~~home~~] services.

(l) The *commission* [~~department~~] shall educate applicants for long-term care services and support under the medical assistance program about options for life insurance policies, including options that do not allow a life insurance policy to be considered as an asset or resource in determining eligibility for medical assistance.

(m) The executive commissioner [~~of the Health and Human Services Commission~~], in consultation with the commissioner of insurance, shall adopt rules necessary to implement this section. The rules must ensure that:

(1) proceeds from a life settlement contract are used to reimburse a provider of long-term care services and support or the state to offset the cost of medical assistance long-term care services and support;

(2) eligibility and need for medical assistance are determined without considering the balance of proceeds from a life settlement contract as provided in this section; and

(3) payments to a provider of long-term care services and support and applied income payments are made in accordance with this chapter.

(o) Notwithstanding the provisions of this section, the *commission* [~~department~~] may not implement a provision of this section if the commission determines that implementation of the provision is not cost-effective or feasible.

SECTION 4.092. Sections 32.0262 and 32.0263, Human Resources Code, are amended to read as follows:

Sec. 32.0262. ELIGIBILITY TRANSITION. (a) The *executive commissioner* [~~department~~] shall develop procedures to ensure that all necessary information regarding a child who will be denied continued medical assistance under this chapter because of an increase in income, assets, or resources but who is eligible for enrollment in the child health plan under Chapter 62, Health and Safety Code, is promptly transmitted to the child health plan in accordance with the standards established under Section 62.104(d), Health and Safety Code.

(b) The *executive commissioner* [~~department~~] shall develop procedures to ensure that the parent or caretaker of a child who will be denied continued medical assistance under this chapter because of a failure to keep an appointment, including an appointment for recertification of eligibility, a failure to provide information, or for another procedural reason, is promptly contacted and informed of:

(1) the need to recertify eligibility for continued medical assistance under this chapter; and

(2) the availability of medical coverage under the child health plan under Chapter 62, Health and Safety Code.

(c) The *commission* [~~department~~] shall develop materials under this section in consultation with [~~the Health and Human Services Commission and~~] the appropriate agencies administering all or part of the child health plan under Chapter 62, Health and Safety Code.

(d) The *executive commissioner* [~~department~~] by rule shall adopt procedures to assist a

family whose child loses eligibility for medical assistance under this chapter in making a transition to the child health plan under Chapter 62, Health and Safety Code, with no interruption in coverage.

Sec. 32.0263. HEALTH CARE ORIENTATION. (a) The *commission* [~~department~~] shall require that the parent or guardian of a child under 19 years of age who originally establishes eligibility for medical assistance must:

(1) attend an in-person counseling session with a *commission* [~~department~~] representative not later than the 31st day after the date the child originally establishes eligibility; or

(2) accompany the child to an appointment with a health care provider for a comprehensive health care orientation not later than the 61st day after the date the child originally establishes eligibility.

(b) The *executive* commissioner by rule shall develop procedures to verify that:

(1) the parent or guardian of the child who originally establishes eligibility complies with the requirement of Subsection (a)(2), if applicable; and

(2) the child is provided a comprehensive health care orientation at the appointment with the health care provider.

SECTION 4.093. Sections 32.027(a), (d), (f), (h), (i), and (l), Human Resources Code, are amended to read as follows:

(a) Except as provided by Subsections (f) *and*[~~,~~] (g), [~~and (h),~~] a recipient of medical assistance authorized in this chapter may select any provider authorized by the *commission* [~~department~~] to provide medical assistance.

(d) The *commission* [~~department~~] shall permit a recipient of medical assistance under this chapter to receive services relating to physical therapy from any person authorized to practice physical therapy under Chapter 453, Occupations Code.

(f) The executive commissioner [~~of the Health and Human Services Commission~~] by rule may develop a system of selective contracting with health care providers for the provision of nonemergency inpatient hospital services to a recipient of medical assistance under this chapter. In implementing this subsection, the executive commissioner shall:

(1) seek input from consumer representatives and from representatives of hospitals licensed under Chapter 241, Health and Safety Code, and from organizations representing those hospitals; and

(2) ensure that providers selected under the system meet the needs of a recipient of medical assistance under this chapter.

(h) A proposal or bid submitted by a hospital and any work papers, cost reports, or other financial data used to prepare the proposal or bid shall be confidential and not subject to required disclosure by the *commission* [~~department~~] or the hospital under any other statute until the executed contracts have been awarded.

(i) In its establishment of provider criteria for hospitals, home health providers, or hospice providers, the *commission* [~~department~~] shall accept licensure by the *Department of Aging and Disability Services or the Department of State Health Services, as appropriate,* [~~Texas Department of Health~~] or certification by the Medicare program, Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.).

(l) Subject to appropriations, the *commission* [~~department~~] shall assure that a recipient of medical assistance under this chapter may select a licensed psychologist, a licensed marriage and family therapist, as defined by Section 502.002, Occupations Code, a licensed professional counselor, as defined by Section 503.002, Occupations Code, or a licensed master social worker, as defined by Section 505.002, Occupations Code, to perform any health care service or procedure covered under the medical assistance program if the selected person is authorized by law to perform the service or procedure. This subsection shall be liberally construed.

SECTION 4.094. Section 32.027(j), Human Resources Code, as added by Chapter 812

(H.B. 803), Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(j) The *commission* [~~department~~] shall assure that a recipient of medical assistance under this chapter may select a nurse first assistant, as defined by Section *301.354* [~~301.1525~~], Occupations Code, to perform any health care service or procedure covered under the medical assistance program if:

(1) the selected nurse first assistant is authorized by law to perform the service or procedure; and

(2) the physician requests that the service or procedure be performed by the nurse first assistant.

SECTION 4.095. Subsection (j), Section 32.027, Human Resources Code, as added by Chapter 1014 (H.B. 1183), Acts of the 77th Legislature, Regular Session, 2001, is redesignated as Subsection (k), Section 32.027, Human Resources Code, and amended to read as follows:

(k) [~~(j)~~] The *commission* [~~department~~] shall assure that a recipient of medical assistance under this chapter may select a surgical assistant licensed under Chapter 206, Occupations Code, to perform any health care service or procedure covered under the medical assistance program if:

(1) the selected surgical assistant is authorized by law to perform the service or procedure; and

(2) the physician requests that the service or procedure be performed by the surgical assistant.

SECTION 4.096. Sections 32.028(a), (d), (e), (f), (g), (h), (i), (j), (l), and (n), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] shall adopt reasonable rules and standards governing the determination of fees, charges, and rates for medical assistance payments.

(d) The *executive commissioner* [~~department~~] in *the* [~~its~~] adoption of reasonable rules and standards governing the determination of rates paid for inpatient hospital services on a prospective payment basis shall:

(1) assure that the payment rates are reasonable and adequate to meet the costs incurred by the hospital in rendering services to Medicaid recipients;

(2) assure that the prospective payment methodology for hospital services sets the hospital-specific standardized amount at a minimum level of $1,600; and

(3) assure that the adjustment in payment rates for hospital services furnished by disproportionate share hospitals takes into account the essential role of rural hospitals in providing access to hospital services to medically indigent persons in rural areas of the state.

(e) The *executive commissioner* [~~department~~] in *the* [~~its~~] adoption of reasonable rules and standards governing the determination of rates paid for services provided by a federally qualified health center, as defined by 42 U.S.C. Section 1396d(l)(2)(B), shall assure that a center is reimbursed for 100 percent of reasonable costs incurred by the center in rendering services to Medicaid recipients.

(f) The *executive commissioner* [~~department~~] in *the* [~~its~~] adoption of reasonable rules and standards governing the determination of rates paid for services provided by a rural health clinic, as defined by 42 U.S.C. Section 1396d(l)(1), shall assure that a clinic is reimbursed for 100 percent of reasonable costs incurred by the clinic in rendering services to Medicaid recipients.

(g) Subject to Subsection (i), the *executive commissioner* [~~Health and Human Services Commission~~] shall ensure that the rules governing the determination of rates paid for nursing *facility* [~~home~~] services improve the quality of care by:

(1) providing a program offering incentives for increasing direct care staff and direct

care wages and benefits, but only to the extent that appropriated funds are available after money is allocated to base rate reimbursements as determined by the *commission's* [~~Health and Human Services Commission's~~] nursing facility rate setting methodologies; and

(2) if appropriated funds are available after money is allocated for payment of incentive-based rates under Subdivision (1), providing incentives that incorporate the use of a quality of care index, a customer satisfaction index, and a resolved complaints index developed by the commission.

(h) The *executive commissioner* [~~Health and Human Services Commission~~] shall ensure that the rules governing the determination of rates paid for nursing *facility* [~~home~~] services provide for the rate component derived from reported liability insurance costs to be paid only to those *facilities* [~~homes~~] that purchase liability insurance acceptable to the commission.

(i) The *executive commissioner* [~~Health and Human Services Commission~~] shall ensure that rules governing the incentives program described by Subsection (g)(1):

(1) provide that participation in the program by a nursing *facility* [~~home~~] is voluntary;

(2) do not impose on a nursing *facility* [~~home~~] not participating in the program a minimum spending requirement for direct care staff wages and benefits;

(3) do not set a base rate for a nursing *facility* [~~home~~] participating in the program that is more than the base rate for a nursing *facility* [~~home~~] not participating in the program; and

(4) establish a funding process to provide incentives for increasing direct care staff and direct care wages and benefits in accordance with appropriations provided.

(j) The *executive commissioner* [~~Health and Human Services Commission~~] shall adopt rules governing the determination of the amount of reimbursement or credit for restocking drugs under Section 562.1085, Occupations Code, that recognize the costs of processing the drugs, including the cost of:

(1) reporting the drug's prescription number and date of original issue;

(2) verifying whether the drug's expiration date or the drug's recommended shelf life exceeds 120 days;

(3) determining the source of payment; and

(4) preparing credit records.

(l) The *executive commissioner* [~~commission~~] shall establish a task force to develop the rules necessary to implement Subsections (j) and (k). The task force must include representatives of nursing facilities and pharmacists.

(n) The *executive commissioner* [~~commission~~] shall ensure that rules governing the determination of rates paid for nursing *facility* [~~home~~] services provide for the reporting of all revenue and costs, without regard to whether a cost is an allowable cost for reimbursement under the medical assistance program, except:

(1) as provided by Subsection (h); and

(2) a penalty imposed under this chapter or Chapter 242, Health and Safety Code.

SECTION 4.097. Sections 32.0281(a), (b), (c), and (e), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] shall by rule describe the process used to determine payment rates for medical assistance and shall notify providers, consumers, the Legislative Budget Board, and the *Governor's Office of Budget, Planning, and Policy* [~~governor's office for budget and planning~~] of that process.

(b) The *executive commissioner* [~~department~~] shall adopt rules relating to payment rates that include:

(1) a description of the process used to determine payment rates;

(2) a description of each cost of living index used in calculating inflation rates and the procedure for determining the level of inflation used in the *executive commissioner's* [~~department's~~] calculations;

(3) the criteria for desk audits;

(4) the procedure for notifying providers of exclusions and adjustments to reported expenses, if notification is requested; and

(5) a method of adjusting rates if new legislation, regulations, or economic factors affect costs.

(c) The *commission* [~~department~~] shall include in the Title XIX State Medicaid Plan submitted to the federal government for approval the procedures for making available to the public the data and methodology used in establishing payment rates.

(e) An interested party may appeal an action taken by the *commission* [~~department~~] under this section, and an appeal of such action shall be governed by the procedures for a contested case hearing under Chapter 2001, Government Code. The filing of an appeal under this section shall not stay the implementation of payment rates adopted by the *executive commissioner* [~~department~~] in accordance with *commission* [~~its~~] rules.

SECTION 4.098. Section 32.0282, Human Resources Code, is amended to read as follows:

Sec. 32.0282. PUBLIC HEARING ON RATES. (a) The *commission* [~~department~~] shall hold a public hearing to allow interested persons to present comments relating to proposed payment rates for medical assistance.

(b) The *commission* [~~department~~] shall provide notice of each hearing to the public.

SECTION 4.099. Section 32.0284(a), Human Resources Code, is amended to read as follows:

(a) In this section, *"supplemental*[~~:~~

[~~(1) "Commission" means the Health and Human Services Commission.~~

[~~(2) "Supplemental~~] hospital payment program" means:

(1) [~~(A)~~] the disproportionate share hospitals supplemental payment program administered according to 42 U.S.C. Section 1396r–4; and

(2) [~~(B)~~] the uncompensated care payment program established under the Texas Health Care Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315).

SECTION 4.100. Section 32.029, Human Resources Code, is amended to read as follows:

Sec. 32.029. METHODS OF PAYMENT. (a) The *commission* [~~department~~] may prescribe a method of payment for medical assistance claims by establishing a direct vendor payment program that is administered by the *commission* [~~department~~], or by an insurance plan, a hospital or medical service plan, or any other health service plan authorized to do business in the state, or by a combination of those plans.

(b) The *commission* [~~department~~] may use any fiscal intermediary, method of payment, or combination of methods it finds most satisfactory and economical. The *commission* [~~department~~] may make whatever changes it finds necessary from time to time to administer the program in an economical and equitable manner consistent with simplicity of administration and the best interest of the recipients of medical assistance.

(c) If the *commission* [~~department~~] elects to make direct vendor payments, the payments shall be made by vouchers and warrants drawn by the comptroller on the proper account. The *commission* [~~department~~] shall furnish the comptroller with a list of those vendors entitled to payments and the amounts to which each is entitled. When the warrants are drawn, they must be delivered to the *commission* [~~department~~], which shall supervise the delivery to vendors.

(d) If at any time state funds are not available to fully pay all claims for medical assistance, the *executive commissioner* [~~board~~] shall prorate the claims.

(e) The *commission* [~~department~~] or its designee must notify providers of health care services in clear and concise language of the status of their claims on any claim not paid or denied within 30 days of receipt by the payor.

SECTION 4.101. Sections 32.0291(a) and (b), Human Resources Code, are amended to read as follows:

(a) Notwithstanding any other law, the *commission* [~~department~~] may:

(1) perform a prepayment review of a claim for reimbursement under the medical assistance program to determine whether the claim involves fraud or abuse; and

(2) as necessary to perform that review, withhold payment of the claim for not more than five working days without notice to the person submitting the claim.

(b) Subject to Section 531.102, Government Code, and notwithstanding any other law, the *commission* [~~department~~] may impose a payment hold on future claims submitted by a provider.

SECTION 4.102. Sections 32.031(a), (b), (d), and (e), Human Resources Code, are amended to read as follows:

(a) The *commission* [~~department~~] may accept federal funds for the support of the medical assistance program and may expend the funds in the manner prescribed by this chapter or other laws. The expenditures must be made in accordance with appropriate agreements between the state and the federal government.

(b) The *commission* [~~department~~] may administer and expend state funds appropriated for the program in accordance with *commission* [~~its~~] rules and the provisions of this chapter.

(d) The *executive commissioner* [~~board~~] is empowered and authorized to pursue the use of local funds as part of the state share under the Medicaid program as provided by federal law and regulation.

(e) Public hospitals, including hospitals owned, operated, or leased by a governmental entity, including a municipality, county, hospital district, or this state, and specifically including a state teaching hospital, may transfer funds to the *commission* [~~department~~] for use as *the* state share under the Medicaid disproportionate share program.

SECTION 4.103. Section 32.0311, Human Resources Code, is amended to read as follows:

Sec. 32.0311. DRUG REIMBURSEMENT UNDER CERTAIN PROGRAMS. The *commission* [~~department~~] shall require a recipient of medical assistance to exhaust drug benefits available under the medical assistance program before reimbursing the recipient, pharmacist, or other health care provider for drugs purchased by or on behalf of the recipient under the Kidney Health Care Program or the *Children with Special Health Care Needs* [~~Chronically Ill and Disabled Children's~~] Services Program.

SECTION 4.104. Section 32.0312, Human Resources Code, is amended to read as follows:

Sec. 32.0312. REIMBURSEMENT FOR SERVICES ASSOCIATED WITH PREVENTABLE ADVERSE EVENTS. The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules regarding the denial or reduction of reimbursement under the medical assistance program for preventable adverse events that occur in a hospital setting. In adopting the rules, the executive commissioner:

(1) shall ensure that the commission imposes the same reimbursement denials or reductions for preventable adverse events as the Medicare program imposes for the same types of health care-associated adverse conditions and the same types of health care providers and facilities under a policy adopted by the federal Centers for Medicare and Medicaid Services;

(2) shall consult an advisory committee on health care quality, if established by the executive commissioner, to obtain the advice of that committee regarding denial or reduction of reimbursement claims for any other preventable adverse events that cause patient death or serious disability in health care settings, including events on the list of adverse events identified by the National Quality Forum; and

(3) may allow the commission to impose reimbursement denials or reductions for preventable adverse events described by Subdivision (2).

SECTION 4.105. Sections 32.0313 and 32.0314, Human Resources Code, are amended to read as follows:

Sec. 32.0313. INDUCED DELIVERIES OR CESAREAN SECTIONS BEFORE 39TH WEEK. (a) The *commission* [~~department~~] shall achieve cost savings with improved outcomes by adopting and implementing quality initiatives that are evidence-based, tested, and fully consistent with established standards of clinical care and that are designed to reduce the number of elective or nonmedically indicated induced deliveries or cesarean sections performed at a hospital on a medical assistance recipient before the 39th week of gestation.

(b) The *commission* [~~department~~] shall coordinate with physicians, hospitals, managed care organizations, and the *commission's* [~~department's~~] billing contractor for the medical assistance program to develop a process for collecting information regarding the number of induced deliveries and cesarean sections described by Subsection (a) that occur during prescribed periods.

Sec. 32.0314. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT AND SUPPLIES. The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules requiring the electronic submission of any claim for reimbursement for durable medical equipment and supplies under the medical assistance program.

SECTION 4.106. Sections 32.0315 and 32.032, Human Resources Code, are amended to read as follows:

Sec. 32.0315. FUNDS FOR GRADUATE MEDICAL EDUCATION. (a) Subject to appropriated state funds, the *executive commissioner* [~~department~~] shall establish procedures and formulas for the allocation of federal medical assistance funds that are directed to be used to support graduate medical education in connection with the medical assistance program.

(b) The *executive commissioner* [~~department~~] shall allocate the funds in the manner the *executive commissioner* [~~department~~] determines most effectively and equitably achieves the purposes for which those federal funds are received, consistent with the needs of this state for graduate medical education and the training of resident physicians in accredited residency programs in appropriate fields and specialties, taking into account other money available to support graduate medical education. In determining the needs of this state for graduate medical education, the *executive commissioner* [~~department~~] shall give primary emphasis to graduate medical education in primary care specialties and shall also recognize the growth in residency training slots since 1997 in the Lower Rio Grande Valley and other health care shortage areas of this state.

(c) The *executive commissioner* [~~department~~] shall consult with the Texas Higher Education Coordinating Board before adopting or revising a formula under this section. At the request of the *executive commissioner* [~~department~~], the coordinating board shall provide the *executive commissioner* [~~department~~] with any information the board possesses to assist the *executive commissioner* [~~department~~] in administering this section.

Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE. The *executive commissioner* [~~department~~] shall adopt reasonable rules for minimizing the opportunity for fraud and abuse, for establishing and maintaining methods for detecting and identifying situations in which a question of fraud or abuse in the program may exist, and for referring cases where fraud or abuse appears to exist to the appropriate law enforcement agencies for prosecution.

SECTION 4.107. Sections 32.0321(a), (b), (c), and (d), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule may require each provider of medical assistance in a provider type that has demonstrated significant potential for fraud or abuse to file with the *commission* [~~department~~] a surety bond in a reasonable amount. The *executive commissioner* [~~department~~] by rule shall require a provider of medical assistance to file with the *commission* [~~department~~] a surety bond in a reason-

able amount if the *commission* [~~department~~] identifies a pattern of suspected fraud or abuse involving criminal conduct relating to the provider's services under the medical assistance program that indicates the need for protection against potential future acts of fraud or abuse.

(b) The bond under Subsection (a) must be payable to the *commission* [~~department~~] to compensate the *commission* [~~department~~] for damages resulting from or penalties or fines imposed in connection with an act of fraud or abuse committed by the provider under the medical assistance program.

(c) Subject to Subsection (d) or (e), the *executive commissioner* [~~department~~] by rule may require each provider of medical assistance that establishes a resident's trust fund account to post a surety bond to secure the account. The bond must be payable to the *commission* [~~department~~] to compensate residents of the bonded provider for trust funds that are lost, stolen, or otherwise unaccounted for if the provider does not repay any deficiency in a resident's trust fund account to the person legally entitled to receive the funds.

(d) The *executive commissioner* [~~department~~] may not require the amount of a surety bond posted for a single facility provider under Subsection (c) to exceed the average of the total average monthly balance of all the provider's resident trust fund accounts for the 12–month period preceding the bond issuance or renewal date.

SECTION 4.108. Section 32.0322, Human Resources Code, is amended to read as follows:

Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION; ENROLLMENT OF PROVIDERS. (a) The *commission* [~~department~~] or the office of inspector general established under Chapter 531, Government Code, may obtain from any law enforcement or criminal justice agency the criminal history record information that relates to a provider under the medical assistance program or a person applying to enroll as a provider under the medical assistance program.

(a–1) The criminal history record information the *commission* [~~department~~] and the office of inspector general are authorized to obtain under Subsection (a) includes criminal history record information relating to:

(1) a person with a direct or indirect ownership or control interest, as defined by 42 C.F.R. Section 455.101, in a provider of five percent or more; and

(2) a person whose information is required to be disclosed in accordance with 42 C.F.R. Part 1001.

(b) Subject to Subsections (b–1) and (e), the executive commissioner [~~of the Health and Human Services Commission~~] by rule shall establish criteria for the *commission* [~~department~~] or the commission's office of inspector general to suspend a provider's billing privileges under the medical assistance program, revoke a provider's enrollment under the program, or deny a person's application to enroll as a provider under the program based on:

(1) the results of a criminal history check;

(2) any exclusion or debarment of the provider from participation in a state or federally funded health care program;

(3) the provider's failure to bill for medical assistance or refer clients for medical assistance within a 12–month period; or

(4) any of the provider screening or enrollment provisions contained in 42 C.F.R. Part 455, Subpart E.

(b–1) In adopting rules under this section, the executive commissioner [~~of the Health and Human Services Commission~~] shall require revocation of a provider's enrollment or denial of a person's application for enrollment as a provider under the medical assistance program if the person has been excluded or debarred from participation in a state or federally funded health care program as a result of:

(1) a criminal conviction or finding of civil or administrative liability for committing

a fraudulent act, theft, embezzlement, or other financial misconduct under a state or federally funded health care program; or

(2) a criminal conviction for committing an act under a state or federally funded health care program that caused bodily injury to:

(A) a person who is 65 years of age or older;

(B) a person with a disability; or

(C) a person under 18 years of age.

(c) As a condition of eligibility to participate as a provider in the medical assistance program, the executive commissioner [~~of the Health and Human Services Commission~~] by rule shall:

(1) require a provider or a person applying to enroll as a provider to disclose:

(A) all persons described by Subsection (a–1)(1);

(B) any managing employees of the provider; and

(C) an agent or subcontractor of the provider if:

(i) the provider or a person described by Subsection (a–1)(1) has a direct or indirect ownership interest of at least five percent in the agent or subcontractor; or

(ii) the provider engages in a business transaction with the agent or subcontractor that meets the criteria specified by 42 C.F.R. Section 455.105; and

(2) require disclosure by persons applying for enrollment as providers and provide for screening of applicants for enrollment in conformity and compliance with the requirements of 42 C.F.R. Part 455, Subparts B and E.

(d) In adopting rules under this section, the executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules as authorized by and in conformity with 42 C.F.R. Section 455.470 for the imposition of a temporary moratorium on enrollment of new providers, or to impose numerical caps or other limits on the enrollment of providers, that the *commission* [~~department~~] or the commission's office of inspector general[~~, in consultation with the department,~~] determines have a significant potential for fraud, waste, or abuse.

(e) The *commission* [~~department~~] may reinstate a provider's enrollment under the medical assistance program or grant a person's previously denied application to enroll as a provider, including a person described by Subsection (b–1), if the *commission* [~~department~~] finds:

(1) good cause to determine that it is in the best interest of the medical assistance program; and

(2) the person has not committed an act that would require revocation of a provider's enrollment or denial of a person's application to enroll since the person's enrollment was revoked or application was denied, as appropriate.

(f) The *commission* [~~department~~] must support a determination made under Subsection (e) with written findings of good cause for the determination.

SECTION 4.109. Sections 32.033(b), (d), (e), (f), (g), and (h), Human Resources Code, are amended to read as follows:

(b) A person who applies for or receives medical assistance shall inform the *commission* [~~department~~], at the time of application or at any time during eligibility and receipt of services, of any unsettled tort claim which may affect medical needs and of any private accident or sickness insurance coverage that is or may become available. A recipient shall inform the *commission* [~~department~~] of any injury requiring medical attention that is caused by the act or failure to act of some other person. An applicant or a recipient shall inform the *commission* [~~department~~] as required by this subsection within 60 days of the date the person learns of his or her insurance coverage, tort claim, or potential cause of action. An applicant or [~~a~~] recipient who knowingly and intentionally

fails to disclose the information required by this subsection commits a Class C misdemeanor.

(d) A separate and distinct cause of action in favor of the state is hereby created, and the *commission* [~~department~~] may, without written consent, take direct civil action in any court of competent jurisdiction. A suit brought under this section need not be ancillary to or dependent upon any other action.

(e) The *commission's* [~~department's~~] right of recovery is limited to the amount of the cost of medical care services paid by the *commission* [~~department~~]. Other subrogation rights granted under this section are limited to the cost of the services provided.

(f) The *executive* commissioner may waive the *commission's* [~~department's~~] right of recovery in whole or in part when the *executive* commissioner finds that enforcement would tend to defeat the purpose of public assistance.

(g) The *commission* [~~department~~] may designate an agent to collect funds the *commission* [~~department~~] has a right to recover from third parties under this section. The *commission* [~~department~~] shall use any funds collected to pay costs of administering the medical assistance program.

(h) The *executive commissioner* [~~department~~] may adopt rules for the enforcement of *the commission's* [~~its~~] right of recovery.

SECTION 4.110. Sections 32.034(a) and (b), Human Resources Code, are amended to read as follows:

(a) The *commission* [~~department~~] has authority to adjudicate claims of contested cases in accordance with Chapter 2001, Government Code. When the *commission* [~~department~~] intends to cancel its contract or impose monetary penalties under a contract with a person providing medical assistance, the *commission* [~~department~~] shall give reasonable notice and an opportunity for hearing if one is requested. The *executive commissioner* [~~department~~] shall adopt rules consistent with Chapter 2001, Government Code, to implement this section, and hearings under this section are contested cases under that act.

(b) The *commission* [~~department~~] may not terminate a contract during the pendency of a hearing under this section. The *commission* [~~department~~] may withhold payments during the pendency of a hearing, but the *commission* [~~department~~] shall pay the withheld payments and resume contract payments if the final determination is favorable to the contractor. The *commission's* [~~department's~~] authority to withhold payments shall be established by contract.

SECTION 4.111. Section 32.035, Human Resources Code, is amended to read as follows:

Sec. 32.035. APPEALS. The provisions of Section 31.034 [~~of this code~~] governing the right of appeal of an applicant for or recipient of financial assistance authorized under Chapter 31 [~~of this code~~] also apply to applicants for medical assistance authorized in this chapter.

SECTION 4.112. Sections 32.038 and 32.0381, Human Resources Code, are amended to read as follows:

Sec. 32.038. COLLECTION OF INSURANCE PAYMENTS. (a) The *commission* [~~department~~] may receive directly from an insurance company any payments to which the *commission* [~~department~~] is entitled under Section 1204.153, Insurance Code.

(b) The *executive commissioner* [~~department~~] shall adopt rules to implement this section, including rules establishing procedures relating to:

(1) notification to the *commission* [~~department~~] that a child receiving benefits under Chapter 31 or *this chapter* [~~Chapter 32 of this code~~] is covered by an insurance policy under which the *commission* [~~department~~] is eligible to receive direct payments;

(2) claims made by the *commission* [~~department~~] to receive payments under Subsection (a) [~~of this section~~];

(3) notification to the *commission* [~~department~~] of any change in the status of the child or the parent; and

(4) notification to the insurance company that the *commission* [~~department~~] is to receive payments under Subsection (a) [~~of this section~~].

(c) *Commission* [~~Department~~] rules relating to the notice prescribed by Subsection (b)(4) [~~of this section~~] must require the notice to be attached to the claim for insurance benefits when the claim is first submitted to the insurance company.

Sec. 32.0381. *ICF-IID* [~~ICF-MR~~] PAYMENT RATES. (a) The *executive commissioner* [~~board~~] shall set the payment rates for *ICF-IID* [~~ICF-MR~~] facilities at least annually.

(b) The *executive commissioner* [~~board~~] shall adopt by rule the methodology used by the *executive commissioner* [~~department~~] in setting payment rates for *ICF-IID* [~~ICF-MR~~] facilities. The methodology shall clearly define the procedures and methods used in projecting the costs of economic and efficient facilities and the procedures and methods used in setting payment rates that reasonably reimburse facilities at each level of care and in each class of providers, including size categories.

(c) The *executive commissioner* [~~board~~] shall ensure that the methodology used in projecting costs and setting payment rates and its implementation is the same for state-operated *ICF-IID* [~~ICF-MR~~] facilities and for private *ICF-IID* [~~ICF-MR~~] facilities. Methods used to project costs, including those involving the handling of gifts, grants, and donations, upper limits on facility and administrative costs, occupancy adjustments, and in assessing the cost impact of new or revised requirements, must be the same for state-operated and private facilities.

(d) To the extent allowed by federal law, any differences in methodology or its implementation between state-operated facilities and private facilities must be stated explicitly in the rule, must be related to actual differences in the nature of the expenses incurred by the class of providers, including size categories, and must not favor state-operated facilities in setting payment rates. When the proposed rule or amendments to the rule are published for public comment, the *executive* commissioner must certify that any differences in methodology between classes of providers, including size categories, are necessitated by cost structure and will not favor state-operated facilities in the setting of payment rates.

SECTION 4.113. Section 32.039(a)(1), Human Resources Code, is amended to read as follows:

(1) "Claim" means an application for payment of health care services under Title XIX of the federal Social Security Act *(42 U.S.C. Section 1396 et seq.)* that is submitted by a person who is under a contract or provider agreement with the *commission* [~~department~~].

SECTION 4.114. Sections 32.039(b), (b-1), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (u), (v), (w), and (x), Human Resources Code, are amended to read as follows:

(b) A person commits a violation if the person:

(1) presents or causes to be presented to the *commission* [~~department~~] a claim that contains a statement or representation the person knows or should know to be false;

(1-a) engages in conduct that violates Section 102.001, Occupations Code;

(1-b) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for referring an individual to a person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program, provided that this subdivision does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(1-c) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for purchasing, leasing, or ordering, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(1–d) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to refer an individual to another person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program, provided that this subdivision does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(1–e) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to purchase, lease, or order, or arrange for or recommend the purchase, lease, or order of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(1–f) provides, offers, or receives an inducement in a manner or for a purpose not otherwise prohibited by this section or Section 102.001, Occupations Code, to or from a person, including a recipient, provider, employee or agent of a provider, third-party vendor, or public servant, for the purpose of influencing or being influenced in a decision regarding:

(A) selection of a provider or receipt of a good or service under the medical assistance program;

(B) the use of goods or services provided under the medical assistance program; or

(C) the inclusion or exclusion of goods or services available under the medical assistance program;

(2) is a managed care organization that contracts with the *commission* [~~department~~] to provide or arrange to provide health care benefits or services to individuals eligible for medical assistance and:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract with the *commission* [~~department~~];

(B) fails to provide to the *commission* [~~department~~] information required to be provided by law, *commission* [~~department~~] rule, or contractual provision;

(C) engages in a fraudulent activity in connection with the enrollment in the organization's managed care plan of an individual eligible for medical assistance or in connection with marketing the organization's services to an individual eligible for medical assistance; or

(D) engages in actions that indicate a pattern of:

(i) wrongful denial of payment for a health care benefit or service that the organization is required to provide under the contract with the *commission* [~~department~~]; or

(ii) wrongful delay of at least 45 days or a longer period specified in the contract with the *commission* [~~department~~], not to exceed 60 days, in making payment for a health care benefit or service that the organization is required to provide under the contract with the *commission* [~~department~~]; or

(3) fails to maintain documentation to support a claim for payment in accordance with the requirements specified by *commission* [~~department~~] rule or medical assistance program policy or engages in any other conduct that a *commission* [~~department~~] rule has defined as a violation of the medical assistance program.

(b–1) A person who commits a violation described by Subsection (b)(3) is liable to the *commission* [~~department~~] for either the amount paid in response to the claim for payment or the payment of an administrative penalty in an amount not to exceed $500 for each violation, as determined by the *commission* [~~department~~].

(c) A person who commits a violation under Subsection (b) is liable to the *commission* [~~department~~] for:

(1) the amount paid, if any, as a result of the violation and interest on that amount determined at the rate provided by law for legal judgments and accruing from the date on which the payment was made; and

(2) payment of an administrative penalty of an amount not to exceed twice the amount paid, if any, as a result of the violation, plus an amount:

(A) not less than $5,000 or more than $15,000 for each violation that results in injury to an elderly person, as defined by Section *48.002(a)(1)* [~~48.002(1)~~], a [~~disabled~~] person *with a disability*, as defined by Section *48.002(a)(8)(A)* [~~48.002(8)(A)~~], or a person younger than 18 years of age; or

(B) not more than $10,000 for each violation that does not result in injury to a person described by Paragraph (A).

(d) Unless the provider submitted information to the *commission* [~~department~~] for use in preparing a voucher that the provider knew or should have known was false or failed to correct information that the provider knew or should have known was false when provided an opportunity to do so, this section does not apply to a claim based on the voucher if the *commission* [~~department~~] calculated and printed the amount of the claim on the voucher and then submitted the voucher to the provider for the provider's signature. In addition, the provider's signature on the voucher does not constitute fraud. The *executive commissioner* [~~department~~] shall adopt rules that establish a grace period during which errors contained in a voucher prepared by the *commission* [~~department~~] may be corrected without penalty to the provider.

(e) In determining the amount of the penalty to be assessed under Subsection (c)(2), the *commission* [~~department~~] shall consider:

(1) the seriousness of the violation;

(2) whether the person had previously committed a violation; and

(3) the amount necessary to deter the person from committing future violations.

(f) If after an examination of the facts the *commission* [~~department~~] concludes that the person committed a violation, the *commission* [~~department~~] may issue a preliminary report stating the facts on which it based its conclusion, recommending that an administrative penalty under this section be imposed and recommending the amount of the proposed penalty.

(g) The *commission* [~~department~~] shall give written notice of the report to the person charged with committing the violation. The notice must include a brief summary of the facts, a statement of the amount of the recommended penalty, and a statement of the person's right to an informal review of the alleged violation, the amount of the penalty, or both the alleged violation and the amount of the penalty.

(h) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice, the person may either give the *commission* [~~department~~] written consent to the report, including the recommended penalty, or make a written request for an informal review by the *commission* [~~department~~].

(i) If the person charged with committing the violation consents to the penalty recommended by the *commission* [~~department~~] or fails to timely request an informal review, the *commission* [~~department~~] shall assess the penalty. The *commission* [~~department~~] shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(j) If the person charged with committing the violation requests an informal review as provided by Subsection (h), the *commission* [~~department~~] shall conduct the review. The *commission* [~~department~~] shall give the person written notice of the results of the review.

(k) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice prescribed by Subsection (j), the person may make to the *commission* [~~department~~] a written request for a hearing. The hearing must be conducted in accordance with Chapter 2001, Government Code.

(l) If, after informal review, a person who has been ordered to pay a penalty fails to request a formal hearing in a timely manner, the *commission* [~~department~~] shall assess the penalty. The *commission* [~~department~~] shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(m) Within 30 days after the date on which the *commission's* [~~board's~~] order issued after a hearing under Subsection (k) becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(n) A person who acts under Subsection (m)(3) within the 30–day period may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the *commission's* [~~department's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *executive* commissioner by certified mail.

(o) If the *executive* commissioner receives a copy of an affidavit under Subsection (n)(2), the *executive* commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(p) If the person charged does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the *commission* [~~department~~] may forward the matter to the attorney general for enforcement of the penalty and interest as provided by law for legal judgments. An action to enforce a penalty order under this section must be initiated in a court of competent jurisdiction in Travis County or in the county in which the violation was committed.

(q) Judicial review of a *commission* [~~department~~] order or review under this section assessing a penalty is under the substantial evidence rule. A suit may be initiated by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(r) If a penalty is reduced or not assessed, the *commission* [~~department~~] shall remit to the person the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the *commission* [~~department~~] under this subsection shall be paid at a rate equal to the rate provided by law for legal judgments and shall be paid for the period beginning on the date the penalty is paid to the *commission* [~~department~~] under this section and ending on the date the penalty is remitted.

(u) Except as provided by Subsection (w), a person found liable for a violation under Subsection (c) that resulted in injury to an elderly person, as defined by Section

48.002(a)(1), a [~~disabled~~] person *with a disability*, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of 10 years. The *executive commissioner* [~~department~~] by rule may provide for a period of ineligibility longer than 10 years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final.

(v) Except as provided by Subsection (w), a person found liable for a violation under Subsection (c) that did not result in injury to an elderly person, as defined by Section 48.002(a)(1), a [~~disabled~~] person *with a disability*, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of three years. The *executive commissioner* [~~department~~] by rule may provide for a period of ineligibility longer than three years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final.

(w) The *executive commissioner* [~~department~~] by rule may prescribe criteria under which a person described by Subsection (u) or (v) is not prohibited from providing or arranging to provide health care services under the medical assistance program. The criteria may include consideration of:

(1) the person's knowledge of the violation;

(2) the likelihood that education provided to the person would be sufficient to prevent future violations;

(3) the potential impact on availability of services in the community served by the person; and

(4) any other reasonable factor identified by the *executive commissioner* [~~department~~].

(x) Subsections (b)(1–b) through (1–f) do not prohibit a person from engaging in:

(1) generally accepted business practices, as determined by *commission* [~~department~~] rule, including:

(A) conducting a marketing campaign;

(B) providing token items of minimal value that advertise the person's trade name; and

(C) providing complimentary refreshments at an informational meeting promoting the person's goods or services;

(2) the provision of a value-added service if the person is a managed care organization; or

(3) other conduct specifically authorized by law, including conduct authorized by federal safe harbor regulations (42 C.F.R. Section 1001.952).

SECTION 4.115. Sections 32.042(b), (b–1), (d), (e), (f), (g), and (i), Human Resources Code, are amended to read as follows:

(b) The state's Medicaid third-party recovery division shall identify state medical assistance recipients who have third-party health coverage or insurance as provided by this subsection. The *commission* [~~department~~] may:

(1) provide to an insurer Medicaid data tapes that identify medical assistance recipients and request that the insurer identify each enrollee, beneficiary, subscriber, or policyholder of the insurer whose name also appears on the Medicaid data tape; or

(2) request that an insurer provide to the *commission* [~~department~~] identifying information for each enrollee, beneficiary, subscriber, or policyholder of the insurer.

(b–1) An insurer from which the *commission* [~~department~~] requests information under Subsection (b) shall provide that information, except that the insurer is only required to provide the *commission* [~~department~~] with the information maintained under Subsection (a) by the insurer or made available to the insurer from the plan. A plan administrator is subject to Subsection (b) and shall provide information under that subsection to the

extent the information is made available to the plan administrator from the insurer or plan.

(d) An insurer shall provide the information required under Subsection (b)(1) only if the *commission* [~~department~~] certifies that the identified individuals are applicants for or recipients of services under Medicaid or are legally responsible for an applicant for or recipient of Medicaid services.

(e) The *commission* [~~department~~] shall enter into an agreement to reimburse an insurer or plan administrator for necessary and reasonable costs incurred in providing information requested under Subsection (b)(1), not to exceed $5,000 for each data match made under that subdivision. If the *commission* [~~department~~] makes a data match using information provided under Subsection (b)(2), the *commission* [~~department~~] shall reimburse the insurer or plan administrator for reasonable administrative expenses incurred in providing the information. The reimbursement for information under Subsection (b)(2) may not exceed $5,000 for initially producing information with respect to a person, or $200 for each subsequent production of information with respect to the person. The *commission* [~~department~~] may enter into an agreement with an insurer or plan administrator that provides procedures for requesting and providing information under this section. An agreement under this subsection may not be inconsistent with any law relating to the confidentiality or privacy of personal information or medical records. The procedures agreed to under this subsection must state the time and manner the procedures take effect.

(f) Information required to be furnished to the *commission* [~~department~~] under this section is limited to information necessary to determine whether health benefits have been or should have been claimed and paid under a health insurance policy or plan for medical care or services received by an individual for whom Medicaid coverage would otherwise be available.

(g) Information regarding an individual certified to an insurer as an applicant for or recipient of medical assistance may only be used to identify the records or information requested and may not violate the confidentiality of the applicant or recipient. The *commission* [~~department~~] shall establish guidelines not later than the date on which the procedures agreed to under Subsection (e) take effect.

(i) In this section:

(1) "Insurer" means a group *hospital service* [~~health services~~] corporation, a health maintenance organization, a self-funded or self-insured welfare or benefit plan or program to the extent the regulation of the plan or program is not preempted by federal law, and any other entity that provides health coverage in this state through an employer, union, trade association, or other organization or other source.

(2) "Plan administrator" means a third-party administrator, prescription drug payer or administrator, pharmacy benefit manager, or dental payer or administrator.

SECTION 4.116. Sections 32.0421(a) and (c), Human Resources Code, are amended to read as follows:

(a) The *commission* [~~department~~] may impose an administrative penalty on a person who does not comply with a request for information made under Section 32.042(b).

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the *commission* [~~department~~] to contest the affidavit as provided by those rules.

SECTION 4.117. Sections 32.0422(a), (j–1), and (k), Human Resources Code, are amended to read as follows:

(a) In this section, *"group*[~~:~~

[~~(1) "Commission" means the Health and Human Services Commission.~~

[~~(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.~~

[~~(3) "Group~~] health benefit plan" means a plan described by Section 1207.001, Insurance Code.

(j–1) An individual described by Subsection (e–1) who enrolls in a group health benefit plan is not ineligible for *home and* community-based services provided under a Section 1915(c) waiver program or another federal *home and community-based services* waiver program solely based on the individual's enrollment in the group health benefit plan, and the individual may receive those services if the individual is otherwise eligible for the program. The individual is otherwise limited to the health benefits coverage provided under the health benefit plan in which the individual is enrolled, and the individual may not receive any benefits or services under the medical assistance program other than the premium payment as provided by Subsection (f–1) and, if applicable, waiver program services described by this subsection.

(k) The commission may not require or permit an individual who is enrolled in a group health benefit plan under this section to participate in the Medicaid managed care program under Chapter 533, Government Code[~~, or a Medicaid managed care demonstration project under Section 32.041~~].

SECTION 4.118. Sections 32.0424(a), (c), and (d), Human Resources Code, are amended to read as follows:

(a) A third-party health insurer is required to provide to the *commission* [~~department~~], on the *commission's* [~~department's~~] request, information in a form prescribed by the *executive commissioner* [~~department~~] necessary to determine:

(1) the period during which an individual entitled to medical assistance, the individual's spouse, or the individual's dependents may be, or may have been, covered by coverage issued by the health insurer;

(2) the nature of the coverage; and

(3) the name, address, and identifying number of the health plan under which the person may be, or may have been, covered.

(c) A third-party health insurer shall respond to any inquiry by the *commission* [~~department~~] regarding a claim for payment for any health care item or service reimbursed by the *commission* [~~department~~] under the medical assistance program not later than the third anniversary of the date the health care item or service was provided.

(d) A third-party health insurer may not deny a claim submitted by the *commission* [~~department~~] or the *commission's* [~~department's~~] designee for which payment was made under the medical assistance program solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point of service that is the basis of the claim, if:

(1) the claim is submitted by the *commission* [~~department~~] or the *commission's* [~~department's~~] designee not later than the third anniversary of the date the item or service was provided; and

(2) any action by the *commission* [~~department~~] or the *commission's* [~~department's~~] designee to enforce the state's rights with respect to the claim is commenced not later than the sixth anniversary of the date the *commission* [~~department~~] or the *commission's* [~~department's~~] designee submits the claim.

SECTION 4.119. Section 32.04242, Human Resources Code, is amended to read as follows:

Sec. 32.04242. PAYOR OF LAST RESORT. The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules to ensure, to the extent allowed by federal law, that the Medicaid program:

(1) is the payor of last resort; and

(2) provides reimbursement for services, including long-term care services, only if, and to the extent, other adequate public or private sources of payment are not available.

SECTION 4.120. Section 32.0425(a)(1), Human Resources Code, is amended to read as follows:

(1) "Qualified rehabilitation professional" means a person who:

(A) holds a certification as an assistive technology professional or a rehabilitation engineering technologist issued by, and is in good standing with, the Rehabilitation Engineering and Assistive Technology Society of North America, provided that the requirements for that certification are at least as stringent as the requirements in effect on January 1, 2009; or

(B) is otherwise qualified to conduct the professional activities of a person who holds a certification described by Paragraph (A), as determined by rules adopted by the executive commissioner [~~of the Health and Human Services Commission~~].

SECTION 4.121. Sections 32.0425(b) and (c), Human Resources Code, are amended to read as follows:

(b) The *commission* [~~department~~] may provide medical assistance reimbursement for the provision of, or the performance of a major modification to, a wheeled mobility system only if:

(1) the system is delivered to a recipient by a medical assistance provider that is, or directly employs or contracts with, a qualified rehabilitation professional and that professional was present and involved in any clinical assessment of the recipient that is required for obtaining the system; and

(2) at the time the wheeled mobility system is delivered to the recipient, the qualified rehabilitation professional:

(A) is present for and directs a fitting to ensure that the system is appropriate for the recipient; and

(B) verifies that the system functions relative to the recipient.

(c) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules specifying:

(1) the scope, including any required components, of the fitting and verification of functionality required by Subsection (b);

(2) documentation of the fitting and verification of functionality that must be submitted as part of a claim for reimbursement for the provision or modification of a wheeled mobility system; and

(3) the appropriate reimbursement methodology for compensating the evaluation and final fitting services provided by qualified rehabilitation professionals involved in the provision or modification of wheeled mobility systems.

SECTION 4.122. Sections 32.043(b) and (d), Human Resources Code, are amended to read as follows:

(b) The public hospital shall acquire goods or services by any procurement method approved by the *commission* [~~Health and Human Services Commission~~] that provides the best value to the public hospital. The public hospital shall document that it considered all relevant factors under Subsection (c) in making the acquisition.

(d) The state auditor or the *commission* [~~department~~] may audit the public hospital's acquisitions of goods and services to the extent that state money or federal money appropriated by the state is used to acquire the goods and services.

SECTION 4.123. Section 32.044(d), Human Resources Code, is amended to read as follows:

(d) The *executive commissioner* [~~department~~] with the assistance of [~~the Health and Human Services Commission and~~] the comptroller shall adopt rules under this section that allow the public or private hospital to make purchases through group purchasing programs except when the *commission* [~~department~~] has reason to believe that a better value is available through another procurement method.

SECTION 4.124. Sections 32.045, 32.046, 32.0461, 32.0462, 32.0463, 32.047, 32.048,

and 32.049, Human Resources Code, are amended to read as follows:

Sec. 32.045. ENHANCED REIMBURSEMENT. The *commission* [~~department~~] shall develop a procedure for:

(1) identifying each service provided under the medical assistance program for which the state is eligible to receive enhanced reimbursement of costs from the federal government; and

(2) ensuring that the state seeks the highest level of federal reimbursement available for each service provided.

Sec. 32.046. SANCTIONS AND PENALTIES RELATED TO THE PROVISION OF PHARMACY PRODUCTS. (a) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules governing sanctions and penalties that apply to a provider who participates in the vendor drug program or is enrolled as a network pharmacy provider of a managed care organization contracting with the commission under Chapter 533, Government Code, or its subcontractor and who submits an improper claim for reimbursement under the program.

(b) The *commission* [~~department~~] shall notify each provider in the vendor drug program that the provider is subject to sanctions and penalties for submitting an improper claim.

Sec. 32.0461. VENDOR DRUG PROGRAM; COMPETITIVE BIDDING. (a) In consultation and coordination with the State Council on Competitive Government, the *commission* [~~Texas Department of Health~~] shall seek competitive bids for the claims processing function of the vendor drug program. [~~The department and the Texas Department of Human Services may submit a bid proposal under this section in the same manner as a private entity.~~]

(b) The *commission* [~~Texas Department of Health~~] shall require any person seeking to contract for services under this section to comply with competitive bidding procedures adopted by *the executive commissioner* [~~that department~~].

(c) The *commission* [~~Texas Department of Health~~] may award a contract under this section to another person only if the department and the State Council on Competitive Government determine that the provision of services under that contract would be more cost-effective and the time to process claims under the contract would be the same as or faster than having employees of the *commission* [~~department~~] continue to process claims.

Sec. 32.0462. VENDOR DRUG PROGRAM; PRICING STANDARD. (a) Notwithstanding any other provision of state law, the *commission* [~~department~~] shall:

(1) consider a nationally recognized, unbiased pricing standard for prescription drugs in determining reimbursement amounts under the vendor drug program; and

(2) update reimbursement amounts under the vendor drug program at least weekly.

(b) The *executive* commissioner shall adopt rules implementing this section. In adopting rules, the *executive* commissioner shall ensure that implementation of this section does not adversely affect the amount of federal funds available to the state for providing benefits under the vendor drug program.

Sec. 32.0463. MEDICATIONS AND MEDICAL SUPPLIES. The *executive commissioner* [~~department~~] may adopt rules establishing procedures for the purchase and distribution of medically necessary, over-the-counter medications and medical supplies under the medical assistance program that were previously being provided by prescription if the *executive commissioner* [~~department~~] determines it is more cost-effective than obtaining those medications and medical supplies through a prescription.

Sec. 32.047. PROHIBITION OF CERTAIN HEALTH CARE SERVICE PROVIDERS. (a) A person is permanently prohibited from providing or arranging to provide health care services under the medical assistance program if:

(1) the person is convicted of an offense arising from a fraudulent act under the program; and

(2) the person's fraudulent act results in injury to an elderly person, as defined by

Section 48.002(a)(1), a [~~disabled~~] person *with a disability*, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age.

(b) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules for prohibiting a person from participating in the medical assistance program as a health care provider for a reasonable period, as determined by the executive commissioner, if the person:

(1) fails to repay overpayments under the program; or

(2) owns, controls, manages, or is otherwise affiliated with and has financial, managerial, or administrative influence over a provider who has been suspended or prohibited from participating in the program.

Sec. 32.048. MANAGED CARE INFORMATION AND TRAINING PLAN. (a) Subject to the availability of funds, the *commission* [~~department~~] shall develop a comprehensive plan to provide information and training about the requirements of a managed care plan to recipients of medical assistance, providers of medical assistance, local health and human services agencies, and other interested parties in each service area in which the *commission provides* [~~department plans to provide~~] medical assistance through a managed care plan.

(b) The *commission* [~~department~~] shall include in the comprehensive plan:

(1) [~~180 days of initial information and training in a service area beginning not later than the 90th day before the date on which the department plans to begin to provide medical assistance through a managed care plan in that service area;~~

[~~(2) additional~~] information and training at regular intervals determined by the *commission* [~~department~~]; and

(2) [~~(3)~~] performance measures to evaluate the effectiveness of the information and training.

(c) In developing the comprehensive plan, the *commission* [~~department~~] shall consult with the Medicaid medical care advisory committee.

Sec. 32.049. MANAGED CARE CONTRACT COMPLIANCE. (a) The *commission* [~~department~~] shall review each managed care organization that has contracted with the *commission* [~~department~~] to provide medical assistance to medical assistance recipients through a managed care plan issued by the organization to determine whether the organization is prepared to meet its contractual obligations.

(b)(1) The *commission* [~~department~~] shall require each managed care organization that has contracted with the *commission* [~~department~~] to submit an implementation plan not later than the 90th day before the date on which the *managed care organization* [~~department~~] plans to begin to provide medical assistance through a managed care plan in a service area. The implementation plan must include:

(A) specific staffing patterns by function for all operations, including enrollment, information systems, member services, quality improvement, claims management, case management, and provider and enrollee training; and

(B) specific time frames for demonstrating preparedness for implementation before the date on which the *managed care organization* [~~department~~] plans to begin to provide medical assistance through a managed care plan in a service area.

(2) The *commission* [~~department~~] shall respond within 10 working days if the implementation plan does not adequately meet preparedness guidelines.

(3) The *commission* [~~department~~] shall require each managed care organization that has contracted with the *commission* [~~department~~] to submit status reports on the implementation plan not later than the 60th day and the 30th day before the date on which the *managed care organization* [~~department~~] plans to begin to provide medical assistance through a managed care plan in a service area and every 30th day after the *managed care organization* [~~department~~] begins to provide medical assistance through a managed care plan in a service area until the 180th day of operations.

(c) The *commission* [~~department~~] shall conduct a compliance and readiness review of

each managed care organization that contracts with the state not later than the 15th day before the date on which the [~~department plans to begin the enrollment~~] process *of enrolling recipients in a managed care plan issued by the managed care organization is to begin* in a service area and again not later than the 15th day before the date on which the *managed care organization* [~~department~~] plans to begin to provide medical assistance through a managed care plan in *that* [~~a~~] service area. The review shall include an on-site inspection and tests of service authorization and claims payment systems, complaint processing systems, and any other process or system required by the contract.

(d) The *commission* [~~department~~] may delay enrollment of medical assistance recipients in a managed care plan if the review reveals that the managed care organization is not prepared to meet its contractual obligations.

SECTION 4.125. Sections 32.050(a), (b), (d), and (e), Human Resources Code, are amended to read as follows:

(a) At least annually the *commission* [~~department~~] shall identify each individual receiving medical assistance under the medical assistance program who is eligible to receive similar assistance under the Medicare program.

(b) The *commission* [~~department~~] shall analyze claims submitted for payment for a service provided under the medical assistance program to an individual identified under Subsection (a) to ensure that payment is sought first under the Medicare program to the extent allowed by law.

(d) Except as provided by Subsection (e), a nursing facility, a home health services provider, or any other similar long-term care services provider that is Medicare-certified and provides care to individuals who are eligible for Medicare must:

(1) seek reimbursement from Medicare before billing the medical assistance program for services provided to an individual identified under Subsection (a); and

(2) as directed by the *commission* [~~department~~], appeal Medicare claim denials for payment services provided to an individual identified under Subsection (a).

(e) A home health services provider is not required to seek reimbursement from Medicare before billing the medical assistance program for services provided to a person who is eligible for Medicare and who:

(1) has been determined as not being homebound; or

(2) meets other criteria determined by the *executive commissioner* [~~department~~].

SECTION 4.126. Section 32.051, Human Resources Code, is amended to read as follows:

Sec. 32.051. MISDIRECTED BILLING. To the extent authorized by federal law, the *commission* [~~department~~] shall develop a procedure for the state to:

(1) match claims for payment for medical assistance provided under the medical assistance program against data available from other entities, including the *United States Department of* Veterans *Affairs* [~~Administration~~] and nursing facilities, to determine alternative responsibility for payment of the claims; and

(2) ensure that the appropriate entity bears the cost of a claim.

SECTION 4.127. Sections 32.052(c) and (d), Human Resources Code, are amended to read as follows:

(c) In developing and providing services subject to this section, the *commission* [~~department~~] shall:

(1) fully assess a child at the time the child applies for assistance to determine all appropriate services for the child under the medical assistance program, including both waiver and nonwaiver services;

(2) ensure that permanency planning is implemented to identify and establish the family support necessary to maintain a child's permanent living arrangement with a family;

(3) implement a transition and referral process to prevent breaks in services when a

child is leaving a medical assistance waiver program or moving between service delivery systems due to a change in the child's disability status or needs, aging out of the current delivery system, or moving between geographic areas within the state;

(4) identify and provide core services addressing a child's developmental needs and the needs of the child's family to strengthen and maintain the child's family;

(5) provide for comprehensive coordination and use of available services and resources in a manner that ensures support for families in keeping their children at home;

(6) ensure that eligibility requirements, assessments for service needs, and other components of service delivery are designed to be fair and equitable for all families, including families with parents who work outside the home; and

(7) provide for a broad array of service options and a reasonable choice of service providers.

(d) To ensure that services subject to this section are cost neutral and not duplicative of other services provided under the medical assistance program, the *commission* [~~department~~] shall coordinate the provision of services subject to this section with services provided under the Texas Health Steps Comprehensive Care Program.

SECTION 4.128. Sections 32.053(a), (b), (c), (e), (f), (h), and (i), Human Resources Code, are amended to read as follows:

(a) The *commission* [~~department~~], as an integral part of the medical assistance program, shall develop and implement a program of all-inclusive care for the elderly (PACE) in accordance with Section 4802 of the Balanced Budget Act of 1997 (Pub. L. No. 105–33), as amended. The *commission* [~~department~~] shall provide medical assistance to a participant in the PACE program in the manner and to the extent authorized by federal law.

(b) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules as necessary to implement this section. In adopting rules, the executive commissioner shall:

(1) use the Bienvivir Senior Health Services of El Paso initiative as a model for the program;

(2) ensure that a person is not required to hold a certificate of authority as a health maintenance organization under Chapter 843, Insurance Code, to provide services under the PACE program;

(3) ensure that participation in the PACE program is available as an alternative to enrollment in a Medicaid managed care plan under Chapter 533, Government Code, for eligible recipients, including recipients eligible for assistance under both the medical assistance and Medicare programs;

(4) ensure that managed care organizations that contract under Chapter 533, Government Code, consider the availability of the PACE program when considering whether to refer a recipient to a nursing *facility* [~~home~~] or other long-term care facility; and

(5) establish protocols for the referral of eligible persons to the PACE program.

(c) The *commission* [~~department~~] may not contract with a person to provide services under the PACE program unless the person:

(1) purchases reinsurance in an amount determined by the *commission* [~~department~~] that is sufficient to ensure the person's continued solvency; or

(2) has the financial resources sufficient to cover expenses in the event of the person's insolvency.

(e) The Department of Aging and Disability Services and area agencies on aging shall develop and implement a coordinated plan to promote PACE program sites operating under this section. The *executive commissioner* [~~department~~] shall adopt policies and procedures, including operating guidelines, to ensure that caseworkers and any other

appropriate department staff discuss the benefits of participating in the PACE program with long-term care clients.

(f) The *commission* [~~department~~] shall consider the PACE program as a community-based service option under any "Money Follows the Person" demonstration project or other initiative that is designed to eliminate barriers or mechanisms that prevent or restrict the flexible use of funds under the medical assistance program to enable a recipient to receive long-term services or supports in a setting of the recipient's choice.

(h) The *executive commissioner* [~~commission~~] shall adopt a standard reimbursement methodology for the payment of all PACE organizations for purposes of encouraging a natural increase in the number of PACE program sites throughout the state.

(i) To the extent allowed by the General Appropriations Act, the *commission* [~~Health and Human Services Commission~~] may transfer general revenue funds appropriated to the commission for the medical assistance program to the Department of Aging and Disability Services to provide PACE services in PACE program service areas to eligible recipients whose medical assistance benefits would otherwise be delivered as home and community-based services through the STAR + PLUS Medicaid managed care program and whose personal incomes are at or below the level of income required to receive Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq.

SECTION 4.129. Sections 32.054(c), (d), and (e), Human Resources Code, are amended to read as follows:

(c) In providing dental services under the medical assistance program, the *commission* [~~department~~] shall:

(1) ensure that a stainless steel crown is not used as a preventive measure;

(2) require a dentist participating in the medical assistance program to document, through x-rays or other methods established by *commission* [~~department~~] rule, the dental necessity for a stainless steel crown before the crown is applied;

(3) require a dentist participating in the medical assistance program to comply with a minimum standard of documentation and recordkeeping for each of the dentist's patients, regardless of whether the patient's costs are paid privately or through the medical assistance program;

(4) replace the 15–point system used for determining the dental necessity for hospitalization and general anesthesia with a more objective and comprehensive system developed by the *commission* [~~department~~]; and

(5) take all necessary action to eliminate unlawful acts described by Section 36.002 in the provision of dental services under the medical assistance program, including:

(A) aggressively investigating and prosecuting any dentist who abuses the system for reimbursement under the medical assistance program; and

(B) conducting targeted audits of dentists whose billing activities under the medical assistance program are excessive or otherwise inconsistent with the billing activities of other similarly situated dentists.

(d) In setting reimbursement rates for dental services under the medical assistance program, the *executive commissioner* [~~department~~] shall:

(1) [~~reduce the amount of the hospitalization fee in effect on December 1, 2000, and redistribute amounts made available through reduction of that fee to other commonly billed dental services for which adequate accountability measures exist;~~

[~~(2) eliminate the nutritional consultation fee and redistribute amounts made available through elimination of that fee to other commonly billed dental services for which adequate accountability measures exist;~~

[~~(3)~~] provide for reimbursement of a behavior management fee only if:

(A) the patient receiving dental treatment has been previously diagnosed with *an intellectual or developmental disability* [~~mental retardation~~] or a mental disability or disorder, and extraordinary behavior management techniques are necessary for therapeutic dental treatment because of the patient's uncooperative behavior; and

(B) the dentist includes in the patient's records and on the claim form for reimbursement a narrative description of:

(i) the specific behavior problem demonstrated by the patient that required the use of behavior management techniques;

(ii) the dentist's initial efforts to manage the patient's behavior through routine behavior management techniques; and

(iii) the dentist's extraordinary behavior management techniques subsequently required to manage the patient's behavior; and

(2) [~~(4)~~] redistribute amounts made available through limitation of the behavior management fee under Subdivision *(1)* [~~(3)~~] to other commonly billed dental services for which adequate accountability measures exist.

(e) The *commission* [~~department~~] shall develop the minimum standard described by Subsection (c)(3) in cooperation with the State Board of Dental Examiners.

SECTION 4.130. Sections 32.055(a) and (c), Human Resources Code, are amended to read as follows:

(a) The *commission* [~~department~~] shall develop and implement a catastrophic case management system to be used in providing medical assistance to persons with catastrophic health problems.

(c) The *commission* [~~department~~] shall identify the services to be provided by a case manager assigned under the system. The services must include assessment of the recipient's needs and coordination of all available medical services and payment options. The services may include other support services such as:

(1) assistance with making arrangements to receive care from medical facilities;

(2) assistance with travel and lodging in connection with receipt of medical care;

(3) education of the recipient and the recipient's family members regarding the nature of the recipient's health problems;

(4) referral to appropriate support groups; and

(5) any other service likely to result in better care provided in a cost-effective manner.

SECTION 4.131. Sections 32.0551 and 32.056, Human Resources Code, are amended to read as follows:

Sec. 32.0551. OPTIMIZATION OF CASE MANAGEMENT SYSTEMS. The *commission* [~~Health and Human Services Commission~~] shall:

(1) create and coordinate staffing and other administrative efficiencies for case management initiatives across the commission and health and human services agencies[~~, as defined by Section 531.001, Government Code~~]; and

(2) optimize federal funding revenue sources and maximize the use of state funding resources for case management initiatives across the commission and health and human services agencies.

Sec. 32.056. COMPLIANCE WITH TEXAS HEALTH STEPS *COMPREHENSIVE CARE PROGRAM*. The *executive* commissioner by rule shall develop procedures to ensure that recipients of medical assistance who are eligible for Texas Health Steps *Comprehensive Care Program* comply with the regimen of care prescribed by the [~~Texas Health Steps~~] program.

SECTION 4.132. Sections 32.057(a), (b), (c), (d), (e), and (f), Human Resources Code, are amended to read as follows:

(a) The *commission* [~~department~~] shall request contract proposals from providers of disease management programs to provide program services to recipients of medical assistance who:

(1) have a disease or other chronic health condition, such as heart disease, hemophilia, chronic kidney disease and its medical complications, diabetes, respira-

tory illness, end-stage renal disease, HIV infection, or AIDS, that the *commission* [~~department~~] determines is a disease or condition that needs disease management; and

(2) are not eligible to receive those services under a Medicaid managed care plan.

(b) The *commission* [~~department~~] may contract with a public or private entity to:

(1) write the requests for proposals;

(2) determine how savings will be measured;

(3) identify populations that need disease management;

(4) develop appropriate contracts; and

(5) assist the *commission* [~~department~~] in:

(A) developing the content of disease management programs; and

(B) obtaining funding for those programs.

(c) The executive commissioner [~~of the Health and Human Services Commission,~~] by rule[~~;~~] shall prescribe the minimum requirements a provider of a disease management program must meet to be eligible to receive a contract under this section. The provider must, at a minimum, be required to:

(1) use disease management approaches that are based on evidence-supported models, standards of care in the medical community, and clinical outcomes; and

(2) ensure that a recipient's primary care physician and other appropriate specialty physicians, or registered nurses, advanced practice nurses, or physician assistants specified and directed or supervised in accordance with applicable law by the recipient's primary care physician or other appropriate specialty physicians, become directly involved in the disease management program through which the recipient receives services.

(d) The *commission* [~~department~~] may not award a contract for a disease management program under this section unless the contract includes a written guarantee of state savings on expenditures for the group of medical assistance recipients covered by the program.

(e) The *commission* [~~department~~] may enter into a contract under this section with a comprehensive hemophilia diagnostic treatment center that receives funding through a maternal and child health services block grant under Section 501(a)(2), Social Security Act (42 U.S.C. *Section 701(a)(2)* [~~Section 701~~]), and the center shall be considered a disease management provider.

(f) Directly or through a provider of a disease management program that enters into a contract with the *commission* [~~department~~] under this section, the *commission* [~~department~~] shall, as appropriate and to the extent possible without cost to the state:

(1) identify recipients of medical assistance under this chapter or, at the discretion of the *commission* [~~department~~], enrollees in the child health plan under Chapter 62, Health and Safety Code, who are eligible to participate in federally funded disease management research programs operated by research-based disease management providers; and

(2) assist and refer eligible persons identified by the *commission* [~~department~~] under Subdivision (1) to participate in the research programs described by Subdivision (1).

SECTION 4.133. Sections 32.058(a) and (g), Human Resources Code, are amended to read as follows:

(a) In this section:

(1) "Department" means the Department of Aging and Disability Services.

(2) "Medical[~~, "medical~~] assistance waiver program" means a program *operated* [~~administered~~] by the Department of Aging and Disability Services, other than the Texas home living *waiver* program, that provides services under a waiver granted in accordance with 42 U.S.C. Section 1396n(c).

(g) The executive commissioner [~~of the Health and Human Services Commission~~] may adopt rules to implement Subsections (d), (e), and (f).

SECTION 4.134. Section 32.059, Human Resources Code, is amended to read as follows:

Sec. 32.059. USE OF RESPIRATORY THERAPISTS FOR RESPIRATORY THERAPY SERVICES. The *executive commissioner* [~~department~~] by rule shall require that respiratory therapy services for ventilator-dependent persons furnished as part of a plan of care under this chapter be provided by a respiratory *care practitioner* [~~therapist~~] authorized to practice respiratory care under Chapter 604, Occupations Code, when:

(1) respiratory therapy is determined by the recipient's treating physician to be the most effective method of treatment; and

(2) the use of a respiratory *care practitioner* [~~therapist~~] is practicable and cost-neutral or cost-effective.

SECTION 4.135. Section 32.061, Human Resources Code, is amended to read as follows:

Sec. 32.061. COMMUNITY ATTENDANT SERVICES PROGRAM. (a) Any home and community-based services that the *commission* [~~department~~] provides under Section 1929, Social Security Act (42 U.S.C. Section 1396t) and its subsequent amendments to functionally disabled individuals who have income that exceeds the limit established by federal law for Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.) and its subsequent amendments shall be provided through the community attendant services program.

(b) In determining an applicant's eligibility for home and community-based services described by Subsection (a), the *commission* [~~department~~] shall exclude $20 of unearned or earned income from the applicant's monthly income.

SECTION 4.136. Sections 32.062(a) and (c), Human Resources Code, are amended to read as follows:

(a) The following are not admissible as evidence in a civil action:

(1) any finding by the *Department of Aging and Disability Services* [~~department~~] that an institution licensed under Chapter 242, Health and Safety Code, has violated a standard for participation in the medical assistance program under this chapter; *or*

(2) the fact of the assessment of a monetary penalty against an institution under Section 32.021 or the payment of the penalty by an institution[~~; or~~

[~~(3) any information exchanged between the department and a nursing facility under Section 531.912, Government Code~~].

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the *Department of Aging and Disability Services* [~~department~~] that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; [~~and~~]

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the *Department of Aging and Disability Services* [~~department~~] after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

SECTION 4.137. Section 32.063, Human Resources Code, is amended to read as follows:

Sec. 32.063. THIRD-PARTY BILLING VENDORS. (a) A third-party billing vendor may not submit a claim with the *commission* [~~department~~] for reimbursement on behalf of a provider of medical services under the medical assistance program unless the vendor has entered into a contract with the *commission* [~~department~~] authorizing that activity.

(b) To the extent practical, the contract shall contain provisions comparable to the provisions contained in contracts between the *commission* [~~department~~] and providers of medical services, with an emphasis on provisions designed to prevent fraud or abuse under the medical assistance program. At a minimum, the contract must require the third-party billing vendor to:

(1) provide documentation of the vendor's authority to bill on behalf of each provider for whom the vendor submits claims;

(2) submit a claim in a manner that permits the *commission* [~~department~~] to identify and verify the vendor, any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim; and

(3) subject to any confidentiality requirements imposed by federal law, provide the *commission* [~~department~~], the office of the attorney general, or authorized representatives with:

(A) access to any records maintained by the vendor, including original records and records maintained by the vendor on behalf of a provider, relevant to an audit or investigation of the vendor's services or another function of the *commission* [~~department~~] or office of the attorney general relating to the vendor; and

(B) if requested, copies of any records described by Paragraph (A) at no charge to the *commission* [~~department~~], the office of the attorney general, or authorized representatives.

(c) On receipt of a claim submitted by a third-party billing vendor, the *commission* [~~department~~] shall send a remittance notice directly to the provider referenced in the claim. The notice must:

(1) include detailed information regarding the claim submitted on behalf of the provider; and

(2) require the provider to review the claim for accuracy and notify the *commission* [~~department~~] promptly regarding any errors.

(d) The *commission* [~~department~~] shall take all action necessary, including any modifications of the *commission's* [~~department's~~] claims processing system, to enable the *commission* [~~department~~] to identify and verify a third-party billing vendor submitting a claim for reimbursement under the medical assistance program, including identification and verification of any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim.

(e) The *commission* [~~department~~] shall audit each third-party billing vendor subject to this section at least annually to prevent fraud and abuse under the medical assistance program.

SECTION 4.138. Section 32.064(a), Human Resources Code, is amended to read as follows:

(a) To the extent permitted under Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), as amended, and any other applicable law or regulations, the *executive commissioner* [~~Health and Human Services Commission~~] shall adopt provisions requiring recipients of medical assistance to share the cost of medical assistance, including provisions requiring recipients to pay:

(1) an enrollment fee;

(2) a deductible; or

(3) coinsurance or a portion of the plan premium, if the recipients receive medical

assistance under the Medicaid managed care program under Chapter 533, Government Code[~~, or a Medicaid managed care demonstration project under Section 32.041~~].

SECTION 4.139. Section 32.0641, Human Resources Code, is amended to read as follows:

Sec. 32.0641. RECIPIENT ACCOUNTABILITY PROVISIONS; COST–SHARING REQUIREMENT TO IMPROVE APPROPRIATE UTILIZATION OF SERVICES. (a) To the extent permitted under and in a manner that is consistent with Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.) and any other applicable law or regulation or under a federal waiver or other authorization, the executive commissioner [~~of the Health and Human Services Commission~~] shall adopt, after consulting with the Medicaid and CHIP Quality–Based Payment Advisory Committee established under Section 536.002, Government Code, cost-sharing provisions that encourage personal accountability and appropriate utilization of health care services, including a cost-sharing provision applicable to a recipient who chooses to receive a nonemergency medical service through a hospital emergency room.

(b) The *commission* [~~department~~] may not seek a federal waiver or other authorization under this section that would:

(1) prevent a Medicaid recipient who has a condition requiring emergency medical services from receiving care through a hospital emergency room; or

(2) waive any provision under Section 1867, Social Security Act (42 U.S.C. Section 1395dd).

SECTION 4.140. Section 32.067(b), Human Resources Code, is amended to read as follows:

(b) The *commission* [~~department~~] shall assure that any agency licensed to provide home health services under Chapter 142, Health and Safety Code, and not only a certified agency licensed under that chapter, may provide home health services to individuals enrolled in the Texas Health Steps Comprehensive Care Program.

SECTION 4.141. Section 32.068(c), Human Resources Code, is amended to read as follows:

(c) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules necessary to implement this section. The executive commissioner may by rule adopt limited exceptions to the requirements of this section.

SECTION 4.142. Section 32.069, Human Resources Code, is amended to read as follows:

Sec. 32.069. CHRONIC KIDNEY DISEASE MANAGEMENT INITIATIVE. A provider of disease management programs under Section *32.057* [~~32.059, as added by Chapter 208, Acts of the 78th Legislature, Regular Session, 2003,~~] shall develop a program to provide screening for and diagnosis and treatment of chronic kidney disease and its medical complications under the medical assistance program. The program must use generally recognized clinical practice guidelines and laboratory assessments that identify chronic kidney disease on the basis of impaired kidney function or the presence of kidney damage.

SECTION 4.143. Section 32.070, Human Resources Code, is amended to read as follows:

Sec. 32.070. AUDITS OF PROVIDERS. (a) In this section, "provider" means an individual, firm, partnership, corporation, agency, association, institution, or other entity that is or was approved by the *commission* [~~department~~] to provide medical assistance under contract or provider agreement with the *commission* [~~department~~].

(b) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules governing the audit of providers in the medical assistance program.

(c) The rules must:

(1) provide that the agency conducting the audit must notify the provider, and the provider's corporate headquarters, if the provider is a pharmacy that is incorporated,

of the impending audit not later than the seventh day before the date the field audit portion of the audit begins;

(2) limit the period covered by an audit to three years;

(3) provide that the agency conducting the audit must accommodate the provider's schedule to the greatest extent possible when scheduling the field audit portion of the audit;

(4) require the agency conducting the audit to conduct an entrance interview before beginning the field audit portion of the audit;

(5) provide that each provider must be audited under the same standards and parameters as other providers of the same type;

(6) provide that the audit must be conducted in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States or other appropriate standards;

(7) require the agency conducting the audit to conduct an exit interview at the close of the field audit portion of the audit with the provider to review the agency's initial findings;

(8) provide that, at the exit interview, the agency conducting the audit shall:

(A) allow the provider to:

(i) respond to questions by the agency;

(ii) comment, if the provider desires, on the initial findings of the agency; and

(iii) correct a questioned cost by providing additional supporting documentation that meets the auditing standards required by Subdivision (6) if there is no indication that the error or omission that resulted in the questioned cost demonstrates intent to commit fraud; and

(B) provide to the provider a preliminary audit report and a copy of any document used to support a proposed adjustment to the provider's cost report;

(9) permit the provider to produce documentation to address any exception found during an audit not later than the 10th day after the date the field audit portion of the audit is completed;

(10) provide that the agency conducting the audit shall deliver a draft audit report to the provider not later than the 60th day after the date the field audit portion of the audit is completed;

(11) permit the provider to submit to the agency conducting the audit a written management response to the draft audit report or to appeal the findings in the draft audit report not later than the 30th day after the date the draft audit report is delivered to the provider;

(12) provide that the agency conducting the audit shall deliver the final audit report to the provider not later than the 180th day after the date the field audit portion of the audit is completed or the date on which a final decision is issued on an appeal made under Subdivision (13), whichever is later; and

(13) establish an ad hoc review panel, composed of providers practicing or doing business in this state appointed by the executive commissioner [~~of the Health and Human Services Commission~~], to administer an informal process through which:

(A) a provider may obtain an early review of an audit report or an unfavorable audit finding without the need to obtain legal counsel; and

(B) a recommendation to revise or dismiss an unfavorable audit finding that is found to be unsubstantiated may be made by the review panel to the agency, provided that the recommendation is not binding on the agency.

(d) This section does not apply to a computerized audit conducted using the Medicaid Fraud Detection [~~Audit~~] System or an audit or investigation of fraud and abuse conducted by the Medicaid fraud control unit of the office of the attorney general, the of-

fice of the state auditor, the office of the inspector general, or the Office of Inspector General in the United States Department of Health and Human Services.

SECTION 4.144. Sections 32.071(a), (c), (d), (e), (f), and (g), Human Resources Code, are amended to read as follows:

(a) The *commission* [~~department~~] shall develop and implement a comprehensive medical assistance education campaign for recipients and providers to ensure that care is provided in such a way as to improve patient outcomes and maximize cost-effectiveness. The *commission* [~~department~~] shall ensure that educational information developed under this section is demographically relevant and appropriate for each recipient or provider to whom the information is provided.

(c) The *commission* [~~department~~] shall evaluate whether certain risk groups may disproportionately increase their appropriate use of the health care system as a result of targeted elements of an education campaign. If the *commission* [~~department~~] determines that certain risk groups will respond with more appropriate use of the system, the *commission* [~~department~~] shall develop and implement the appropriate targeted educational elements.

(d) The *commission* [~~department~~] shall develop a system for reviewing recipient prescription drug use and educating providers with respect to that drug use in a manner that emphasizes reducing inappropriate prescription drug use and the possibility of adverse drug interactions.

(e) The *commission* [~~department~~] shall coordinate the medical assistance education campaign with area health education centers, federally qualified health centers, as defined by 42 U.S.C. Section 1396d(l)(2)(B), and other stakeholders who use public funds to educate recipients and providers about the health care system in this state. The *commission* [~~department~~] shall make every effort to maximize state funds by working through these partners to maximize receipt of additional federal funding for administrative and other costs.

(f) The *commission* [~~department~~] shall coordinate with other state and local agencies to ensure that community-based health workers, health educators, state eligibility determination employees who work in hospitals and other provider locations, and promoters are used in the medical assistance education campaign, as appropriate.

(g) The *commission* [~~department~~] shall ensure that all state agencies that work with recipients, all administrative persons who provide eligibility determination and enrollment services, and all service providers use the same curriculum for recipient and provider education, as appropriate.

SECTION 4.145. Section 32.072(b), Human Resources Code, is amended to read as follows:

(b) The *commission* [~~department~~] may require an ophthalmologist or therapeutic optometrist selected as provided by this section by a recipient of medical assistance who is otherwise required to have a primary care physician or other gatekeeper or health care coordinator to forward to the recipient's physician, gatekeeper, or health care coordinator information concerning the eye health care services provided to the recipient.

SECTION 4.146. Sections 32.073(b) and (c), Human Resources Code, are amended to read as follows:

(b) The *commission* [~~Health and Human Services Commission~~] shall ensure that any health information technology used by the commission or any entity acting on behalf of the commission in the medical assistance program conforms to standards required under federal law.

(c) Not later than the second anniversary of the date national standards for electronic prior authorization of benefits are adopted, the *commission* [~~Health and Human Services Commission~~] shall require a health benefit plan issuer participating in the medical assistance program or the agent of the health benefit plan issuer that manages or administers prescription drug benefits to exchange prior authorization requests electronically with a prescribing provider participating in the medical assistance program who has electronic prescribing capability and who initiates a request electronically.

SECTION 4.147. Section 32.074(b), Human Resources Code, is amended to read as follows:

(b) The *commission* [~~department~~] shall ensure that each Medicaid recipient enrolled in a home and community-based services waiver program that includes a personal emergency response system as a service has access to a personal emergency response system, if necessary, without regard to the recipient's access to a landline telephone.

SECTION 4.148. Section 32.075(c), Human Resources Code, is amended to read as follows:

(c) The *commission* [~~department~~] shall provide employment assistance and supported employment to participants in the waiver programs identified in Subsection (b).

SECTION 4.149. Section 32.201(1), Human Resources Code, is amended to read as follows:

(1) "Electronic health record" means electronically originated and maintained health and claims information regarding the health status of an individual that may be derived from multiple sources and includes the following core functionalities:

(A) a patient health and claims information or data entry function to aid with medical diagnosis, nursing assessment, medication lists, allergy recognition, demographics, clinical narratives, and test results;

(B) a results management function that may include computerized laboratory test results, diagnostic imaging reports, interventional radiology reports, and automated displays of past and present medical or laboratory test results;

(C) a computerized physician order entry of medication, care orders, and ancillary services;

(D) clinical decision support that may include electronic reminders and prompts to improve prevention, diagnosis, and management; and

(E) electronic communication and connectivity that allows online communication:

(i) among physicians and health care providers; and

(ii) among the *commission* [~~Health and Human Services Commission~~], the operating agencies, and participating providers.

SECTION 4.150. Sections 32.202(a) and (b), Human Resources Code, are amended to read as follows:

(a) To the extent allowed by federal law, the executive commissioner may adopt rules allowing the *commission* [~~Health and Human Services Commission~~] to permit, facilitate, and implement the use of health information technology for the medical assistance program to allow for electronic communication among the commission, the operating agencies, and participating providers for:

(1) eligibility, enrollment, verification procedures, and prior authorization for health care services or procedures covered by the medical assistance program, as determined by the executive commissioner, including diagnostic imaging;

(2) the update of practice information by participating providers;

(3) the exchange of recipient health care information, including electronic prescribing and electronic health records;

(4) any document or information requested or required under the medical assistance program by the *commission* [~~Health and Human Services Commission~~], the operating agencies, or participating providers; and

(5) the enhancement of clinical and drug information available through the vendor drug program to ensure a comprehensive electronic health record for recipients.

(b) If the executive commissioner determines that a need exists for the use of health information technology in the medical assistance program and that the technology is cost-effective, the *commission* [~~Health and Human Services Commission~~] may, for the purposes prescribed by Subsection (a):

(1) acquire and implement the technology; or

(2) evaluate the feasibility of developing and, if feasible, develop[,] the technology through the use or expansion of other systems or technologies the commission uses for other purposes, including[:

[~~(A) the technologies used in the pilot program implemented under Section 531.1063, Government Code; and~~

[~~(B)~~)] the health passport developed under Section 266.006, Family Code.

SECTION 4.151. Section 32.252, Human Resources Code, is amended to read as follows:

Sec. 32.252. PARTNERSHIP FOR LONG–TERM CARE PROGRAM. The partnership for long-term care program is administered as part of the medical assistance program by the *commission* [~~department~~] with the assistance of the Texas Department of Insurance. The program must be consistent with provisions governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (Pub. L. No. 109–171).

SECTION 4.152. Sections 32.253(b) and (c), Human Resources Code, are amended to read as follows:

(b) The *commission* [~~department~~] may not consider the resources of an individual who has used all or part of the individual's benefits under an approved plan to the extent those resources are the subject of a dollar-for-dollar asset disregard in determining:

(1) eligibility for medical assistance under the medical assistance program;

(2) the amount of medical assistance provided; or

(3) any subsequent recovery by this state from the individual's estate for medical assistance provided to the individual.

(c) The *commission* [~~department~~] may not provide to an individual eligible for medical assistance under this section those medical assistance services covered under the medical assistance program that are also covered by the individual's benefits under the approved plan until the individual has fully exhausted the individual's benefits under the plan.

SECTION 4.153. Sections 32.254 and 32.255, Human Resources Code, are amended to read as follows:

Sec. 32.254. RECIPROCAL AGREEMENTS. The *commission* [~~department~~] may enter into reciprocal agreements with other states to extend asset protection to a resident of this state who purchased a long-term care benefit plan in another state that has a substantially similar asset disregard program.

Sec. 32.255. TRAINING; INFORMATION AND TECHNICAL ASSISTANCE. The *commission* [~~Health and Human Services Commission~~] shall provide information and technical assistance to the Texas Department of Insurance regarding that department's role in ensuring that each individual who sells a long-term care benefit plan under the partnership for long-term care program receives training and demonstrates evidence of an understanding of these plans as required by Section 1651.105, Insurance Code. The training must satisfy the training requirements imposed under the provisions governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (Pub. L. No. 109–171).

SECTION 4.154. Sections 33.0005 and 33.0006, Human Resources Code, are amended to read as follows:

Sec. 33.0005. DEFINITIONS. In this chapter:

(1) *"Commissioner" means the commissioner of agriculture.*

(1–a) "Department" means *the Department of Agriculture*[:

[~~(A) with respect to the food stamp program, the Health and Human Services Commission; and~~

[~~(B) with respect to any other nutritional assistance program or special nutrition program listed in Subdivision (3), the Health and Human Services Commission or the agency of this state that operates the program, as applicable~~].

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission[~~, or the chief administrative officer of an agency of this state operating a nutritional assistance program, as applicable~~].

(3) *"Supplemental nutrition assistance program" and "SNAP" mean the program operated pursuant to 7 U.S.C. Section 2011 et seq.* [~~"Nutritional assistance program" or "special nutrition program" includes the following programs authorized by federal law that provide nutritional assistance to needy individuals in this state:~~

[~~(A) the food stamp program;~~

[~~(B) the child and adult care food program;~~

[~~(C) the summer food service program;~~

[~~(D) the food distribution program;~~

[~~(E) the emergency food assistance program; and~~

[~~(F) the commodity supplemental food program.~~]

Sec. 33.0006. OPERATION OF *SNAP* [~~FOOD STAMP PROGRAM~~]. The *commission* [~~Health and Human Services Commission~~] operates the *supplemental nutrition assistance* [~~food stamp~~] program.

SECTION 4.155. Section 33.002, Human Resources Code, is amended to read as follows:

Sec. 33.002. DISTRIBUTION OF COMMODITIES AND *SNAP BENEFITS* [~~FOOD STAMPS~~]. (a) The department is responsible for the distribution of commodities and *the commission is responsible for the distribution of supplemental nutrition assistance program benefits* [~~food stamps~~] allocated *respectively* to the department *and the commission* by the federal government.

(b) The department *and commission* may enter into agreements with federal agencies that are required as a prerequisite to the allocation of the commodities or *supplemental nutrition assistance program benefits* [~~food stamps~~]. The department *and commission* may enter into agreements with eleemosynary institutions, schools, and other eligible agencies and recipients of the commodities and *supplemental nutrition assistance program benefits* [~~food stamps~~]. The department [~~administering the distribution of federal surplus commodities and other resources~~] may cooperate with a municipality or county as necessary to properly administer *the* [~~that~~] distribution *of federal surplus commodities and other resources for which the department is responsible.*

(c) The department *and the executive commissioner, as applicable,* shall establish policies and rules that will ensure the widest and most efficient distribution of the commodities and *supplemental nutrition assistance program benefits* [~~food stamps~~] to those eligible to receive them.

(d) The *commission* [~~department~~] shall continually monitor the expedited issuance of *supplemental nutrition assistance program* [~~food stamp~~] benefits to ensure that each region in the state complies with federal regulations and that those households eligible for expedited issuance are identified, processed, and certified within the timeframes prescribed within the federal regulations.

(e) The *commission* [~~department~~] shall screen all applicants for expedited issuance *of supplemental nutrition assistance program benefits* on a priority basis within one working day. Applicants who meet the federal criteria for expedited issuance and have an immediate need for food assistance shall receive *those benefits* [~~either a manual Authorization-to-Purchase card or the immediate issuance of food stamp coupons~~] within one working day.

(f) The *commission* [~~department~~] shall conspicuously post in each local *supplemental nutrition assistance program benefits* [~~food stamp~~] office a notice of the availability of and procedure for applying for expedited issuance.

(g) The *commission* [~~department~~] may, within federal limits, modify the one-day screening and service delivery requirements prescribed by Subsection (e) if the *commission* [~~department~~] determines that the modification is necessary to reduce fraud in the *supplemental nutrition assistance* [~~food stamp~~] program.

SECTION 4.156. Sections 33.0021(a) and (c), Human Resources Code, are amended to read as follows:

(a) The *commission* [~~department~~] shall develop general informational materials that contain eligibility guidelines for *supplemental nutrition assistance program* benefits under this chapter and that clearly and simply explain the process for applying for benefits, as well as indicate the availability of expedited *benefits* [~~food stamps~~], the existence of toll-free telephone hotlines, and the existence of a procedure in each region to handle complaints. These informational materials shall be nonpromotional in nature.

(c) The *commission* [~~department~~] shall distribute the materials to community action agencies, legal services offices, and emergency food programs and other programs likely to have contact with potential applicants.

SECTION 4.157. Section 33.0023, Human Resources Code, is amended to read as follows:

Sec. 33.0023. *SNAP* [~~FOOD STAMP~~] INFORMATION MATCHING SYSTEM. (a) To detect and prevent fraud in the *supplemental nutrition assistance* [~~food stamp~~] program, the *commission* [~~department~~], through the use of a computerized matching system, shall compare at least semiannually *commission* [~~department~~] information relating to *supplemental nutrition assistance program benefits* [~~food stamp~~] transactions and redemptions by *benefits* recipients [~~of food stamps~~] and retailers with information obtained from the comptroller and other appropriate state agencies relating to those recipients and retailers.

(b) The *commission* [~~department~~], the comptroller, and the appropriate agencies shall take all necessary measures to protect the confidentiality of information provided under this section, in compliance with all existing state and federal privacy guidelines.

(c) In this section, "retailer" means a business approved for participation in the *supplemental nutrition assistance* [~~food stamp~~] program.

SECTION 4.158. Section 33.003(a), Human Resources Code, is amended to read as follows:

(a) The department may establish distribution districts and employ distributing agents or may make other arrangements necessary to provide for the efficient distribution of commodities [~~and food stamps~~].

SECTION 4.159. Section 33.004, Human Resources Code, is amended to read as follows:

Sec. 33.004. *COMMODITY DISTRIBUTION PROGRAM* ADVISORY BOARDS. (a) The department may establish state or district-level advisory boards to facilitate the operations of the commodity distribution *program* [~~or food stamp programs~~].

(b) The advisory boards shall be of the size, membership, and experience that the [~~executive~~] commissioner determines to be essential for the accomplishment of the purposes of this chapter and not in conflict with or duplicative of other laws on this subject.

SECTION 4.160. Section 33.006, Human Resources Code, is amended to read as follows:

Sec. 33.006. HANDLING CHARGES. (a) The department may assess reasonable handling charges against the recipients of commodities [~~or food stamps~~] to cover the cost of distribution. The total operation must be conducted on a nonprofit basis.

(b) The department shall make the assessments at the times and in the amounts that it considers necessary for the proper administration of the *commodity distribution program* [~~programs~~]. However, the assessments must be uniform in each distribution district and may not exceed $1 per recipient per year.

SECTION 4.161. Section 33.008, Human Resources Code, is amended to read as

follows:

Sec. 33.008. SALE OF USED COMMODITY CONTAINERS. The department may sell used commodity containers. Proceeds from the sales in each distribution district shall be deposited in the *general revenue* [~~commodity distribution~~] fund [~~and used for the commodity distribution program~~].

SECTION 4.162. Section 33.011, Human Resources Code, is amended to read as follows:

Sec. 33.011. PROHIBITED ACTIVITIES; PENALTIES. (a) A person commits an offense if the person knowingly uses, alters, or transfers *a supplemental nutrition assistance program electronic* [~~food stamp~~] benefit *transfer card* [~~permits~~] in any manner not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the *supplemental nutrition assistance program electronic* [~~food stamp~~] benefit *transfer card* [~~permits~~] is less than $200 and a felony of the third degree if the value [~~of the food stamp benefit permits~~] is $200 or more.

(b) A person commits an offense if the person knowingly possesses *a supplemental nutrition assistance program electronic* [~~food stamp~~] benefit *transfer card* [~~permits~~] when not authorized by law to possess *the card* [~~them~~], knowingly redeems *supplemental nutrition assistance program benefits* [~~food stamp benefit permits~~] when not authorized by law to redeem them, or knowingly redeems *supplemental nutrition assistance program benefits* [~~food stamp benefit permits~~] for purposes not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the *supplemental nutrition assistance program electronic benefit transfer card possessed, or the program benefits redeemed,* [~~food stamp benefit permits~~] is less than $200 and a felony of the third degree if the value of the *supplemental nutrition assistance program electronic benefit transfer card possessed, or the program benefits redeemed,* [~~food stamp benefit permits~~] is $200 or more.

[~~(c) A person commits an offense if the person knowingly possesses blank authorizations to participate in the food stamp program when not authorized by law to possess them. An offense under this subsection is a felony of the third degree.~~]

(d) When cash, exchange value, or *supplemental nutrition assistance program electronic* [~~food stamp~~] benefit *transfer cards* [~~permits~~] of various values are obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the values aggregated in determining the grade of the offense.

(e) The *commission* [~~department~~] may contract with county commissioners courts to provide funds to pay for professional and support services necessary for the enforcement of any criminal offense that involves illegally obtaining, possessing, or misusing *supplemental nutrition assistance program benefits* [~~food stamps~~].

(f) For the purposes of Subsections (a) and (b), the value of *a supplemental nutrition assistance program electronic* [~~food stamp~~] benefit *transfer card* [~~permits~~] is the cash or exchange value obtained in violation of this section.

(g) In this section, "*supplemental nutrition assistance program benefits* [~~food stamp benefit permits~~]" includes[~~:~~

[~~(1) food stamp coupons;~~

[~~(2)~~] electronic benefit transfer (EBT) cards[~~; and~~

[~~(3) authorizations to participate in the food stamp program~~].

SECTION 4.163. Sections 33.012, 33.013, 33.015, 33.022, 33.023, 33.0231, and 33.025, Human Resources Code, are amended to read as follows:

Sec. 33.012. CHEMICAL DEPENDENCY TREATMENT PROGRAM AS REPRESENTATIVE. The *commission* [~~department~~] shall provide an individual's *supplemental nutrition assistance program* [~~food stamp~~] allotment to the residential chemical dependency treatment program in which the person resides to the extent allowed under Section 8(f), Food Stamp Act of 1977 (7 U.S.C. Section 2017(e)), if the individual

designates the program as the individual's authorized representative.

Sec. 33.013. INFORMATION AND REFERRAL SERVICES. (a) Each local *supplemental nutrition assistance program benefits* [~~food stamp~~] office shall compile and maintain a current list of emergency food providers in the area served by the local *supplemental nutrition assistance program benefits* [~~food stamp~~] office and refer individuals who need food to local programs that may be able to provide assistance.

(b) The *commission* [~~department~~] shall establish regional or statewide toll-free telephone hotlines to provide emergency food information and to refer needy individuals to local programs that may be able to provide assistance. The *commission* [~~department~~] shall publish the telephone number for referrals in the emergency telephone numbers section of local telephone books. The *commission* [~~department~~] shall display this telephone number in all of its offices.

(c) Where emergency food programs do not exist, the *commission* [~~department office~~] shall assist community groups in establishing emergency food assistance programs.

(d) The *commission* [~~department~~] may establish other local, regional, or statewide programs to provide emergency food information and referral services where needed and where none presently exist.

Sec. 33.015. INITIAL ESTABLISHMENT AND RECERTIFICATION OF ELIGIBILITY FOR CERTAIN PERSONS. (a) In administering the *supplemental nutrition assistance* [~~food stamp~~] program, the *commission* [~~department~~] shall, except as provided by Subsection (c), allow a person to comply with initial eligibility requirements, including any initial interview, and with subsequent periodic eligibility recertification requirements by telephone instead of through a personal appearance at *commission* [~~department~~] offices if:

(1) the person and each member of the person's household:

(A) have no earned income; and

(B) are elderly or *persons with disabilities* [~~disabled~~]; or

(2) the person is subject to a hardship, as determined by *commission rule* [~~the department~~].

(b) For purposes of *rules under* Subsection (a)(2), a hardship includes a situation in which a person is prevented from personally appearing at *commission* [~~department~~] offices because the person is:

(1) subject to a work or training schedule;

(2) subject to transportation difficulties;

(3) subject to other difficulties arising from the person's residency in a rural area;

(4) subject to prolonged severe weather;

(5) ill; or

(6) needed to care for a member of the person's household.

(c) The *commission* [~~department~~] may require a person described by Subsection (a) to personally appear at *commission* [~~department~~] offices to establish initial eligibility or to comply with periodic eligibility recertification requirements if the *commission* [~~department~~] considers a personal appearance necessary to:

(1) protect the integrity of the *supplemental nutrition assistance* [~~food stamp~~] program; or

(2) prevent an adverse determination regarding the person's eligibility that would be less likely to occur if the person made a personal appearance.

(d) A person described by Subsection (a) may elect to personally appear at *commission* [~~department~~] offices to establish initial eligibility or to comply with periodic eligibility recertification requirements.

(e) The *commission* [~~department~~] shall require a person exempted under this section from making a personal appearance at *commission* [~~department~~] offices to provide

verification of the person's entitlement to the exemption on initial eligibility certification and on each subsequent periodic eligibility recertification. If the person does not provide verification and the *commission* [~~department~~] considers the verification necessary to protect the integrity of the *supplemental nutrition assistance* [~~food stamp~~] program, the *commission* [~~department~~] shall initiate a fraud referral to the *commission's* [~~department's~~] office of inspector general.

Sec. 33.022. APPLICATION ASSISTANCE. (a) On request of an applicant *for supplemental nutrition assistance program benefits*, the *commission* [~~department~~] shall assist the applicant in filling out forms and completing the application process.

(b) The *commission* [~~department~~] shall inform each applicant of the availability of assistance.

Sec. 33.023. INFORMATION VERIFICATION. (a) The *commission* [~~department~~] shall develop and implement for expedited issuance a uniform procedure for verifying information required of an applicant *for supplemental nutrition assistance program benefits*.

(b) In developing the uniform procedure, the *commission* [~~department~~] shall attempt to minimize the cost and complexity of the procedure to the applicant.

(c) The *commission* [~~department~~] shall not require *an applicant* [~~applicants~~] for expedited service to verify more eligibility items than the minimum necessary to conform to the federal regulations and shall assist the applicant in obtaining materials needed to verify an application. The *commission* [~~department~~] shall not deny or delay determination of eligibility due to lack of verification of items that may be postponed if they cannot be verified within the timeframes prescribed by the federal regulations.

(d) The *commission* [~~department~~] shall post a notice in each of its offices indicating to whom an applicant *for* or client *of the supplemental nutrition assistance program* can talk to resolve problems or complaints. This notice should indicate persons available to handle problems in local, regional, and state offices. Notification of the existence of each office and complaint procedures shall be posted in each *supplemental nutrition assistance program benefits* [~~food stamp~~] office and in materials made available to applicants regarding the application process.

Sec. 33.0231. VERIFICATION OF IDENTITY AND PREVENTION OF DUPLICATE PARTICIPATION IN SNAP. The *commission* [~~department~~] shall use appropriate technology to:

(1) confirm the identity of applicants for benefits under the supplemental nutrition assistance program; and

(2) prevent duplicate participation in the program by a person.

Sec. 33.025. NUTRITION EDUCATION AND OUTREACH FOR THOSE ELIGIBLE FOR *SNAP BENEFITS* [~~FOOD STAMPS~~]. (a) The *commission* [~~department~~] shall develop and implement a plan of operation to provide nutrition education and outreach to persons eligible for *supplemental nutrition assistance program benefits* [~~food stamps~~].

(b) The plan of operation for education and outreach shall:

(1) ensure that low-income consumers are provided with informational materials that include but are not limited to information on:

(A) food budgeting for low-income consumers;

(B) purchasing and preparing low-cost nutritional meals;

(C) basic nutrition and healthy foods;

(D) the availability of *supplemental nutrition assistance program benefits* [~~food stamps~~];

(E) the eligibility requirements for *supplemental nutrition assistance program benefits* [~~food stamps~~]; and

(F) the application procedures for receiving *supplemental nutrition assistance program benefits* [~~food stamps~~];

(2) identify a target population for the informational activities, which may include:

(A) recipients of the *Special* Supplemental *Nutrition* [~~Food~~] Program for Women, Infants and Children;

(B) families which have children who are eligible for the free or reduced-priced meals programs;

(C) recipients of commodity surplus foods;

(D) senior citizens attending nutrition sites and participating in nutritional activities;

(E) clients of emergency food pantries;

(F) farm workers or migrants; and

(G) others who may benefit from the information including but not limited to senior citizens, persons with disabilities, and working poor families;

(3) identify geographical areas, if any, which specifically will be targeted; and

(4) ensure that all informational activities are multilingual and available in accessible alternative formats.

(c) The *commission* [~~department~~] shall submit the plan of operation to the Food and Nutrition Service of the United States Department of Agriculture for approval, making the *commission* [~~department~~] eligible for reimbursement for 50 percent of the cost of the informational activities.

(d) The *commission* [~~department~~] shall cooperate with other state agencies that currently operate nutrition education programs.

(e) The *commission* [~~department~~] shall enlist the assistance of pro bono public relations firms where available.

SECTION 4.164. Section 33.026(c), Human Resources Code, is amended to read as follows:

(c) The *department may, with respect to* [~~department's advisory committee on~~] the federal Child and Adult Care Food Program [~~may~~]:

(1) conduct public hearings in accordance with department procedures;

(2) refer issues relating to the program to the *commissioner* [~~board~~] for discussion; and

(3) recommend modifications to the department's training programs for sponsoring organizations and other persons participating in the program.

SECTION 4.165. Section 33.0271(h), Human Resources Code, is amended to read as follows:

(h) The *department* [~~executive commissioner~~] by rule may establish procedures that would allow an entity that had the entity's application to participate in the Child and Adult Care Food Program denied or authority to participate in the program revoked under Subsection (g) to appeal the department's determination under that subsection.

SECTION 4.166. Section 33.028, Human Resources Code, is amended to read as follows:

Sec. 33.028. GRANT PROGRAMS FOR NUTRITION EDUCATION. (a) The *department* [~~Department of Agriculture~~] shall develop a program under which the department awards grants to:

(1) participants in the Child and Adult Care Food Program, *the* Head Start program, or other early childhood education programs to operate nutrition education programs for children who are at least three years of age but younger than five years of age; and

(2) community and faith-based initiatives that provide recreational, social, volunteer, leadership, mentoring, or developmental programs to incorporate nutrition education into programs provided for children younger than 19 years of age.

(b) The *department* [~~Department of Agriculture~~] may solicit and accept gifts, grants, and donations from any public or private source for the purposes of this section.

(c) The *department* [~~Department of Agriculture~~] may adopt rules as necessary to administer the grant programs established under this section.

SECTION 4.167. Sections 34.002(a) and (d), Human Resources Code, are amended to read as follows:

(a) The Health and Human Services Commission[~~, the department,~~] and the Texas Workforce Commission, with the participation of local workforce development boards, shall jointly develop and implement a state program of temporary assistance and related support services that is distinct from the financial assistance program authorized by Chapter 31.

(d) If federal law is enacted that imposes work participation rate requirements on two-parent families for purposes of the financial assistance program under Chapter 31 that are substantively identical to those that federal law imposes on one-parent families for purposes of that program, the *Health and Human Services Commission* [~~department~~] may, on the effective date of the federal law relating to the work participation rate requirements for two-parent families, provide for establishment of that recipient's eligibility for financial assistance under Chapter 31 instead of under this chapter in a manner that avoids disruption of benefits for which the recipient is eligible.

SECTION 4.168. Sections 34.003(a) and (c), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~Health and Human Services Commission, the department,~~] and the Texas Workforce Commission shall adopt all rules necessary for implementation of the state program, including rules regarding eligibility, work requirements, work exemptions, time limits, and related support services.

(c) The Health and Human Services Commission[~~, the department,~~] and the Texas Workforce Commission shall form an interagency work group to develop the rules required under this section. The interagency work group shall provide for participation in development of the rules by representatives of local workforce development boards.

SECTION 4.169. Section 34.004, Human Resources Code, is amended to read as follows:

Sec. 34.004. PROCEDURES APPLICABLE TO PERSONS RESIDING IN MINIMUM SERVICE COUNTIES. The Health and Human Services Commission[~~, the department,~~] and the Texas Workforce Commission shall develop and implement procedures to:

(1) determine the date on which a person's eligibility for temporary assistance and related support services based on residency in a minimum service county, as defined by the Texas Workforce Commission, will cease as a result of the county's reclassification; and

(2) provide for establishment of that person's eligibility for financial assistance and related support services under Chapter 31 in a manner that avoids disruption of benefits for which the person is eligible.

SECTION 4.170. Section 34.006, Human Resources Code, is amended to read as follows:

Sec. 34.006. STUDY. The Texas Workforce Commission, in collaboration with local workforce development boards and the appropriate standing committees of the senate and house of representatives, shall:

(1) study methods to improve the delivery of workforce services to persons residing in minimum service counties, as defined by the *Texas Workforce Commission* [~~commission~~]; and

(2) develop recommendations to improve the delivery of services described by Subdivision (1).

SECTION 4.171. Section 35.001(3), Human Resources Code, is amended to read as follows:

(3) "Department" means the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services.

SECTION 4.172. Section 35.002, Human Resources Code, is amended to read as follows:

Sec. 35.002. ADOPTION OF RULES AND IMPLEMENTATION OF PROGRAM. The *executive commissioner* [~~department~~] shall adopt rules to implement and administer this chapter, including:

(1) procedures and guidelines for determining eligibility standards relating to financial qualifications and the need for services and for determining eligibility criteria for selecting clients to receive assistance;

(2) standards and procedures for approving qualified programs and support services;

(3) procedures for conducting a periodic review of clients;

(4) procedures and guidelines for determining when assistance duplicates other support programs or results in excessive support to a client;

(5) reasonable payment rates for qualified programs and support services under this chapter; and

(6) a copayment system in accordance with Section 35.007 [~~of this code~~].

SECTION 4.173. Sections 35.003(a), (b), (c), and (f), Human Resources Code, are amended to read as follows:

(a) The department's rules must provide that an applicant for assistance is eligible to receive assistance if the applicant resides in this state and meets the department's eligibility criteria for income and need [~~and is not eligible for services under Subchapter A, Chapter 535, Health and Safety Code~~]. A family or a person with a disability living independently may apply for assistance.

(b) The department shall determine *in accordance with department rules* eligibility for support services from the results of current evaluations, program plans, and medical reports. Those documents shall be provided to the department on request. The department, if it considers necessary, shall provide any additional evaluations.

(c) The department shall determine the applicant's needs and the support services for which the applicant is eligible *in accordance with department rules and* after consulting with the applicant.

(f) If requested by the applicant, the *commission's appeals division* [~~department~~] shall hold a hearing on the denial of an application.

SECTION 4.174. Section 35.004(b), Human Resources Code, is amended to read as follows:

(b) The *executive commissioner* [~~department~~] by rule may add services and programs for which the department may provide assistance.

SECTION 4.175. Sections 35.005(a) and (b), Human Resources Code, are amended to read as follows:

(a) The department may grant assistance of not more than $3,600 a year to a client and make periodic distributions or a lump-sum distribution according to the client's needs. The commissioner *of aging and disability services* or the commissioner's designee may grant additional amounts on consideration of an individual client's needs.

(b) In addition to the assistance authorized by Subsection (a) [~~of this section~~], the department may award to a client a *one-time* [~~onetime~~] grant of assistance of not more than $3,600 for architectural renovation or other capital expenditure to improve or facilitate the care, treatment, therapy, general living conditions, or access of a person with a disability. The commissioner *of aging and disability services* or the commissioner's designee may grant additional amounts on consideration of an individual client's needs.

SECTION 4.176. Section 35.007, Human Resources Code, is amended to read as follows:

Sec. 35.007. COPAYMENT SYSTEM. *In accordance with department rules, the* [~~The~~]

department shall establish a copayment system with each client using a scale for payments determined according to the client's need for financial assistance to acquire the necessary support services and the client's ability to pay for those services.

SECTION 4.177. Section 35.008(a), Human Resources Code, is amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule shall establish a reasonable charge for each authorized support service.

SECTION 4.178. Section 35.009, Human Resources Code, is amended to read as follows:

Sec. 35.009. CLIENT RESPONSIBILITY FOR PAYMENT. Each client shall pay:

(1) the client's copayment;

(2) the amount of charges in excess of the amount determined by the *executive commissioner* [~~department~~] to be reasonable; and

(3) the amount of charges incurred in excess of the maximum amount of assistance authorized by this chapter to be provided by the department.

SECTION 4.179. Section 36.001(3), Human Resources Code, is amended to read as follows:

(3) "Fiscal agent" means:

(A) a person who, through a contractual relationship with *a* [~~the Texas Department of Human Services, the Texas Department of Health, or another~~] state agency, receives, processes, and pays a claim under the Medicaid program; or

(B) the designated agent of a person described by Paragraph (A).

SECTION 4.180. Section 36.002, Human Resources Code, is amended to read as follows:

Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful act if the person:

(1) knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(2) knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(3) knowingly applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program, including certification or recertification as:

(i) a hospital;

(ii) a nursing facility or skilled nursing facility;

(iii) a hospice;

(iv) an *ICF–IID* [~~intermediate care facility for the mentally retarded~~];

(v) an assisted living facility; or

(vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;

(5) except as authorized under the Medicaid program, knowingly pays, charges,

solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under the Medicaid program;

(6) knowingly presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly makes or causes to be made a claim under the Medicaid program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under the Medicaid program and knowingly fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;

(9) conspires to commit a violation of Subdivision (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (12), or (13);

(10) is a managed care organization that contracts with the *commission* [~~Health and Human Services Commission~~] or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;

(B) fails to provide to the commission or appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision; or

(C) engages in a fraudulent activity in connection with the enrollment of an individual eligible under the Medicaid program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the Medicaid program;

(11) knowingly obstructs an investigation by the attorney general of an alleged unlawful act under this section;

(12) knowingly makes, uses, or causes the making or use of a false record or statement material to an obligation to pay or transmit money or property to this state under the Medicaid program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to this state under the Medicaid program; or

(13) knowingly engages in conduct that constitutes a violation under Section 32.039(b).

SECTION 4.181. Section 36.003(a), Human Resources Code, is amended to read as follows:

(a) A state agency, including the *commission* [~~Health and Human Services Commission~~], the [~~Texas~~] Department of *State Health* [~~Human~~] Services, the [~~Texas~~] Department of *Aging and Disability Services* [~~Health, the Texas Department of Mental Health and Mental Retardation~~], *and* [~~or~~] the Department of *Family and* Protective [~~and Regulatory~~] Services, shall provide the attorney general access to all documentary materials of persons and Medicaid recipients under the Medicaid program to which that agency has

access. Documentary material provided under this subsection is provided to permit investigation of an alleged unlawful act or for use or potential use in an administrative or judicial proceeding.

SECTION 4.182. Sections 36.005(a), (b), and (b–2), Human Resources Code, are amended to read as follows:

(a) A health and human services agency, as defined by Section 531.001, Government Code:

(1) shall suspend or revoke:

(A) a provider agreement between the agency and a person, other than a person who operates a nursing facility or an *ICF–IID* [~~ICF–MR facility~~], found liable under Section 36.052; and

(B) a permit, license, or certification granted by the agency to a person, other than a person who operates a nursing facility or an *ICF–IID* [~~ICF–MR facility~~], found liable under Section 36.052; and

(2) may suspend or revoke:

(A) a provider agreement between the agency and a person who operates a nursing facility or an *ICF–IID* [~~ICF–MR facility~~] and who is found liable under Section 36.052; or

(B) a permit, license, or certification granted by the agency to a person who operates a nursing facility or an *ICF–IID* [~~ICF–MR facility~~] and who is found liable under Section 36.052.

(b) A provider found liable under Section 36.052 for an unlawful act may not, for a period of 10 years, provide or arrange to provide health care services under the Medicaid program or supply or sell, directly or indirectly, a product to or under the Medicaid program. The executive commissioner [~~of the Health and Human Services Commission~~] may by rule:

(1) provide for a period of ineligibility longer than 10 years; or

(2) grant a provider a full or partial exemption from the period of ineligibility required by this subsection if the executive commissioner finds that enforcement of the full period of ineligibility is harmful to the Medicaid program or a beneficiary of the program.

(b–2) Subsections (b) and (b–1) do not apply to a provider who operates a nursing facility or an *ICF–IID* [~~ICF–MR facility~~].

SECTION 4.183. Section 36.052(a), Human Resources Code, is amended to read as follows:

(a) Except as provided by Subsection (c), a person who commits an unlawful act is liable to the state for:

(1) the amount of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act, including any payment made to a third party;

(2) interest on the amount of the payment or the value of the benefit described by Subdivision (1) at the prejudgment interest rate in effect on the day the payment or benefit was received or paid, for the period from the date the benefit was received or paid to the date that the state recovers the amount of the payment or value of the benefit;

(3) a civil penalty of:

(A) not less than $5,500 or the minimum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds $5,500, and not more than $15,000 or the maximum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds $15,000, for each unlawful act committed by the person that results in injury to an elderly person, as defined by Section 48.002(a)(1), a [~~disabled~~] person *with a disability*, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age; or

(B) not less than $5,500 or the minimum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds $5,500, and not more than $11,000 or the maximum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds $11,000, for each unlawful act committed by the person that does not result in injury to a person described by Paragraph (A); and

(4) two times the amount of the payment or the value of the benefit described by Subdivision (1).

SECTION 4.184. Section 36.110(a–1), Human Resources Code, is amended to read as follows:

(a–1) If the state does not proceed with an action under this subchapter, the person bringing the action is entitled, except as provided by Subsection (b), to receive at least 25 percent but not more than 30 percent of the proceeds of the action. The entitlement of a person under this subsection is not affected by any subsequent intervention in the action by the state in accordance with Section *36.104(b–1)* [~~36.104(b)~~].

SECTION 4.185. Sections 40.002(a), (b), and (c), Human Resources Code, are amended to read as follows:

(a) The Department of Family and Protective Services is composed of the council, the commissioner, an administrative staff, and other [~~officers and~~] employees necessary to efficiently carry out the purposes of this chapter.

(b) Notwithstanding any other law, the department shall:

(1) provide protective services for children and elderly *persons* and [~~disabled~~] persons *with disabilities*, including investigations of alleged abuse, neglect, or exploitation in facilities of the *Department of State Health Services and the* [~~Texas~~] Department of *Aging* [~~Mental Health~~] and *Disability Services* [~~Mental Retardation~~] or *the* [~~its~~] successor agency *for either of those agencies*;

(2) provide family support and family preservation services that respect the fundamental right of parents to control the education and upbringing of their children;

(3) license, register, and enforce regulations applicable to child-care facilities, child-care administrators, and child-placing agency administrators; and

(4) implement and manage programs intended to provide early intervention or prevent at-risk behaviors that lead to child abuse, delinquency, running away, truancy, and dropping out of school.

(c) The department is the state agency designated to cooperate with the federal government in the administration of programs under:

(1) Parts B and E, Title IV, federal Social Security Act (42 U.S.C. Sections 620 et seq. and 670 et seq.); [~~and~~]

(2) *the Child Abuse Prevention and Treatment Act (42 U.S.C. Section 5101 et seq.); and*

(3) other federal law for which the department has administrative responsibility.

SECTION 4.186. Sections 40.0041(a), (d), and (f), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner by rule* [~~department~~] shall develop and implement a uniform process for receiving and resolving complaints against the department throughout the state. The process shall include:

(1) statewide procedures through which the public, consumers, and service recipients are informed:

(A) of the right to make a complaint against the department, including the mailing addresses and telephone numbers of appropriate department personnel responsible for receiving complaints and providing related assistance; and

(B) of the department's procedures for resolving a complaint, including the right to appeal a decision made at the local level;

(2) development and statewide distribution of a form or telephone system that may be used to make a complaint;

(3) a requirement that the department provide information by mail or telephone regarding the department's procedures for investigating and resolving a complaint to each person who makes a complaint; and

(4) a requirement that the department provide status information at least quarterly to a person with a pending complaint against the department, unless the information would jeopardize an undercover investigation.

(d) The *executive commissioner* [~~executive director~~] shall develop a consistent, statewide process for addressing an appeal by a person dissatisfied with the resolution of a complaint at the regional level. The process shall include an opportunity for appeal of a complaint without the participation of the department's ombudsman office.

(f) The department shall periodically prepare and deliver reports to the *executive commissioner* [~~board~~] and the *commissioner* [~~executive director~~] regarding the number, type, and resolution of complaints made in the state against the department.

SECTION 4.187. Sections 40.005(a), (b), and (c), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] shall establish and *the department shall* enforce rules governing the custody, use, and preservation of the department's records, papers, files, and communications.

(b) The *executive commissioner* [~~department~~] shall prescribe safeguards to govern the use or disclosure of information relating to a recipient of a department service or to an investigation the department conducts in performing its duties and responsibilities. The safeguards must be consistent with the purposes of the department's programs and must comply with applicable state and federal law and department rules.

(c) Notwithstanding any other provision of law, the *executive commissioner* [~~department~~] by rule may prescribe a process by which an administrative law judge may disclose requested confidential information that the department possesses. The rules must provide that the information may be disclosed by the administrative law judge only if the administrative law judge:

(1) provides notice to the department and any interested party; and

(2) determines after an in camera review of the information that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual.

SECTION 4.188. Section 40.027(c), Human Resources Code, is amended to read as follows:

(c) Subject to the control of the executive commissioner, the commissioner shall:

(1) act as the department's chief administrative officer;

(2) in accordance with the procedures prescribed by Section 531.00551, Government Code, assist the executive commissioner in the development and implementation of policies and guidelines needed for the administration of the department's functions;

(3) in accordance with the procedures adopted by the executive commissioner under Section 531.00551, Government Code, assist the executive commissioner in the development of rules relating to the matters within the department's jurisdiction, including the delivery of services to persons and the rights and duties of persons who are served or regulated by the department; and

(4) serve as a liaison between the department and commission.

SECTION 4.189. Section 40.0315, Human Resources Code, is amended to read as follows:

Sec. 40.0315. INVESTIGATION UNIT FOR ADULT PROTECTIVE SERVICES. (a) The adult protective services division of the department shall maintain an investigation unit to investigate allegations of abuse, neglect, and exploitation of elderly *persons* and [~~disabled~~] persons *with disabilities* reported to the division.

(b) An investigator in the unit shall determine whether an elderly *person* or [~~disabled~~] person *with a disability* who is the subject of a report made under Section 48.051(a) may have suffered from abuse, neglect, or exploitation as a result of the criminal conduct of another person. If the investigator determines that criminal conduct may have occurred, the investigator shall immediately notify:

(1) the commission's office of inspector general if the [~~disabled~~] person *with a disability* who is the subject of the report resides in a state supported living center or the *ICF-IID* [~~ICF-MR~~] component of the Rio Grande State Center; and

(2) the appropriate law enforcement agency, unless the law enforcement agency reported the alleged abuse, neglect, or exploitation to the department.

SECTION 4.190. Sections 40.032(a), (b), (c), (d), (e), and (f), Human Resources Code, are amended to read as follows:

(a) The *department* [~~executive director~~] may employ personnel necessary to administer the department's duties.

(b) The *department* [~~executive director or the executive director's designated representative~~] shall develop an intradepartmental career ladder program that addresses opportunities for mobility and advancement for employees within the department. The program shall require the intradepartmental posting of all positions concurrently with any public posting.

(c) The *department* [~~executive director or the executive director's designated representative~~] shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this subsection.

(d) The *department* [~~executive director or the executive director's designated representative~~] shall provide [~~to members of the board and~~] to the department's employees, as often as is necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The *department* [~~executive director or the executive director's designated representative~~] shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that comply with Chapter 21, Labor Code;

(2) a comprehensive analysis of the department's workforce that meets federal and state laws, rules, and regulations and instructions adopted under those laws, rules, and regulations;

(3) procedures by which a determination can be made about the extent of underuse in the department's workforce of all persons for whom federal or state laws, rules, and regulations and instructions adopted under those laws, rules, and regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(f) The policy statement required under Subsection (e) shall:

(1) be filed with the governor's office;

(2) cover an annual period;

(3) be updated at least annually; and

(4) be reviewed by the *Texas Workforce* Commission *civil rights division* [~~on Human Rights~~] for compliance with Subsection (e)(1).

SECTION 4.191. Section 40.0321(d), Human Resources Code, is amended to read as follows:

(d) The department *may* [~~shall~~] not require a salary supplement as a condition for creating or maintaining a position in the region.

SECTION 4.192. Section 40.0322(a), Human Resources Code, is amended to read as follows:

(a) In hiring department employees whose duties include providing services as part of, or relating to, the provision of adult protective services directly to an elderly *person* or [~~disabled~~] person *with a disability*, the commissioner shall ensure that the department hires, as often as possible, persons with professional credentials related to adult protective services, including persons who are licensed master social workers, as defined by Section 505.002, Occupations Code, or licensed professional counselors.

SECTION 4.193. Section 40.0323, Human Resources Code, is amended to read as follows:

Sec. 40.0323. COORDINATION REGARDING RECRUITMENT FOR AND CURRICULUM OF CERTAIN CERTIFICATE OR DEGREE PROGRAMS. Subject to the availability of funds, the department and the Texas Higher Education Coordinating Board jointly shall develop strategies to:

(1) promote certificate or degree programs in the fields of social work and psychology to individuals enrolled in or admitted to institutions of higher education in this state; and

(2) ensure that persons receiving a certificate or degree, including a graduate degree, in social work or psychology from an institution of higher education in this state have the knowledge and skills regarding protective services that are provided directly to elderly *persons* or [~~disabled~~] persons *with disabilities* and necessary for successful employment by the adult protective services division of the department.

SECTION 4.194. Section 40.033(a), Human Resources Code, is amended to read as follows:

(a) *Subject to rules adopted by the executive commissioner, the* [~~The~~] department may establish a merit system for its employees.

SECTION 4.195. Sections 40.035(a), (b), and (d), Human Resources Code, are amended to read as follows:

(a) The department shall develop and implement a training program that each newly hired or assigned department employee must complete before:

(1) initiating an investigation of a report of alleged abuse, neglect, or exploitation of an elderly *person* or [~~disabled~~] person *with a disability* under Chapter 48; or

(2) providing protective services to elderly *persons* or [~~disabled~~] persons *with disabilities* under that chapter.

(b) The training program must:

(1) provide the person with appropriate comprehensive information regarding:

(A) the incidence and types of reports of abuse, neglect, and exploitation of elderly *persons* or [~~disabled~~] persons *with disabilities* that are received by the department, including information concerning false reports; and

(B) the use and proper implementation of:

(i) the risk assessment criteria developed under Section 48.004;

(ii) the criteria used by caseworkers to determine whether elderly *persons* or [~~disabled~~] persons *with disabilities* lack capacity to consent to receive protective services; and

(iii) the legal procedures available under Chapter 48 for the protection of elderly *persons* or [~~disabled~~] persons *with disabilities*, including the procedures for obtaining a court order for emergency protective services under Section 48.208;

(2) include best practices for management of a case from the intake process to the provision of protective services, including criteria that specify the circumstances under which an employee should:

(A) consult a supervisor regarding a case; or

(B) refer an elderly *person* or [~~disabled~~] person *with a disability* to an appropriate public agency or community service provider for guardianship or other long-term services after the delivery of protective services to that person has been completed;

(3) provide appropriate specialized training in any necessary topics, including:

(A) investigation of suspected identity theft and other forms of financial exploitation and suspected self-neglect; and

(B) establishment and maintenance of working relationships with community organizations and other local providers who provide services to elderly *persons* and [~~disabled~~] persons *with disabilities*;

(4) include on-the-job training, which must require another department caseworker with more experience to accompany and train the caseworker in the field;

(5) provide for the development of individualized training plans;

(6) include training in working with law enforcement agencies and the court system when legal intervention is sought for investigations or emergency orders;

(7) to the maximum extent possible, include nationally recognized best practices in addition to the best practices required under Subdivision (2); and

(8) include testing, progress reports, or other evaluations to assess the performance of trainees.

(d) The department shall develop and implement appropriate continuing education programs for employees of the adult protective services division who have completed initial training under this section. The continuing education programs must include nationally recognized best practices to the maximum extent possible and must be designed to provide an annual update regarding changes in:

(1) adult protective services division policies and procedures; and

(2) applicable law, including statutory changes affecting the adult protective services division or elderly *persons* or [~~disabled~~] persons *with disabilities* served by the division.

SECTION 4.196. Section 40.0505, Human Resources Code, is amended to read as follows:

Sec. 40.0505. POWERS AND DUTIES OF COMMISSIONER; *EFFECT OF CONFLICT WITH OTHER LAW* [~~OF HEALTH AND HUMAN SERVICES~~]. [~~The commissioner of health and human services has the powers and duties relating to the board and executive director as provided by Section 531.0055, Government Code.~~] To the extent a power or duty given to the *commissioner* [~~board or executive director~~] by this chapter or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

SECTION 4.197. Subchapter C, Chapter 40, Human Resources Code, is amended by adding Sections 40.0506 and 40.0507 to read as follows:

Sec. 40.0506. MANAGEMENT AND DIRECTION BY EXECUTIVE COMMISSIONER. The department's powers and duties prescribed by this chapter and other law, including enforcement activities and functions, are subject to the executive commissioner's oversight under Chapter 531, Government Code, to manage and direct the operations of the department.

Sec. 40.0507. CONTRACTING AND AUDITING AUTHORITY; DELEGATION. (a) The executive commissioner, as authorized by Section 531.0055, Government Code, may delegate to the department the executive commissioner's authority under that section for contracting and auditing relating to the department's powers, duties, functions, and activities.

(b) If the executive commissioner does not make a delegation under Subsection (a), a reference in law to the department with respect to the department's contracting or auditing authority means the executive commissioner. If the executive commissioner makes a delegation under Subsection (a), a reference in law to the department's contracting or

auditing authority means the authority the executive commissioner has delegated to the department.

(c) If the executive commissioner revokes all or part of a delegation made under Subsection (a), a reference in law to the department with respect to a function for which the delegation was revoked means the executive commissioner or another entity to which the executive commissioner delegates that authority.

(d) It is the legislature's intent that the executive commissioner retain the authority over and responsibility for contracting and auditing at each health and human services agency as provided by Section 531.0055, Government Code. A statute that becomes law on or after January 1, 2015, that references the contracting or auditing authority of the department does not give the department direct contracting or auditing authority unless the statute expressly provides that the contracting or auditing authority:

(1) is given directly to the department; and

(2) is an exception to the exclusive contracting and auditing authority given to the executive commissioner under Section 531.0055, Government Code.

SECTION 4.198. Sections 40.0521(a) and (b), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] shall adopt and *the department shall* implement rules that require an investigating employee to document indications of domestic violence, including elder, spousal, and child abuse. The department may develop forms to facilitate the documentation process.

(b) The *executive commissioner* [~~department~~] by rule shall require that written information, printed in English and Spanish, concerning community services that are available to victims of domestic violence be distributed to those victims. The department may coordinate its efforts under this subsection with local law enforcement agencies already providing that information.

SECTION 4.199. Section 40.0523, Human Resources Code, is amended to read as follows:

Sec. 40.0523. INFANT MORTALITY PREVENTION EDUCATION PROGRAM. (a) The department [~~and the Children's Trust Fund of Texas Council jointly~~] shall develop and implement a statewide education program designed to prevent infant mortality. [~~The department and the council shall develop and mutually agree to a memorandum of understanding to clearly define the responsibilities of the department and the council under this section.~~]

(b) In developing and implementing the program, the department [~~and the Children's Trust Fund of Texas Council~~] shall request the assistance of individuals, governmental entities, private organizations, and other entities with specific knowledge of infant mortality prevention.

(c) The *executive commissioner* [~~board and the Children's Trust Fund of Texas Council~~] shall adopt rules to implement this section.

SECTION 4.200. Section 40.0524(b), Human Resources Code, is amended to read as follows:

(b) Members of a multidisciplinary team may exchange information relating to a report of child abuse or neglect as necessary to facilitate a thorough investigation of the report. The *executive commissioner* [~~department~~] may adopt rules governing the exchange of information between team members.

SECTION 4.201. Sections 40.0527(a) and (c), Human Resources Code, are amended to read as follows:

(a) Subject to the availability of funds, the executive commissioner by rule shall develop and the department shall implement a statewide public awareness campaign designed to educate the public regarding the abuse, neglect, and exploitation of elderly *persons* and [~~disabled~~] persons *with disabilities*.

(c) A public awareness strategy implemented for the program must include:

(1) the provision of information on the incidence and types of reports of abuse, neglect, and exploitation of elderly *persons* or [~~disabled~~] persons *with disabilities*; and

(2) practices that can reduce the incidences of abuse, neglect, and exploitation of elderly *persons* or [~~disabled~~] persons *with disabilities* in this state.

SECTION 4.202. Section 40.059, Human Resources Code, is amended to read as follows:

Sec. 40.059. FEES. The *executive commissioner by rule* [~~department~~] may set and *the department may collect* [~~charge~~] appropriate fees in the administration and delivery of services.

SECTION 4.203. Section 40.060, Human Resources Code, is amended to read as follows:

Sec. 40.060. INDEMNIFICATION FOR LEGAL EXPENSES. If a present or former employee of the department who is or was involved in activities relating to the protection of children or elderly *persons* or [~~disabled~~] persons *with disabilities* is criminally prosecuted for conduct involving the person's misfeasance or nonfeasance in the course and scope of the person's employment and is found not guilty after a trial or appeal or if the complaint or indictment is dismissed without a plea of guilty or nolo contendere being entered, the department may indemnify the person or the person's estate for the reasonable attorney's fees incurred in defense of the prosecution up to a maximum of $10,000.

SECTION 4.204. Section 40.062, Human Resources Code, is amended to read as follows:

Sec. 40.062. EXEMPTION FROM CERTAIN COSTS AND FEES. The department is not required to pay any cost or fee otherwise imposed for court proceedings or other services, including a:

(1) filing fee or fee for issuance or service of process imposed by Section 110.002, Family Code, or by Section 51.317, 51.318(b)(2), or 51.319, Government Code;

(2) transfer fee imposed by Section 110.002 or 110.005, Family Code;

(3) court reporter fee imposed by Section 51.601, Government Code;

(4) judicial fund fee imposed by *Section* [~~Sections 51.701 and~~] 51.702, Government Code;

(5) judge's fee imposed by Section 25.0008 or 25.0029, Government Code;

(6) cost or security fee imposed by Section *53.051, 53.052, 1053.051,* [~~12~~] or *1053.052, Estates* [~~622, Probate~~] Code; or

(7) fee imposed by a county officer under Section 118.011 or 118.052, Local Government Code.

SECTION 4.205. Section 40.065(b), Human Resources Code, is amended to read as follows:

(b) The department shall develop and implement a communication plan to ensure statewide public and government awareness of child abuse or neglect investigated by the department. The plan shall include information detailing the procedure followed by the department during the investigation and the responsibilities of the department in child abuse cases. In implementing the plan, the department shall establish a process for expediting the reporting of child abuse or neglect to the department. The *executive commissioner* [~~department~~] shall adopt rules to implement this subsection.

SECTION 4.206. Section 40.066(b), Human Resources Code, is amended to read as follows:

(b) The memorandum of understanding shall require the chief administrative law judge, the department, and the *commissioner* [~~executive director~~] to cooperate in connection with a contested case hearing and may authorize the State Office of Administrative Hearings to perform any administrative act, including *the* giving of notice, that is required to be performed by the department or *commissioner* [~~executive director~~].

SECTION 4.207. Section 40.068(c), Human Resources Code, is amended to read as follows:

(c) The department shall spend funds in a guardianship of a client's estate in compliance with *Title 3, Estates Code* [~~Chapter XIII, Texas Probate Code~~].

SECTION 4.208. Sections 40.101(2) and (3), Human Resources Code, are amended to read as follows:

(2) "Primary prevention" means services and activities available to the community at large or to families to prevent child abuse and neglect before it occurs. *The term includes infant mortality prevention education programs.*

(3) "Operating fund" means the Department of *Family and* Protective [~~and Regulatory~~] Services child abuse and neglect prevention operating fund account.

SECTION 4.209. Sections 40.105(a) and (e), Human Resources Code, are amended to read as follows:

(a) The child abuse and neglect prevention trust fund account is an account in the general revenue fund. Money in the trust fund is dedicated to child abuse *and neglect primary* prevention programs.

(e) All marriage license fees and other fees collected for and deposited in the trust fund and interest earned on the trust fund balance shall be appropriated each biennium only to the operating fund for primary child abuse *and neglect* prevention programs.

SECTION 4.210. Section 40.106(a), Human Resources Code, is amended to read as follows:

(a) The [~~Department of Protective and Regulatory Services child abuse and neglect prevention~~] operating fund [~~account~~] is an account in the general revenue fund.

SECTION 4.211. Sections 42.041(d) and (e), Human Resources Code, are amended to read as follows:

(d) A facility exempt from the provisions of Subsection (a) [~~of this section~~] that desires to receive or participate in federal or state funding shall be required to comply with all other provisions of this chapter and with all regulations promulgated under this chapter.

(e) The exemptions provided by Subsection (b) [~~of this section~~] do not affect the authority of local, regional, or state health department officials, the state fire marshal, or local fire prevention officials to inspect child-care facilities.

SECTION 4.212. Sections 42.042(a), (b), (e), (f), (g), (g–1), (h), (i), (l), (n), and (p), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] shall *adopt* [~~make~~] rules to carry out the provisions of this chapter.

(b) The department shall conduct a comprehensive review of all rules and standards at least every six years. For purposes of this subsection, the six-year period begins on the latest of the date of:

(1) the conclusion of the review of the rules and standards;

(2) a decision by the department not to revise the rules and standards;

(3) a decision by the *executive commissioner* [~~board~~] not to revise the rules and standards; or

(4) *executive commissioner* [~~board~~] action adopting new standards.

(e) The *executive commissioner* [~~department~~] shall promulgate minimum standards that apply to licensed child-care facilities and to registered family homes covered by this chapter and that will:

(1) promote the health, safety, and welfare of children attending a facility or registered family home;

(2) promote safe, comfortable, and healthy physical facilities and registered family homes for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

(4) ensure adequate and healthy food service where food service is offered;

(5) prohibit racial discrimination by child-care facilities and registered family homes;

(6) require procedures for parental and guardian consultation in the formulation of children's educational and therapeutic programs;

(7) prevent the breakdown of foster care and adoptive placement; and

(8) ensure that a child-care facility or registered family home:

(A) follows the directions of a child's physician or other health care provider in providing specialized medical assistance required by the child; and

(B) maintains for a reasonable time a copy of any directions from the physician or provider that the parent provides to the facility or home.

(f) In promulgating minimum standards for the provision of child-care services, the *executive commissioner* [~~department~~] shall recognize the various categories of services, including services for specialized care, the various categories of children and their particular needs, and the differences in the organization and operation of child-care facilities and general residential operations. Standards for general residential operations must require an intake study before a child is placed in an operation. The intake study may be conducted at a community mental health and *intellectual disability* [~~mental retardation~~] center.

(g) In promulgating minimum standards the *executive commissioner* [~~department~~] may recognize and treat differently the types of services provided by the following:

(1) registered family homes;

(2) child-care facilities, including general residential operations, foster group homes, foster homes, group day-care homes, and day-care centers;

(3) child-placing agencies;

(4) agency foster homes;

(5) agency foster group homes;

(6) before-school or after-school programs; and

(7) school-age programs.

(g–1) *The executive commissioner in adopting* [~~In determining~~] and *the department in* enforcing minimum standards for a school-age program[~~, the department~~] shall consider commonly accepted training methods for the development of a skill, talent, ability, expertise, or proficiency that are implemented with the consent of the parent or guardian of the participant and that are fundamental to the core purpose of the program.

(h) The *executive commissioner* [~~department~~] shall promulgate minimum standards for child-placing agencies.

(i) Before *the executive commissioner adopts* [~~adopting~~] minimum standards, the department shall:

(1) convene a temporary work group to advise the *executive commissioner* [~~department~~] regarding the proposed standards, composed of at least six members who represent the diverse geographic regions of this state, including:

(A) a department official designated by the commissioner to facilitate the work group's activities;

(B) a person with demonstrated expertise or knowledge regarding the different types and classifications of child-care facilities, homes, agencies, or programs that will be covered by the proposed standards;

(C) a parent with experience related to one of the different types or classifications of child-care facilities, homes, agencies, or programs that will be covered by the proposed standards; and

(D) a representative of a nonprofit entity licensed under this chapter; and

(2) send a copy of the proposed standards to each licensee covered by the proposed standards at least 60 days before the standards take effect to provide the licensee an opportunity to review and to send written suggestions to the department.

(l) In promulgating minimum standards for the regulation of family homes that register with the department, the *executive commissioner* [~~department~~] must address the minimum qualifications, education, and training required of a person who operates a family home registered with the department.

(n) Not later than the 60th day before the date the *executive commissioner* [~~board~~] adopts a revision to the minimum standards for child-care facilities, the *executive commissioner* [~~department~~] shall present the revision to the appropriate legislative oversight committees that have jurisdiction over child-care facilities for review and comment.

(p) The *executive commissioner* [~~department~~] by rule shall prescribe minimum training standards for an employee of a regulated child-care facility, including the time required for completing the training. The *executive commissioner* [~~department~~] may not require an employee to repeat required training if the employee has completed the training within the time prescribed by department rule. The department's local offices shall make available at the local office locations a copy of the rules regarding minimum training standards, information enabling the owner or operator of a regulated facility to apply for training funds from other agencies to lower facility costs, and any other materials the department may develop to assist the owner or operator or other entity in providing the training.

SECTION 4.213. Sections 42.0421(a), (b), (c), (e), (f), and (h), Human Resources Code, are amended to read as follow:

(a) The minimum training standards prescribed by the *executive commissioner* [~~department~~] under Section 42.042(p) for an employee, director, or operator of a day-care center, group day-care home, or registered family home must include:

(1) 24 hours of initial training that must be completed not later than the 90th day after the employee's first day of employment for an employee of a day-care center who has no previous training or less than two years of employment experience in a regulated child-care facility, eight hours of which must be completed before the employee is given responsibility for a group of children;

(2) 24 hours of annual training for each employee of a day-care center or group day-care home, excluding the director, which must include at least six hours of training in one or more of the following areas:

(A) child growth and development;

(B) guidance and discipline;

(C) age-appropriate curriculum; and

(D) teacher-child interaction; and

(3) 30 hours of annual training for each director of a day-care center or group day-care home, or operator of a registered family home, which must include at least six hours of training in one or more of the following areas:

(A) child growth and development;

(B) guidance and discipline;

(C) age-appropriate curriculum; and

(D) teacher-child interaction.

(b) The minimum training standards prescribed by the *executive commissioner* [~~department~~] under Section 42.042(p) must require an employee of a licensed day-care center or group day-care home who provides care for children younger than 24 months of age to receive special training regarding the care of those children. The special training must be included as a component of the initial training required by Subsection (a)(1) and as a one-hour component of the annual training required by Subsections (a)(2) and (a)(3). The special training must include information on:

(1) recognizing and preventing shaken baby syndrome;

(2) preventing sudden infant death syndrome; and

(3) understanding early childhood brain development.

(c) The *executive commissioner* [~~department~~] by rule shall require an operator of a registered family home who provides care for a child younger than 24 months of age to complete one hour of annual training on:

(1) recognizing and preventing shaken baby syndrome;

(2) preventing sudden infant death syndrome; and

(3) understanding early childhood brain development.

(e) In addition to other training required by this section, the *executive commissioner* [~~department~~] by rule shall require an owner, operator, or employee of a day-care center, group day-care home, registered family home, *general residential operation* [~~child-care institution~~], foster group home, or agency foster group home who transports a child under the care of the facility whose chronological or developmental age is younger than nine years of age to complete at least two hours of annual training on transportation safety.

(f) The training required by this section must be appropriately targeted and relevant to the age of the children who will receive care from the individual receiving training and must be provided by a person who:

(1) is a training provider registered with the Texas Early *Childhood Professional* [~~Care and Education Career~~] Development System's Texas Trainer Registry that is maintained by the Texas Head Start State Collaboration Office;

(2) is an instructor at a public or private secondary school, an institution of higher education, as defined by Section 61.003, Education Code, or a private college or university accredited by a recognized accrediting agency who teaches early childhood development or another relevant course, as determined by rules adopted by the commissioner of education and the commissioner of higher education;

(3) is an employee of a state agency with relevant expertise;

(4) is a physician, psychologist, licensed professional counselor, social worker, or registered nurse;

(5) holds a generally recognized credential or possesses documented knowledge relevant to the training the person will provide;

(6) is a registered family home care provider or director of a day-care center or group day-care home in good standing with the department, if applicable, and who:

(A) has demonstrated core knowledge in child development and caregiving; and

(B) is only providing training at the home or center in which the provider or director and the person receiving training are employed; or

(7) has at least two years of experience working in child development, a child development program, early childhood education, a childhood education program, or a Head Start or Early Head Start program and:

(A) has been awarded a Child Development Associate (CDA) credential; or

(B) holds at least an associate's degree in child development, early childhood education, or a related field.

(h) In adopting the minimum training standards under Section 42.042(p), the *executive commissioner* [~~department~~] may not require more training hours than the number of hours prescribed by Subsection (a) for a day-care center, group day-care home, or [~~a~~] registered family home.

SECTION 4.214. Section 42.0422, Human Resources Code, is amended to read as follows:

Sec. 42.0422. RESTRAINT AND SECLUSION. A person providing services to a resi-

dent of a general residential operation, including a state-operated facility that is a residential treatment center or a general residential operation serving children with *intellectual disabilities* [~~mental retardation~~], shall comply with Chapter 322, Health and Safety Code, and the rules adopted under that chapter.

SECTION 4.215. Section 42.0423(h), Human Resources Code, is amended to read as follows:

(h) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules and forms necessary to implement this section.

SECTION 4.216. Section 42.0424(d), Human Resources Code, is amended to read as follows:

(d) The *executive commissioner* [~~department~~] shall adopt rules to implement this section.

SECTION 4.217. Sections 42.0425(a) and (b), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule shall regulate assessment services provided by child-care facilities or child-placing agencies. A child-care facility or child-placing agency may not provide assessment services unless specifically authorized by [~~the~~] department *rule*.

(b) The *executive commissioner* [~~department~~] by rule shall establish minimum standards for assessment services. The standards must provide that consideration is given to the individual needs of a child, the appropriate place for provision of services, and the factors listed in Section 42.042(e).

SECTION 4.218. Sections 42.043(a), (c), and (f), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] shall *adopt* [~~make~~] rules for the immunization of children in facilities regulated under this chapter.

(c) The *executive commissioner* [~~Texas Department of Health~~] shall *adopt* [~~make~~] rules for the provisional admission of children to facilities regulated under this chapter and may modify or delete any of the immunizations listed in Subsection (b) [~~of this section~~] or require additional immunizations as a requirement for admission to a facility.

(f) The [~~Texas~~] Department of *State* Health *Services* shall provide the immunizations required by this section to children in areas where there is no local provision of these services.

SECTION 4.219. Section 42.0431, Human Resources Code, is amended to read as follows:

Sec. 42.0431. ENFORCEMENT OF SCREENING REQUIREMENTS RELATING TO VISION, HEARING, AND OTHER SPECIAL SENSES AND COMMUNICATION DISORDERS. (a) The *executive commissioner* [~~department~~], after consultation with the [~~Texas~~] Department of *State* Health *Services*, shall adopt rules necessary to ensure that children receiving care at a day-care center or group day-care home licensed under this chapter are screened for vision, hearing, and any other special senses or communication disorders in compliance with rules adopted [~~by the Texas Board of Health~~] under Section 36.004, Health and Safety Code.

(b) Each day-care center or group day-care home licensed under this chapter shall maintain individual screening records for children attending the facility who are required to be screened, and the department may inspect those records at any reasonable time. The department shall coordinate the monitoring inspections in compliance with protocol agreements adopted between the department and the [~~Texas~~] Department of *State* Health *Services* pursuant to Section 42.0442.

SECTION 4.220. Section 42.0442(b), Human Resources Code, is amended to read as follows:

(b) The department shall form an interagency task force with the [~~Texas~~] Department of *State* Health *Services*, the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Ser-

vices, and the Texas Workforce Commission to develop an inspection protocol that will coordinate inspections by those agencies. The protocol must assign the required items for inspection by each agency and facilitate the sharing of inspection data and compliance history.

SECTION 4.221. Section 42.04425(b), Human Resources Code, is amended to read as follows:

(b) The department shall make the data collected by the department available to another state agency or political subdivision of the state for the purpose of administering programs or enforcing laws within the jurisdiction of that agency or subdivision. If feasible using available information systems, the department shall make the data directly available to the [~~Texas~~] Department of *State* Health *Services*, the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services, and the Texas Workforce Commission through electronic information systems. The department, the [~~Texas~~] Department of *State* Health *Services*, the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services, and the Texas Workforce Commission shall jointly plan the development of child-care inspection databases that, to the extent feasible, are similar in their design and architecture to promote the sharing of data.

SECTION 4.222. Section 42.0443(e), Human Resources Code, is amended to read as follows:

(e) The *executive commissioner* [~~department~~] shall adopt rules necessary to implement this section.

SECTION 4.223. Section 42.0445(b), Human Resources Code, is amended to read as follows:

(b) The *executive commissioner* [~~department~~] may adopt rules to implement this section.

SECTION 4.224. Section 42.045(c), Human Resources Code, is amended to read as follows:

(c) If a child-placing agency terminates operation as a child-placing agency, it shall, after giving notice to the department, transfer its files and records concerning adopted children, their biological families, and their adoptive families to the *vital statistics unit of the Department of State Health Services* [~~Bureau of Vital Statistics~~] or, after giving notice to the *vital statistics unit* [~~Bureau of Vital Statistics~~], to a facility licensed by the department to place children for adoption.

SECTION 4.225. Section 42.048(b), Human Resources Code, is amended to read as follows:

(b) When issuing a license, the department may impose restrictions on a facility, including [~~but not limited to~~] the number of children to be served and the type of children to be served.

SECTION 4.226. Section 42.050(a), Human Resources Code, is amended to read as follows:

(a) A license holder may apply for a new license in compliance with the requirements of this chapter and *department* [~~the~~] rules [~~promulgated by the department~~].

SECTION 4.227. Sections 42.052(g) and (i), Human Resources Code, are amended to read as follows:

(g) The certification requirements of this section do not apply to a Texas *Juvenile Justice Department* [~~Youth Commission facility, a Texas Juvenile Probation Commission~~] facility, or a facility providing services solely for the Texas *Juvenile Justice Department* [~~Youth Commission~~].

(i) The department shall provide to a listed family home a copy of the listing. A listing must contain a provision that states: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH THE DEPARTMENT OF *FAMILY AND* PROTECTIVE [~~AND REGULATORY~~] SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED." The operator of a listed home is not required to

display the listing in a prominent place at the home but shall make the listing available for examination. The *executive commissioner* [~~department~~] by rule shall provide for a sufficient period to allow operators of family homes to comply with the listing requirement of this section.

SECTION 4.228. Section 42.0522, Human Resources Code, is amended to read as follows:

Sec. 42.0522. PUBLIC ADVERTISING OF FAMILY HOMES. (a) A family home may not place a public advertisement that uses the title "registered family home" or any variation of that phrase unless the home is registered under this chapter. Any public advertisement for a registered family home that uses the title "registered family home" must contain a provision in bold type stating: "THIS HOME IS REGISTERED WITH THE DEPARTMENT OF *FAMILY AND* PROTECTIVE [~~AND REGULATORY~~] SERVICES BUT IS NOT LICENSED OR REGULARLY INSPECTED."

(b) A family home may not place a public advertisement that uses the title "listed family home" or any variation of that phrase unless the home is listed as provided by this chapter. Any public advertisement for a listed family home that uses the title "listed family home" must contain a provision in bold type stating: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH THE DEPARTMENT OF *FAMILY AND* PROTECTIVE [~~AND REGULATORY~~] SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED."

SECTION 4.229. Section 42.053(d), Human Resources Code, is amended to read as follows:

(d) The department shall revoke or suspend the license of a child-placing agency if an agency foster home or agency foster group home operated by the licensed agency fails to comply with Subsection (c) [~~of this section~~].

SECTION 4.230. Section 42.0535(e), Human Resources Code, is amended to read as follows:

(e) The *executive commissioner* [~~department,~~] by rule[~~,~~] shall develop a process by which a child-placing agency shall report to the department:

(1) the name of any verified foster home or foster group home that has been closed for any reason, including a voluntary closure;

(2) information regarding the reasons for the closure of the foster home or foster group home; and

(3) the name and other contact information of a person who may be contacted by another child-placing agency to obtain the records relating to the closed foster home or foster group home that are required to be maintained and made available under this section.

SECTION 4.231. Section 42.054(g), Human Resources Code, is amended to read as follows:

(g) The provisions of Subsections (b) through (f) [~~of this section~~] do not apply to:

(1) licensed foster homes and licensed foster group homes;

(2) nonprofit facilities regulated under this chapter that provided 24–hour care for children in the managing conservatorship of the department during the 12–month period immediately preceding the anniversary date of the facility's license;

(3) facilities operated by a nonprofit corporation or foundation that provides 24–hour residential care and does not charge for the care provided; or

(4) a family home listed under Section 42.0523 in which the relative child-care provider cares for the child in the child's own home.

SECTION 4.232. Section 42.055(b), Human Resources Code, is amended to read as follows:

(b) The *executive commissioner* [~~department~~] by rule shall determine the design, size, and wording of the sign.

SECTION 4.233. Section 42.056(c), Human Resources Code, is amended to read as follows:

(c) The *executive commissioner* [~~department~~] by rule shall require a child-care facility, child-placing agency, or registered family home to pay to the department a fee in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

SECTION 4.234. Section 42.058, Human Resources Code, is amended to read as follows:

Sec. 42.058. COMPETITIVE BIDDING OR ADVERTISING RULES. (a) The *executive commissioner* [~~board~~] may not adopt rules restricting competitive bidding or advertising by a license holder or registration holder except to prohibit false, misleading, or deceptive practices or to prevent a violation of this chapter.

(b) *Rules* [~~In its rules~~] to prohibit false, misleading, or deceptive practices[~~, the board~~] may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's or registration holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder or registration holder; or

(4) restricts the license holder's or registration holder's advertisement under a trade name.

SECTION 4.235. Section 42.060(c), Human Resources Code, is amended to read as follows:

(c) The *executive commissioner* [~~department~~] by rule shall prescribe requirements regarding the placement, installation, and number of carbon monoxide detectors and maintenance procedures for those detectors.

SECTION 4.236. Section 42.0705, Human Resources Code, is amended to read as follows:

Sec. 42.0705. RANGE OF PENALTIES. The department shall revoke or suspend a license or registration, place on probation a person whose license or registration has been suspended, or reprimand a license holder or registration holder for a violation of this chapter or a *department* rule [~~of the board~~]. If a license or registration suspension is probated, the department may require the license holder or registration holder to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit services to the areas prescribed by the department;

(3) continue or review professional education until the license holder or registration holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation; or

(4) take corrective action relating to the violation on which the probation is based.

SECTION 4.237. Sections 42.072(a), (b), (d), (e), and (f), Human Resources Code, are amended to read as follows:

(a) The department may suspend, deny, revoke, or refuse to renew the license, listing, registration, or certification of approval of a facility or family home that does not comply with the requirements of this chapter, *department* [~~the~~] standards and rules [~~of the department~~], or the specific terms of the license, listing, registration, or certification. The department may revoke the probation of a person whose license, listing, or registration is suspended if the person violates a term of the conditions of probation.

(b) If the department proposes to take an action under Subsection (a), the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter

2001, Government Code. An action under this section, including a revocation of a person's license, is a contested case as defined by Chapter 2001, Government Code, and is subject to judicial review under the substantial evidence rule in accordance with that chapter. Rules of practice adopted by the *executive commissioner* [~~board~~] under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

(d) The *executive commissioner* [~~department~~] by rule may provide for denial of an application or renewal for a licensed facility or for listing or registering a family home or may revoke a facility's license or a family home's listing or registration based on findings of background or criminal history as a result of a background or criminal history check.

(e) A person may continue to operate a facility or family home during an appeal of a license, listing, or registration revocation unless the operation of the facility or family home poses a risk to the health or safety of children. The executive commissioner shall by rule establish the criteria for determining whether the operation of a facility or family home poses a risk to the health or safety of children. The department shall notify the facility or family home of the criteria the department used to determine that the operation of the facility or family home poses a risk to health or safety and that the facility or family home may not operate. A person who has been notified by the department that the facility or home may not operate under this section may seek injunctive relief from a district court in Travis County or in the county in which the facility or home is located to allow operation during the pendency of an appeal. The court may grant injunctive relief against the *department's* [~~agency's~~] action only if the court finds that the child-care operation does not pose a health or safety risk to children. A court granting injunctive relief under this subsection shall have no other jurisdiction over an appeal of final *department* [~~agency~~] action unless conferred by Chapter 2001, Government Code.

(f) The department shall deny an application or renewal for listing or registering a family home or shall revoke a family home's listing or registration if the results of a background or criminal history check conducted by the department under Section 42.056 show that a person has been convicted of an offense under Title 5[;] or 6, Penal Code, or Chapter 43, Penal Code.

SECTION 4.238. Section 42.077(b), Human Resources Code, is amended to read as follows:

(b) If a person who operates a facility or family home that has had its license, listing, or registration revoked or suspended later applies for a new license, listing, or registration to operate the same facility or family home, the department shall charge the person an application fee *set by the executive commissioner by rule* in an amount necessary to reimburse the department for the cost of the notice relating to that facility or family home.

SECTION 4.239. Section 42.078(d), Human Resources Code, is amended to read as follows:

(d) Monetary penalties *may* [~~shall~~] not be assessed for violations that are the result of clerical errors.

SECTION 4.240. Section 42.152(b), Human Resources Code, is amended to read as follows:

(b) A small employer is not required to obtain a permit to operate an employer-based day-care facility under this subchapter if the employer holds a license to operate a child-care facility that is issued by the department under Subchapter C. An employer that holds that license must comply with the applicable provisions of Subchapter C, the applicable *department* rules [~~of the department~~], and any specific terms of the license.

SECTION 4.241. Section 42.153(c), Human Resources Code, is amended to read as follows:

(c) The department may charge an applicant an administrative fee *set by the executive commissioner by rule* in a reasonable amount that is sufficient to cover the costs of the department in processing the application.

SECTION 4.242. Section 42.159(e), Human Resources Code, is amended to read as follows:

(e) The department shall require the small employer to pay to the department a fee *set by the executive commissioner by rule* in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

SECTION 4.243. Section 42.162(c), Human Resources Code, is amended to read as follows:

(c) The department may charge a small employer issued a permit under this subchapter a reasonable fee *set by the executive commissioner by rule* for the cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan under this section.

SECTION 4.244. Section 42.202(b), Human Resources Code, is amended to read as follows:

(b) A shelter is not required to obtain a permit to provide shelter care under this subchapter if the shelter holds a license to operate a child-care facility that is issued by the department under Subchapter C. A shelter that holds that license must comply with the applicable provisions of Subchapter C, the applicable *department* rules [~~of the department~~], and any specific terms of the license.

SECTION 4.245. Section 42.203(c), Human Resources Code, is amended to read as follows:

(c) The department may charge an applicant an administrative fee *set by the executive commissioner by rule* in a reasonable amount that is sufficient to cover the costs of the department in processing the application.

SECTION 4.246. Section 42.206(e), Human Resources Code, is amended to read as follows:

(e) The department shall require the shelter to pay to the department a fee *set by the executive commissioner by rule* in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

SECTION 4.247. Section 42.209(c), Human Resources Code, is amended to read as follows:

(c) The department may charge a shelter issued a permit under this subchapter a reasonable fee *set by the executive commissioner by rule* for the cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan under this section.

SECTION 4.248. Section 43.005, Human Resources Code, is amended to read as follows:

Sec. 43.005. RULES. The *executive commissioner* [~~board~~] may *adopt* [~~make~~] rules to administer the provisions of this chapter.

SECTION 4.249. Section 43.0055, Human Resources Code, is amended to read as follows:

Sec. 43.0055. COMPETITIVE BIDDING OR ADVERTISING RULES. (a) The *executive commissioner* [~~department~~] may not adopt rules restricting competitive bidding or advertising by a license holder except to prohibit false, misleading, or deceptive practices.

(b) *Rules* [~~In its rules~~] to prohibit false, misleading, or deceptive practices[~~, the department~~] may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) restricts the license holder's advertisement under a trade name.

SECTION 4.250. Section 43.006, Human Resources Code, is amended to read as

follows:

Sec. 43.006. FEES. The *executive commissioner by rule* [~~board~~] may set and *the department may collect* [~~charge~~] fees for administering an examination and issuing an initial license, renewal license, or provisional license in amounts necessary to cover the costs of administering this chapter.

SECTION 4.251. Section 43.009(b), Human Resources Code, is amended to read as follows:

(b) The *department* [~~board~~] shall recognize, prepare, or administer continuing education programs for license holders. The continuing education requirement may be fulfilled by studies in the areas of legal aspects of child care, concepts related to the field of social work, or other subjects approved by the department.

SECTION 4.252. Chapter 44, Human Resources Code, is amended to read as follows:

CHAPTER 44. ADMINISTRATION OF FEDERAL AND STATE DAY-CARE PROGRAMS

SUBCHAPTER A. FEDERALLY ESTABLISHED DAY-CARE PROGRAMS

Sec. 44.001. DESIGNATED AGENCY. The Texas Workforce Commission is the state agency designated to administer a day-care program established by federal law and financed partially or totally by federal funds.

Sec. 44.002. ADMINISTRATIVE RULES. (a) The Texas Workforce Commission shall promulgate rules to carry out the administrative provisions of the program consistent with federal law and regulations.

(b) The rules must include procedures to allow operators of day-care centers to review and comment on proposed rules and policies.

Sec. 44.003. ADMINISTRATION OF FEDERAL-LOCAL PROGRAM. (a) If the program is to be funded through political subdivisions of the state or local agencies approved by the *Texas Workforce Commission* [~~commission~~] matching federal grants, the *Texas Workforce Commission* [~~commission~~] shall promulgate procedures for effective delivery of services consistent with this section and with federal law and regulations.

(b) If the services are provided through contracting with operators of day-care programs on request from political subdivisions or local agencies, the *Texas Workforce Commission* [~~commission~~] may not promulgate standards for selection of the type of programs more restrictive than required by federal law or regulations.

(c) The executive director of the *Texas Workforce Commission* [~~commission~~] shall establish an accounting system consistent with federal law and regulations which will provide that an operator of a day-care program contracting with the *Texas Workforce Commission* [~~commission~~]:

(1) shall receive prepayment in accordance with policies and procedures mutually agreed on by the comptroller and the *Texas Workforce Commission* [~~commission~~]; and

(2) shall be paid on the basis of legitimate and reasonable expenses, insofar as possible, given federal regulations and department policy, instead of being paid on the basis of the number of children attending or the number of children enrolled in the program, provided that on being monitored by the *Texas Workforce Commission* [~~commission~~], the contracting operator can substantiate that there were sufficient preparations in the development of the services offered.

(d) The executive director of the *Texas Workforce Commission* [~~commission~~] shall establish procedures for hearing complaints by operators of day-care programs contracting with the *Texas Workforce Commission* [~~commission~~] relating to the failure of the *Texas Workforce Commission* [~~commission~~] to comply with Subsection (c).

SUBCHAPTER B. DAY-CARE CENTERS

Sec. 44.031. ESTABLISHMENT. (a) The *Texas Workforce Commission* [~~commission~~] may establish day-care centers for all children who qualify for services under Section 44.032. Where in the opinion of the executive director of the *Texas Workforce Commission* [~~commission~~] it appears feasible for the furtherance of the objectives of this legislation, the *Texas Workforce Commission* [~~commission~~] may establish cooperative agreements with other state agencies.

(b) The *Texas Workforce Commission* [~~commission~~] is not required to establish a day-care center or to provide services under this subchapter unless funds are appropriated for that purpose.

Sec. 44.032. ELIGIBILITY. (a) Except as provided by Subsection (b), to be eligible for admission to a day-care center authorized under this subchapter, a child must be at least six weeks of age and:

(1) the child must be eligible for state assistance under the aid to families with dependent children program and the child's caretaker must be employed, enrolled in a job training program authorized by the Texas Workforce Commission, registered to work by *the Texas Workforce Commission* [~~that commission~~], or permanently and totally disabled; or

(2) the child must be from a family eligible under federal law or regulations to participate in a partially or totally federally funded welfare or social services program.

(b) Additional children of the same age group may also be admitted to a center under additional standards established by the *Texas Workforce Commission* [~~commission~~].

(c) To reduce rapid turnover of children in care and to ensure maximum stability for the child to the extent possible within federal guidelines, once a child meets the initial eligibility standards and is enrolled in a child-care program, the child remains eligible for not less than one year after the date of enrollment.

Sec. 44.033. FEES. (a) A fee for services rendered by the day-care center may not be charged for a child who is eligible for state assistance under the aid to families with dependent children program.

(b) A fee that is scaled to family income for services rendered by the day-care program may be charged for a child who is not eligible for state assistance under the aid to families with dependent children program.

Sec. 44.034. STANDARDS; RECOMMENDATIONS. (a) If the Texas Workforce Commission establishes day-care centers under this subchapter, the department shall prescribe standards of operation and performance for the centers that will ensure proper nutrition, social adjustment, health services, and appropriate growth and development for children admitted.

(b) The executive director of the *Texas Workforce Commission* [~~commission~~] shall prescribe procedures for receiving recommendations relating to the operation of the centers from parents, guardians, or custodians of children admitted to the centers, operators of the centers, and other interested persons.

Sec. 44.035. CONTRACTS. (a) The executive director of the Texas Workforce Commission may contract for services authorized under this subchapter with an individual, organization, association, or corporation meeting the standards established under Section 44.034 and the standards for child-care facilities licensed by the *department* [~~Department of Protective and Regulatory Services~~].

(b) The fees paid to the center under the contract may not exceed the amount it would cost the state to provide the same services.

(c) The executive director of the *Texas Workforce Commission* [~~commission~~] shall terminate a contract with a day-care center that fails to maintain the department's standards.

(d) When the executive director of the *Texas Workforce Commission* [~~commission~~] intends to cancel a contract with a day-care center, the executive director shall give the center reasonable notice and an opportunity for a hearing if one is requested. The *Texas*

Workforce Commission [~~commission~~] shall adopt rules consistent with Chapter 2001, Government Code, to implement this section. Hearings under this section are contested cases under that chapter.

Sec. 44.036. ANNUAL EVALUATION OF DAY-CARE CENTERS. If the *Texas Workforce Commission* [~~commission~~] establishes day-care centers or provides services under this subchapter, the *Texas Workforce Commission* [~~commission~~], with the assistance of the department, shall evaluate the performance of the centers each state fiscal year. This evaluation shall be sent to the governor and to the Legislative Budget Board not later than the 100th day after the last day of the state fiscal year covered by the evaluation.

SECTION 4.253. The heading to Chapter 48, Human Resources Code, is amended to read as follows:

CHAPTER 48. INVESTIGATIONS AND PROTECTIVE SERVICES FOR ELDERLY *PERSONS* AND [~~DISABLED~~] PERSONS *WITH DISABILITIES*

SECTION 4.254. Section 48.001, Human Resources Code, is amended to read as follows:

Sec. 48.001. PURPOSE. The purpose of this chapter is to provide for the authority to investigate the abuse, neglect, or exploitation of an elderly [~~or disabled~~] person *or person with a disability* and to provide protective services to that person.

SECTION 4.255. Sections 48.002(a)(2), (3), (5), (6), and (8), Human Resources Code, are amended to read as follows:

(2) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly [~~or disabled~~] person *or person with a disability* by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or

(B) sexual abuse of an elderly [~~or disabled~~] person *or person with a disability*, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(3) "Exploitation" means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an elderly [~~or disabled~~] person *or person with a disability* that involves using, or attempting to use, the resources of the elderly [~~or disabled~~] person *or person with a disability*, including the person's social security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the [~~elderly or disabled~~] person.

(5) "Protective services" means the services furnished by the department or by *another* [~~a~~] protective services agency to an elderly [~~or disabled~~] person *or person with a disability* who has been determined to be in a state of abuse, neglect, or exploitation or to a relative or caretaker of an elderly [~~or disabled~~] person *or person with a disability* if the department determines the services are necessary to prevent the elderly [~~or disabled~~] person *or person with a disability* from returning to a state of abuse, neglect, or exploitation. These services may include social casework, case management, and arranging for psychiatric and health evaluation, home care, day care, social services, health care, respite services, and other services consistent with this chapter. The term does not include the services of the department or another protective services agency in conducting an investigation regarding alleged abuse, neglect, or exploitation of an elderly [~~or disabled~~] person *or person with a disability*.

(6) "Protective services agency" means a public or private agency, corporation, board, or organization that provides protective services to elderly [~~or disabled~~] persons *or persons with disabilities* in the state of abuse, neglect, or exploitation.

(8) "*Person with a disability* [~~Disabled person~~]" means a person with a mental, physical, or *intellectual or* developmental disability that substantially impairs the person's ability to provide adequately for the person's care or protection and who is:

(A) 18 years of age or older; or

(B) under 18 years of age and who has had the disabilities of minority removed.

SECTION 4.256. Section 48.002(b), Human Resources Code, is amended to read as follows:

(b) The definitions of "abuse," "neglect," and "exploitation" adopted by the *executive commissioner* [~~department~~] as prescribed by Section 48.251 apply to an investigation of abuse, neglect, or exploitation *under Subchapter* [~~in a facility subject to Subchapters~~] F *or* [~~and~~] H.

SECTION 4.257. Section 48.004, Human Resources Code, is amended to read as follows:

Sec. 48.004. RISK ASSESSMENT. The executive commissioner by rule shall develop and maintain risk assessment criteria for use by department personnel in determining whether an elderly [~~or disabled~~] person *or person with a disability* is in imminent risk of abuse, neglect, or exploitation or in a state of abuse, neglect, or exploitation and needs protective services. The criteria must:

(1) provide for a comprehensive assessment of the person's:

(A) environmental, physical, medical, mental health, and financial condition;

(B) social interaction and support; and

(C) need for legal intervention; and

(2) specify the circumstances under which a caseworker must consult with a supervisor regarding a case.

SECTION 4.258. Section 48.007, Human Resources Code, is amended to read as follows:

Sec. 48.007. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN ABUSE, NEGLECT, OR EXPLOITATION INVESTIGATIONS. The *commission* [~~Health and Human Services Commission~~], the department, the Department of Aging and Disability Services, the office of independent ombudsman for state supported living centers, and the *commission's* [~~Health and Human Services Commission's~~] office of inspector general shall enter into a memorandum of understanding regarding investigations of alleged abuse, neglect, or exploitation of residents or clients of state supported living centers or the *ICF-IID* [~~ICF-MR~~] component of the Rio Grande State Center that delineates the responsibilities of each agency *and office* under this chapter, Chapter 261, Family Code, and Chapter 555, Health and Safety Code, and amend the memorandum of understanding as necessary to reflect changes in those responsibilities. During the negotiation of the memorandum of understanding, the agencies *and offices* shall jointly determine whether the forensic training received by relevant staff of the Department of Family and Protective Services is adequate. Specifically, the agencies *and offices* shall assess and, if necessary, develop a plan to enhance the ability of department staff to identify and report incidences that constitute a potential criminal offense. The *commission* [~~Health and Human Services Commission~~] is the final arbiter of any dispute regarding the memorandum of understanding under this section.

SECTION 4.259. Sections 48.051(a), (b), and (d), Human Resources Code, are amended to read as follows:

(a) Except as prescribed by Subsection (b), a person having cause to believe that an elderly [~~or disabled~~] person *or person with a disability* is in the state of abuse, neglect, or exploitation, including a [~~disabled~~] person *with a disability who is* receiving services as described by Section 48.252, shall report the information required by Subsection (d) immediately to the department.

(b) If a person has cause to believe that an elderly [~~or disabled~~] person *or person with a disability*, other than a [~~disabled~~] person *with a disability* receiving services as

described by Section 48.252, has been abused, neglected, or exploited in a facility operated, licensed, certified, or registered by a state agency, the person shall report the information to the state agency that operates, licenses, certifies, or registers the facility for investigation by that agency.

(d) The report may be made orally or in writing. It shall include:

(1) the name, age, and address of the elderly [~~or disabled~~] person *or person with a disability*;

(2) the name and address of any person responsible for the *care of the* elderly *person* or *person with a disability* [~~disabled person's care~~];

(3) the nature and extent of the *condition of the* elderly *person* or *person with a disability* [~~disabled person's condition~~];

(4) the basis of the reporter's knowledge; and

(5) any other relevant information.

SECTION 4.260. Section 48.052(a), Human Resources Code, is amended to read as follows:

(a) A person commits an offense if the person has cause to believe that an elderly [~~or disabled~~] person *or person with a disability* has been abused, neglected, or exploited or is in the state of abuse, neglect, or exploitation and knowingly fails to report in accordance with this chapter. An offense under this subsection is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the *abused, neglected, or exploited* [~~disabled~~] person *is* [~~was~~] a person with *an intellectual disability* [~~mental retardation~~] who resided in a state supported living center, the *ICF–IID* [~~ICF–MR~~] component of the Rio Grande State Center, or a facility licensed under Chapter 252, Health and Safety Code, and the actor knew that the [~~disabled~~] person had suffered serious bodily injury as a result of the abuse, neglect, or exploitation.

SECTION 4.261. Section 48.101(f), Human Resources Code, is amended to read as follows:

(f) The department or investigating state agency may establish procedures to exchange with another state agency or governmental entity information that is necessary for the department, state agency, or entity to properly execute its respective duties and responsibilities to provide services to elderly [~~or disabled~~] persons *or persons with disabilities* under this chapter or other law. An exchange of information under this subsection does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

SECTION 4.262. Sections 48.102(a) and (d), Human Resources Code, are amended to read as follows:

(a) The department shall send a written report of the department's investigation of alleged abuse, neglect, or exploitation of *an* [~~a disabled~~] adult *with a disability* at a school, as appropriate, to the Texas Education Agency, the agency responsible for teacher certification, the local school board or the school's governing body, and the school principal or director, unless the principal or director is alleged to have committed the abuse, neglect, or exploitation. The entity to which the report is sent shall take appropriate action.

(d) The *executive commissioner* [~~department~~] shall adopt rules necessary to implement this section.

SECTION 4.263. Section 48.103(a), Human Resources Code, is amended to read as follows:

(a) On determining after an investigation that an elderly [~~or disabled~~] person *or person with a disability* has been abused, exploited, or neglected by an employee of a home and community support services agency licensed under Chapter 142, Health and Safety Code, the department shall:

(1) notify the state agency responsible for licensing the home and community support services agency of the department's determination;

(2) notify any health and human services agency, as defined by Section 531.001,

Government Code, that contracts with the home and community support services agency for the delivery of health care services of the department's determination; and

(3) provide to the licensing state agency and any contracting health and human services agency access to the department's records or documents relating to the department's investigation.

SECTION 4.264. Sections 48.151(b) and (c), Human Resources Code, are amended to read as follows:

(b) The *executive commissioner* [~~department~~] shall adopt rules for conducting investigations under this chapter.

(c) The *executive commissioner* [~~department~~] by rule may assign priorities and prescribe investigative procedures for conducting investigations according to the degree of severity and immediacy of the alleged harm to the individual. Notwithstanding Subsection (a), the [~~department's~~] priorities and procedures may provide that an investigation is not required to be initiated within 24 hours in all cases.

SECTION 4.265. Section 48.152(a), Human Resources Code, is amended to read as follows:

(a) An investigation by the department or a state agency shall include an interview with the elderly [~~or disabled~~] person *or person with a disability*, if appropriate, and with persons thought to have knowledge of the circumstances. If the elderly [~~or disabled~~] person *or person with a disability* refuses to be interviewed or cannot be interviewed because of a physical or mental impairment, the department shall continue the investigation by interviewing other persons thought to have knowledge relevant to the investigation.

SECTION 4.266. Section 48.1522, Human Resources Code, is amended to read as follows:

Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW ENFORCEMENT AGENCY. (a) Except as provided by Subsection (b), if during the course of the department's or another state agency's investigation of reported abuse, neglect, or exploitation a caseworker of the department or other state agency, as applicable, or the caseworker's supervisor has cause to believe that the elderly [~~or disabled~~] person *or person with a disability* has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, the caseworker or supervisor shall:

(1) immediately notify an appropriate law enforcement agency, unless the law enforcement agency reported the alleged abuse, neglect, or exploitation to the department; and

(2) provide the law enforcement agency with a copy of the investigation report of the department or other state agency, as applicable, in a timely manner.

(b) If during the course of the department's investigation of reported abuse, neglect, or exploitation a caseworker of the department or the caseworker's supervisor has cause to believe that a [~~disabled~~] person *with a disability* who is a resident or client of a state supported living center or the *ICF-IID* [~~ICF-MR~~] component of the Rio Grande State Center has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, in addition to the report to the appropriate law enforcement agency required by Subsection (a), the caseworker shall immediately notify the commission's office of inspector general and promptly provide the commission's office of inspector general with a copy of the department's investigation report.

SECTION 4.267. Section 48.153(a), Human Resources Code, is amended to read as follows:

(a) To implement an investigation of reported abuse, neglect, or exploitation, the probate court, or the county court when no probate court exists, may authorize entry of the place of residence of the elderly [~~or disabled~~] person *or person with a disability*.

SECTION 4.268. Section 48.154(a), Human Resources Code, is amended to read as follows:

(a) The department or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of the department's or state agency's duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly [~~or disabled~~] person *or person with a disability*. A person, agency, or institution that has a record or document that the department or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the department or state agency that requested the record or document.

SECTION 4.269. Section 48.155, Human Resources Code, is amended to read as follows:

Sec. 48.155. INTERFERENCE WITH INVESTIGATION OR SERVICES PROHIBITED. (a) A person, including a guardian and notwithstanding Section *1151.001* [~~675~~], *Estates* [~~Texas Probate~~] Code, may not interfere with:

(1) an investigation by the department or by *another* [~~a~~] protective services agency of alleged abuse, neglect, or exploitation of an elderly [~~or disabled~~] person *or person with a disability*; or

(2) the provision of protective services to an elderly [~~or disabled~~] person *or person with a disability*.

(b) The department or *another* [~~a~~] protective services agency may petition the appropriate court to enjoin any interference with:

(1) an investigation of alleged abuse, neglect, or exploitation; or

(2) the provision of protective services such as removal of the elderly [~~or disabled~~] person *or person with a disability* to safer surroundings or safeguarding the person's resources from exploitation.

SECTION 4.270. Section 48.201, Human Resources Code, is amended to read as follows:

Sec. 48.201. APPLICATION OF SUBCHAPTER. Except as otherwise provided, this subchapter does not apply to *an* [~~a Texas Department of Mental Health and Mental Retardation~~] investigation under Subchapter F or H.

SECTION 4.271. Section 48.202, Human Resources Code, is amended to read as follows:

Sec. 48.202. SERVICE DETERMINATION BY DEPARTMENT OR AGENCY. (a) In an investigation the department or state agency, as appropriate, shall determine:

(1) whether the person needs protective services from the department;

(2) what services are needed;

(3) whether services are available from the department, from the state agency, or in the community and how they can be provided;

(4) whether the person, acting alone, would be capable of obtaining needed services and could bear the cost or would be eligible for services from the department or state agency;

(5) whether a caretaker would be willing to provide services or would agree to their provision;

(6) whether the elderly [~~or disabled~~] person *or person with a disability* desires the services;

(7) whether the person needs legal intervention to resolve the person's abuse, neglect, or exploitation and, if so, what type of intervention is needed; and

(8) other pertinent data.

(b) If the department or state agency, as appropriate, determines under Subsection (a)(1) that a person needs protective services, the department or agency shall, in determining how those services can be provided as required by Subsection (a)(3),

determine whether the person *may be* [~~is~~] eligible for community-based long-term [~~care~~] services *and supports* and whether those services *and supports* are available. If the person is eligible for those services *and supports*, but the services *and supports* are not immediately available, the department or state agency shall ensure that the person is placed on an appropriate waiting list for the services *and supports* and that the person's abuse, neglect, or exploitation is resolved before the department closes the case.

SECTION 4.272. Section 48.203, Human Resources Code, is amended to read as follows:

Sec. 48.203. VOLUNTARY PROTECTIVE SERVICES. (a) An elderly [~~or disabled~~] person *or person with a disability* may receive voluntary protective services if the person requests or consents to receive those services.

(b) The elderly [~~or disabled~~] person *or person with a disability* who receives protective services shall participate in all decisions regarding *the person's* [~~his or her~~] welfare, if able to do so.

(c) The least restrictive alternatives should be made available to the elderly [~~or disabled~~] person *or person with a disability* who receives protective services.

(d) Except as provided by Section 48.208, if an elderly [~~or disabled~~] person *or person with a disability* withdraws from or refuses consent to voluntary protective services, the services may not be provided.

SECTION 4.273. Section 48.204, Human Resources Code, is amended to read as follows:

Sec. 48.204. AGENCY POWERS. A protective services agency may furnish protective services to an elderly [~~or disabled~~] person *or person with a disability* with the person's consent or to a relative or caretaker of *the* [~~an elderly or disabled~~] person on behalf of the [~~elderly or disabled~~] person with the relative's or caregiver's consent or, if the elderly [~~or disabled~~] person *or person with a disability* lacks the capacity to consent, without that person's consent as provided by this chapter.

SECTION 4.274. Sections 48.205(b) and (d), Human Resources Code, are amended to read as follows:

(b) The department shall use existing resources and services of public and private agencies in providing protective services. If the department does not have existing resources to provide direct protective services to elderly [~~or disabled~~] persons *or persons with disabilities*, the department, subject to the availability of funds, shall contract with protective services agencies for the provision of those services, especially to [~~elderly or disabled~~] persons residing in rural or remote areas of this state or not previously served by the department.

(d) The responsibilities prescribed by this chapter are exclusive of those designated to other state or federal agencies authorized or required by law to provide protective services to elderly [~~or disabled~~] persons *or persons with disabilities* determined to be in the state of abuse, neglect, or exploitation.

SECTION 4.275. Section 48.206, Human Resources Code, is amended to read as follows:

Sec. 48.206. COST OF SERVICES. If the elderly [~~or disabled~~] person *or person with a disability* receiving the protective services is determined to be financially able to contribute to the payments for those services, the provider shall receive a reasonable reimbursement from the person's assets.

SECTION 4.276. Sections 48.208(b), (c), (c–1), (c–2), (c–3), (c–4), (c–5), (d), (d–1), (e–1), (f), (g), and (h), Human Resources Code, are amended to read as follows:

(b) If the department determines that an elderly [~~or disabled~~] person *or person with a disability* is suffering from abuse, neglect, or exploitation presenting a threat to life or physical safety, that the person lacks capacity to consent to receive protective services, and that no consent can be obtained, the department may petition the probate or statutory or constitutional county court that has probate jurisdiction in the county in which

the [~~elderly or disabled~~] person resides for an emergency order authorizing protective services.

(c) The petition shall be verified and shall include:

(1) the name, age, and address of the elderly [~~or disabled~~] person *or person with a disability* who needs protective services;

(2) the nature of the abuse, neglect, or exploitation;

(3) the services needed; and

(4) a medical report signed by a physician stating that the person is suffering from abuse, neglect, or exploitation presenting a threat to life or physical safety and stating that the person is physically or mentally incapable of consenting to services unless the court finds that an immediate danger to the *person's* health or safety [~~of the elderly or disabled person~~] exists and there is not sufficient time to obtain the medical report.

(c–1) Notwithstanding Subsection (c)(4), in lieu of a medical report described by Subsection (c)(4), the petition may include an assessment of the [~~elderly or disabled person's~~] health status *of the elderly person or person with a disability* as described by Subsection (c–2) or psychological status as described by Subsection (c–3), or a medical opinion of the [~~elderly or disabled~~] person's health status as described by Subsection (c–4), if the department determines, after making a good faith effort, that a physician from whom the department may obtain the medical report is unavailable. The department shall ensure that the person who performs an assessment of the [~~elderly or disabled person's~~] health or psychological status *of the elderly person or person with a disability* has training and experience in performing the applicable assessment.

(c–2) Except as provided by Subsection (c–4), an assessment of the [~~elderly or disabled person's~~] health status *of the elderly person or person with a disability* must be performed by a physician assistant or advanced practice nurse. The person performing the assessment shall sign a report stating:

(1) that the elderly [~~or disabled~~] person *or person with a disability* is reported to be suffering from abuse, neglect, or exploitation, which may present a threat to the person's life or physical safety;

(2) whether the elderly [~~or disabled~~] person *or person with a disability* has provided the person's medical history to the physician assistant or advanced practice nurse, as applicable; and

(3) that in the professional opinion of the physician assistant or advanced practice nurse, as applicable, the issuance of an emergency order authorizing protective services without the [~~elderly or disabled person's~~] consent *of the elderly person or person with a disability* is necessary under the circumstances.

(c–3) An assessment of the [~~elderly or disabled person's~~] psychological status *of the elderly person or person with a disability* must be performed by a licensed professional counselor, licensed psychologist, or master social worker who has training and expertise in issues related to abuse, neglect, and exploitation. The person performing the assessment shall sign a report stating:

(1) that the elderly [~~or disabled~~] person *or person with a disability* is reported to be suffering from abuse, neglect, or exploitation, which may present a threat to the person's life or physical safety; and

(2) that in the professional opinion of the licensed professional counselor, licensed psychologist, or master social worker, as applicable, the issuance of an emergency order authorizing protective services without the [~~elderly or disabled person's~~] consent *of the elderly person or person with a disability* is necessary under the circumstances.

(c–4) A registered nurse may perform a nursing assessment of the [~~elderly or disabled person's~~] health status *of the elderly person or person with a disability*. If the registered nurse, based on the registered nurse's professional nursing judgment, determines that the [~~elderly or disabled~~] person is likely to be suffering from abuse, neglect, or exploitation, which may present a threat to the person's life or physical safety, the registered

nurse shall report that assessment to a physician. After the registered nurse reports the assessment, the physician shall sign a written opinion stating whether:

(1) the elderly [~~or disabled~~] person *or person with a disability* is reported to be suffering from abuse, neglect, or exploitation, which may present a threat to the person's life or physical safety; and

(2) the issuance of an emergency order authorizing protective services without the [~~elderly or disabled person's~~] consent *of the elderly person or person with a disability* is necessary under the circumstances.

(c–5) The physician may use the registered nurse's assessment of the [~~elderly or disabled person's~~] health status *of the elderly person or person with a disability* as the basis of the physician's professional opinion under Subsection (c–4).

(d) On finding that there is reasonable cause to believe that abuse, neglect, or exploitation presents a threat to life or physical safety for the elderly [~~or disabled~~] person *or person with a disability* and that the [~~elderly or disabled~~] person lacks capacity to consent to services, the court may:

(1) order removal of the [~~elderly or disabled~~] person to safer surroundings;

(2) order medical services; and

(3) order other available services necessary to remove conditions creating the threat to life or physical safety, including the services of law enforcement officers or emergency medical services personnel.

(d–1) If the court renders an order that is based on a petition including an assessment under Subsection (c–2) or (c–3) or a medical opinion under Subsection (c–4), the court shall order that the elderly [~~or disabled~~] person *or person with a disability* be examined by a physician not later than 72 hours after the time the provision of protective services begins. After performing the examination, the physician shall sign and submit to the court a medical report stating the physician's opinion whether the [~~elderly or disabled~~] person is:

(1) suffering from abuse, neglect, or exploitation presenting a threat to life or physical safety; and

(2) physically or mentally incapable of consenting to services.

(e–1) An emergency order that was rendered based on a petition that included an assessment under Subsection (c–2) or (c–3) or a medical opinion under Subsection (c–4) immediately terminates if the medical report issued under Subsection (d–1) states the physician's opinion that the elderly [~~or disabled~~] person *or person with a disability*:

(1) is not suffering from abuse, neglect, or exploitation presenting a threat to life or physical safety; or

(2) is physically or mentally capable of consenting to services.

(f) Any medical facility, emergency medical services provider, or physician who provides treatment to or who transports an elderly [~~or disabled~~] person *or person with a disability* pursuant to an emergency order under Subsection (d) or an emergency authorization under Subsection (h) is not liable for any damages arising from the treatment or transportation, except those damages resulting from the negligence of the facility, provider, or physician.

(g) The court shall appoint an attorney ad litem to represent the elderly [~~or disabled~~] person *or person with a disability* in any proceeding brought by the department under this section. A reasonable fee, as determined by the court, shall be paid to the attorney ad litem from the general fund of the county.

(h) If the department cannot obtain an emergency order under this section because the court is closed on a Saturday, Sunday, or legal holiday or after 5 p.m., the department may remove or authorize an appropriate transportation service, including an emergency medical services provider, to remove the elderly [~~or disabled~~] person *or person with a disability* to safer surroundings, authorize medical treatment, or authorize or provide other available services necessary to remove conditions creating the threat to

life or physical safety. The department must obtain an emergency order under this section not later than 4 p.m. on the first succeeding business day after the date on which protective services are provided. If the department does not obtain an emergency order, the department shall cease providing protective services and, if necessary, make arrangements for the immediate return of the person to the place from which the person was removed, to the person's place of residence in the state, or to another suitable place.

SECTION 4.277. Sections 48.209(a) and (d), Human Resources Code, are amended to read as follows:

(a) The department shall refer an individual to the Department of Aging and Disability Services for guardianship services under Subchapter E, Chapter 161, if the individual is:

(1) a minor in the conservatorship of the department who:

(A) is 16 years of age or older; and

(B) the department has reason to believe will, because of a physical or mental condition, be substantially unable to provide for the individual's own food, clothing, or shelter, to care for the individual's own physical health, or to manage the individual's own financial affairs when the individual becomes an adult; or

(2) an elderly [~~or disabled~~] person *or person with a disability* who:

(A) has been found by the department to be in a state of abuse, neglect, or exploitation; and

(B) the department has reason to believe is an incapacitated person as defined by Section *1002.017(2)* [~~601(14)(B)~~], *Estates* [~~Texas Probate~~] Code.

(d) Nothing in this section shall prohibit the department from also making a referral of an individual to a court having probate jurisdiction in the county where the individual is domiciled or found, if the court has requested the department to notify the court of any individuals who may be appropriate for a court-initiated guardianship proceeding under *Chapter 1102* [~~Section 683~~], *Estates* [~~Texas Probate~~] Code. In making a referral under this subsection and if requested by the court, the department shall, to the extent allowed by law, provide the court with all relevant information in the department's records relating to the individual. The court, as part of this process, may not require the department to:

(1) perform the duties of a guardian ad litem or court investigator as prescribed by *Chapter 1102* [~~Section 683~~], *Estates* [~~Texas Probate~~] Code; or

(2) gather additional information not contained in the department's records.

SECTION 4.278. Section 48.211, Human Resources Code, is amended to read as follows:

Sec. 48.211. REPORT TO GUARDIANSHIP COURT. If the elderly [~~or disabled~~] person *or person with a disability* has a guardian, a written notification of the findings of the investigation shall be sent to the court to which the guardian is accountable.

SECTION 4.279. The heading to Subchapter F, Chapter 48, Human Resources Code, is amended to read as follows:

SUBCHAPTER F. INVESTIGATIONS IN CERTAIN FACILITIES, COMMUNITY CENTERS, AND LOCAL MENTAL HEALTH AND *INTELLECTUAL AND DEVELOPMENTAL DISABILITY* [~~MENTAL RETARDATION~~] AUTHORITIES

SECTION 4.280. Section 48.251, Human Resources Code, is amended to read as follows:

Sec. 48.251. DEFINITIONS. The *executive commissioner* [~~department~~] by rule shall adopt definitions of "abuse," "neglect," and "exploitation" to govern *investigations* [~~an investigation~~] under this subchapter and Subchapter H.

SECTION 4.281. Section 48.252, Human Resources Code, is amended to read as

follows:

Sec. 48.252. INVESTIGATION OF REPORTS IN CERTAIN FACILITIES AND IN COMMUNITY CENTERS. (a) The department shall receive and investigate reports of the abuse, neglect, or exploitation of an individual with a disability receiving services:

(1) in:

(A) a mental health facility operated by the Department of State Health Services; or

(B) a facility licensed under Chapter 252, Health and Safety Code;

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

(3) through a program providing services to that person by contract with a mental health facility operated by the Department of State Health Services, a community center, a local mental health authority, or a local *intellectual and developmental disability* [~~mental retardation~~] authority.

(b) The department shall receive and shall investigate reports of the abuse, neglect, or exploitation of an individual with a disability receiving services:

(1) in a state supported living center or the *ICF-IID* [~~ICF-MR~~] component of the Rio Grande State Center; or

(2) through a program providing services to that person by contract with a state supported living center or the *ICF-IID* [~~ICF-MR~~] component of the Rio Grande State Center.

(c) The *executive commissioner* [~~department~~] by rule shall define who is "an individual with a disability receiving services."

(d) In this section, "community center," "local mental health authority," and "local *intellectual and developmental disability* [~~mental retardation~~] authority" have the meanings assigned by Section 531.002, Health and Safety Code.

SECTION 4.282. Section 48.254, Human Resources Code, is amended to read as follows:

Sec. 48.254. FORWARDING OF CERTAIN REPORTS. In accordance with department rules, the department shall forward a copy of the initial intake report and a copy of the completed investigation report relating to alleged or suspected abuse, neglect, or exploitation to the appropriate facility, community center, *local* mental health authority, *local intellectual and developmental disability* [~~mental retardation~~] authority, or program providing mental health or *intellectual disability* [~~mental retardation~~] services under contract with the facility, community center, or authority.

SECTION 4.283. Sections 48.255(a), (b), (c), (d), (e), and (f), Human Resources Code, are amended to read as follows:

(a) The department, the Department of Aging and Disability Services, and the Department of State Health Services shall develop [~~joint~~] rules to facilitate investigations in state mental health facilities and state supported living centers.

(b) The *executive commissioner* [~~department, the Department of Aging and Disability Services, and the Department of State Health Services~~] by *rule* [~~joint rules~~] shall establish procedures for resolving disagreements between the department and the Department of Aging and Disability Services or the Department of State Health Services concerning the department's investigation findings.

(c) The department, the Department of Aging and Disability Services, and the Department of State Health Services shall develop *and propose to the executive commissioner* [~~joint~~] rules to facilitate investigations in community centers, *local* mental health authorities, and *local intellectual and developmental disability* [~~mental retardation~~] authorities.

(d) A confirmed investigation finding by the department may not be changed by a superintendent of a state mental health facility, by a director of a state supported living

center, by a director of a community center, or by a *local* mental health authority or *local intellectual and developmental disability* [~~mental retardation~~] authority.

(e) The *executive commissioner* [~~department~~] shall provide by rule for an appeals process by the alleged victim of abuse, neglect, or exploitation under this section.

(f) The *executive commissioner* [~~department~~] by rule may assign priorities to an investigation conducted by the department under this section. The primary criterion used by the *executive commissioner* [~~department~~] in assigning a priority must be the risk that a delay in the investigation will impede the collection of evidence.

SECTION 4.284. Section 48.256(a), Human Resources Code, is amended to read as follows:

(a) The department, the Department of Aging and Disability Services, and the Department of State Health Services shall, *at the direction of the executive commissioner,* jointly develop and implement a single system to track reports and investigations under this subchapter.

SECTION 4.285. Sections 48.301(a), (b), (c), (e), (f), and (g), Human Resources Code, are amended to read as follows:

(a) If the department receives a report of suspected abuse, neglect, or exploitation of an elderly [~~or disabled~~] person *or person with a disability*, other than a [~~disabled~~] person *with a disability who is* receiving services as described by Section 48.252, in a facility operated, licensed, certified, or registered by a state agency, the department shall refer the report to that agency.

(b) A state agency that receives a report under this section shall make a thorough investigation promptly after receiving a report that an elderly [~~or disabled~~] person *or person with a disability* has been or may be abused, neglected, or exploited in a facility operated, licensed, certified, or registered by the agency. The primary purpose of the investigation is the protection of the elderly [~~or disabled~~] person *or person with a disability*.

(c) Each state agency that may receive reports under this section, *or the person responsible for adopting rules for that state agency,* shall adopt rules relating to the investigation and resolution of reports received under this section.

(e) A state agency that receives a complaint relating to an investigation conducted under this section shall refer the complaint to its governing board, *if applicable,* or other *person or* entity designated to receive such complaints for review and appropriate action.

(f) The *executive commissioner* [~~Health and Human Services Commission~~] by rule shall adopt minimum standards for the investigation of suspected abuse, neglect, or exploitation of an elderly [~~or disabled~~] person *or person with a disability* under this section.

(g) A rule or policy adopted by *or for* a state agency [~~or institution~~] under Subsection (c) must be consistent with the minimum standards adopted by the *executive commissioner* [~~Health and Human Services Commission~~].

SECTION 4.286. Section 48.302, Human Resources Code, is amended to read as follows:

Sec. 48.302. APPROVAL OF RULES. The *executive commissioner* [~~Health and Human Services Commission~~] shall review and approve the rules *required by Section 48.301(c)* to ensure that all agencies implement appropriate standards for the conduct of investigations and that uniformity exists among agencies in the investigation and resolution of reports.

SECTION 4.287. Section 48.303(a), Human Resources Code, is amended to read as follows:

(a) The department shall *enter into* [~~adopt~~] a memorandum of understanding with each state agency that operates, licenses, certifies, or registers a facility in which elderly [~~or disabled~~] persons *or persons with disabilities* are located that clarifies each agency's responsibility under this chapter.

SECTION 4.288. Section 48.304, Human Resources Code, is amended to read as follows:

Sec. 48.304. STATISTICS. (a) *A* [~~Each~~] state agency[~~, other than the Texas Department of Mental Health and Mental Retardation,~~] that operates, licenses, certifies, or registers a facility in which elderly [~~or disabled~~] persons *or persons with disabilities* are located shall compile and maintain statistics on the incidence of abuse, neglect, or exploitation of elderly [~~or disabled~~] persons *or persons with disabilities* that occurs in the facilities. *A state agency is not required to compile and maintain statistics on the incidence of abuse, neglect, or exploitation of an individual with a disability described under Section 48.252.*

(b) The agency shall make the statistics available to the *commission* [~~Health and Human Services Commission~~] on request.

SECTION 4.289. Section 48.402, Human Resources Code, is amended to read as follows:

Sec. 48.402. RULES RELATING TO REPORTABLE CONDUCT. The *executive commissioner* [~~department~~] may adopt rules to further define reportable conduct.

SECTION 4.290. Section 51.0021, Human Resources Code, is amended to read as follows:

Sec. 51.0021. FAMILY VIOLENCE SERVICES PLAN. (a) The *commission* [~~department~~] shall develop and maintain a plan for delivering family violence services in this state.

(b) In developing the plan under this section, the *commission* [~~department~~] shall consider the geographic distribution of services and the need for services, including the need for increasing services for underserved populations.

SECTION 4.291. Section 51.003, Human Resources Code, is amended to read as follows:

Sec. 51.003. CONTRACTS. (a) The *commission* [~~department~~] shall contract for services with family violence centers with consideration given to the plan for family violence services under Section 51.0021. These contracts are to expand existing family violence center services and may not result in reducing financial support a family violence center receives from another source. The contracts shall not provide for more than 75 percent of the cost of the family violence center program. The *commission* [~~department~~] shall develop a declining scale of state financial support for family violence centers, declining over a six-year period from the initiation of each individual contract, with no more than 50 percent of a family violence center program's funding to be provided by the state after the sixth year. The balance each year shall be provided from other sources. The *executive commissioner* [~~department~~] may adopt rules which will allow exceptions to the above scale in individual instances when a family violence center shall demonstrate that exigent circumstances require such a waiver.

(b) The *commission* [~~department~~] may contract with family violence special projects for services. The *commission* [~~department~~] shall consider the plan for family violence services under Section 51.0021 in contracting with family violence special projects.

(c) The *commission* [~~department~~] shall contract statewide for activities that support and advance the work of family violence centers. Activities contracted for under this subsection must include the provision of technical assistance and training for family violence centers. The *commission* [~~department~~] may contract for the provision of public education, consultation to the *commission* [~~department~~], research, evaluation, and liaison and training for other professionals who work with victims of family violence, including professionals in the criminal justice, medical, and social services fields, and for community or civic groups.

(d) The *commission* [~~department~~] shall award all contracts made under Subsection (c) through a competitive bidding process unless that process would not be cost-effective.

SECTION 4.292. Section 51.004, Human Resources Code, is amended to read as follows:

Sec. 51.004. CONTRACT BIDS. (a) To be eligible for a contract under Section 51.003(a), a family violence shelter center must:

(1) provide temporary lodging and direct delivery of services for adults and their dependents;

(2) have been in actual operation offering shelter services 24 hours a day with a capacity for not less than five persons for at least one year before the date on which the contract is awarded;

(3) demonstrate that the center, through the services it provides, is addressing a need in the community consistent with the plan for family violence services under Section 51.0021; and

(4) submit a contract application on forms prescribed by the *commission* [~~department~~].

(b) To be eligible for a contract under Section 51.003(a), a family violence nonresidential center must:

(1) provide, as its primary purpose, direct delivery of services to adult victims of family violence;

(2) demonstrate a system of referring victims of family violence to at least one family violence shelter center or other safe temporary lodging;

(3) have been operating and providing comprehensive services, including the services described by Section 51.005(b)(3), to victims of family violence for at least one year before the date on which the contract is awarded;

(4) demonstrate that the center, through the services it provides, is addressing a need in the community consistent with the plan for family violence services under Section 51.0021; and

(5) submit a contract application on forms prescribed by the *commission* [~~department~~].

(c) The *commission* [~~department~~] shall consider the following factors in awarding contracts under Section 51.003(a):

(1) the family violence center's eligibility for and use of funds from the federal government, philanthropic organizations, and voluntary sources;

(2) community support for the family violence center, as evidenced by financial contributions from civic organizations, local governments, and individuals;

(3) evidence that the family violence center provides services that encourage self-sufficiency and effectively uses community resources;

(4) evidence of involvement with local law enforcement officials; and

(5) support for the family violence center through volunteer work, especially volunteer effort by persons who have been victims of family violence.

(d) To be eligible for a contract under Section 51.003(b), a family violence special project must:

(1) provide:

(A) community education relating to family violence; or

(B) direct delivery of services for adult victims of family violence or their children;

(2) demonstrate a system of referring victims of family violence to at least one family violence shelter center or other safe temporary lodging;

(3) demonstrate that the project, through the services it provides, is addressing a need in the community consistent with the plan for family violence services under Section 51.0021;

(4) demonstrate that the underserved or special population to be served by the project is involved in the project's design and implementation, if applicable; and

(5) submit a contract application on forms prescribed by the *commission* [~~department~~].

(e) The *commission* [~~department~~] shall use a noncompetitive procurement procedure if the *commission* [~~department~~] determines that there is no competition between eligible family violence centers for a service area. If the *commission* [~~department~~] determines that there is competition between eligible family violence centers for a service area, the *commission* [~~department~~] shall award a contract through a competitive procurement procedure.

SECTION 4.293. Section 51.005, Human Resources Code, is amended to read as follows:

Sec. 51.005. CONTRACT SPECIFICATIONS. (a) The *commission* [~~department~~] shall contract only with public or private nonprofit organizations that fulfill the requirements of this chapter.

(b) The contracts shall require the persons operating a family violence center to:

(1) make a quarterly and an annual financial report on a form prescribed by the *commission* [~~department~~];

(2) cooperate with inspections the *commission* [~~department~~] makes to ensure services standards and fiscal responsibility; and

(3) provide, as its primary purpose, services to victims of family violence that include:

(A) 24–hour-a-day shelter, except that a family violence nonresidential center may provide access to a 24–hour-a-day shelter;

(B) a 24–hour-a-day crisis hotline, except that a family violence nonresidential center may provide access to a 24–hour-a-day crisis hotline operated by another organization located in the nonresidential center's service area;

(C) access to emergency medical care;

(D) intervention services, including safety planning, understanding and support, information, education, referrals, and other resource assistance;

(E) access to emergency transportation;

(F) legal assistance in the civil and criminal justice systems, including:

(i) identifying individual needs, legal rights, and legal options; and

(ii) providing support and accompaniment in pursuing those options;

(G) information about educational arrangements for children;

(H) information about training for and seeking employment;

(I) cooperation with criminal justice officials;

(J) community education;

(K) a referral system to existing community services; and

(L) a volunteer recruitment and training program.

(c) The contracts may require the persons operating a family violence center to use intake and case study forms. Forms required shall be developed by the *commission* [~~department~~] with consultation as outlined in Section 51.008.

SECTION 4.294. Section 51.0051, Human Resources Code, is amended to read as follows:

Sec. 51.0051. MAXIMIZING FEDERAL FUNDING FOR PROGRAMS TO BENEFIT VICTIMS OF FAMILY VIOLENCE. To maximize the state's receipt of federal matching funds for emergency assistance under Part A, Title IV, Social Security Act (42 U.S.C. Section 601 et seq.)*:*

(1) [~~,~~] the *commission* [~~department~~] shall:

(A) [~~(1)~~] ensure that a contract made under Section 51.003 includes provisions necessary to maximize federal funding for services for victims of family violence; *and*

(B) [~~(2)~~] file amendments to the state's plan for aid and services to needy families with children under Part A, Title IV, Social Security Act (42 U.S.C. Section 601 et seq.), that are necessary to maximize federal funding; and

(2) the executive commissioner shall [~~(3)~~] establish by rule any reporting procedures that federal law requires as a condition of receiving federal matching funds.

SECTION 4.295. Section 51.006, Human Resources Code, is amended to read as follows:

Sec. 51.006. REPORT. (a) Not later than November 1 of each even-numbered year, the *commission* [~~department~~] shall publish a report that summarizes reports from family violence centers under contract with the *commission* [~~department~~] and that analyzes the effectiveness of the contracts authorized by this chapter. The reports must include information on the expenditure of funds authorized under this chapter, the services provided, the number of persons for whom a service was provided, and any other information relating to the provision of family violence services. [~~The report may be combined with the report required by Section 21.011.~~] Copies of the report shall be submitted to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the standing committees of the senate and house of representatives having primary jurisdiction over the *commission* [~~department~~].

(b) The report required under Subsection (a) may be published electronically on the *commission's* [~~department's~~] Internet website. The *commission* [~~department~~] shall notify each agency entitled to receive a copy of the report that the report is available on the *commission's* [~~department's~~] Internet website on or before the date the report is due.

SECTION 4.296. Section 51.007, Human Resources Code, is amended to read as follows:

Sec. 51.007. CONFIDENTIALITY. The *commission* [~~department~~] may not disclose any information that would identify:

(1) a particular family violence center location;

(2) a board member of a family violence center or family violence special project; or

(3) a person working at or receiving services through a family violence center or family violence special project.

SECTION 4.297. Section 51.008, Human Resources Code, is amended to read as follows:

Sec. 51.008. CONSULTATIONS. In implementing this chapter, the *commission* [~~department~~] shall consult with individuals and groups having knowledge of and experience in the problems of family violence.

SECTION 4.298. Section 51.009, Human Resources Code, is amended to read as follows:

Sec. 51.009. GRANTS AND FUNDS. The *commission* [~~department~~] may seek other funds that may be available for the contracts authorized by this chapter.

SECTION 4.299. Section 51.010, Human Resources Code, is amended to read as follows:

Sec. 51.010. RULES. The *executive commissioner* [~~department~~] may adopt rules necessary to implement this chapter.

SECTION 4.300. Section 51.011, Human Resources Code, is amended to read as follows:

Sec. 51.011. FUNDING. (a) In order to finance the program created by this chapter, the *commission* [~~department~~] is authorized to solicit and receive grants of money from either private or public sources, including appropriation by the legislature from the general revenue fund of the State of Texas, and in that regard it is hereby declared that the need for and importance of this program require priority and preferential consideration in appropriation.

(b) The *commission* [~~department~~] may use not more than six percent of the annual

legislative appropriation to the family violence program for administration of this chapter and not more than six percent annually for the contracts described in Section 51.003(c).

SECTION 4.301. Section 51.012, Human Resources Code, is amended to read as follows:

Sec. 51.012. COORDINATION OF SERVICES. The *commission* [~~department~~] and the Department of *Family and* Protective [~~and Regulatory~~] Services shall coordinate the provision of violence prevention services for children.

SECTION 4.302. Chapter 54, Human Resources Code, is amended to read as follows:

CHAPTER 54. PROTECTIVE ORDERS SOUGHT BY DEPARTMENT OF *FAMILY AND* PROTECTIVE [~~AND REGULATORY~~] SERVICES

Sec. 54.001. PROTECTIVE ORDERS. The *executive commissioner* [~~Department of Protective and Regulatory Services~~] shall adopt rules to provide procedures for the filing of protective orders *by the Department of Family and Protective Services* for the protection of a member of a family or household as provided by *Title 4* [~~Section 71.04~~], Family Code.

Sec. 54.002. NOTICE TO NONABUSIVE PARENT OR HOUSEHOLD MEMBER. The Department of *Family and* Protective [~~and Regulatory~~] Services shall provide prior notice to a nonabusive parent or adult member of a household of the department's intent to file an application for a protective order for a child or older person and shall request the assistance of the person receiving the notice in developing a safety plan for household members and the child or older person for whom the order is sought. The department shall exercise reasonable safety precautions to protect a nonabusive parent or other member of a household while providing notice and requesting assistance under this section.

SECTION 4.303. The heading to Chapter 73, Human Resources Code, is amended to read as follows:

CHAPTER 73. [~~INTERAGENCY COUNCIL ON~~] EARLY CHILDHOOD INTERVENTION SERVICES

SECTION 4.304. Section 73.001, Human Resources Code, is amended by amending Subdivisions (1) and (2) and adding Subdivision (4) to read as follows:

(1) *"Commission" means the Health and Human Services Commission* [~~"Board" means the board of the Interagency Council on Early Childhood Intervention~~].

(2) *"Department" means the Department of Assistive and Rehabilitative Services* [~~"Council" means the Interagency Council on Early Childhood Intervention~~].

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 4.305. Section 73.003, Human Resources Code, is amended to read as follows:

Sec. 73.003. STRATEGIC PLAN. The *department* [~~council~~] shall develop and implement a strategic plan for a statewide system of early childhood intervention services, as required by *Part C* [~~Subchapter VIII~~], Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section *1431* [~~1471~~] et seq.), and its subsequent amendments, to ensure that the provisions of this chapter are properly implemented by the agencies affected.

SECTION 4.306. Section 73.004, Human Resources Code, is amended to read as follows:

Sec. 73.004. ADVISORY COMMITTEE. (a) The governor shall appoint an advisory committee to assist the *department* [~~council~~] in the performance of its duties *under this chapter*. The *executive commissioner* [~~council~~] shall establish the size and composition of the committee by rule, consistent with federal regulations and state rules. The *commis-*

sioner of assistive and rehabilitative services [~~governor or the council~~] may also appoint ex officio members to serve for specific purposes to assist the *department* [~~council~~] in the performance of its duties *under this chapter.*

(b) The committee shall meet and serve *in accordance with department* [~~under the~~] rules [~~of the board~~], but the committee shall elect its own presiding officer. The committee may be divided into regional committees to assist the *department* [~~council~~] in community-level program planning and implementation *under this chapter.*

(c) The advisory committee is not subject to *Chapter 2110, Government Code* [~~Article 6252-33, Revised Statutes~~].

SECTION 4.307. Section 73.0041, Human Resources Code, is amended to read as follows:

Sec. 73.0041. ADVISORY COMMITTEE DUTIES. The advisory committee established under Section 73.004 shall perform the duties and responsibilities required of an advisory committee under *20 U.S.C. Section 1441* [~~Subchapter VIII, Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1471 et seq.),~~] and its subsequent amendments.

SECTION 4.308. Section 73.0045, Human Resources Code, is amended to read as follows:

Sec. 73.0045. *COMMISSIONER'S* POWERS AND DUTIES*; EFFECT OF CONFLICT WITH OTHER LAW* [~~OF COMMISSIONER OF HEALTH AND HUMAN SERVICES~~]. [~~The commissioner of health and human services has the powers and duties relating to the board and the executive director of the board as provided by Section 531.0055, Government Code.~~] To the extent a power or duty given to the *commissioner of assistive and rehabilitative services* [~~board or executive director~~] by this chapter or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

SECTION 4.309. Section 73.005, Human Resources Code, is amended to read as follows:

Sec. 73.005. *ISSUES RELATED TO INTERVENTION SERVICES; LEGISLATIVE PROPOSALS* [~~BOARD POWERS AND DUTIES~~]. (a) The *executive commissioner* [~~board~~] with the advice of the advisory committee shall address contemporary issues affecting intervention services in the state including:

(1) successful intervention strategies;

(2) personnel preparation and continuing education;

(3) screening services;

(4) day or respite care services;

(5) public awareness; and

(6) contemporary research.

(b) The *executive commissioner* [~~board~~] with the advice of the advisory committee shall advise the legislature on legislation that is needed to maintain a statewide system of quality intervention services for children with developmental delay who are under three years of age and the families of those children. The *department* [~~council~~] may develop and submit legislation to the legislature or comment on pending legislation that affects this population.

SECTION 4.310. Section 73.0051, Human Resources Code, is amended to read as follows:

Sec. 73.0051. POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER AND DEPARTMENT UNDER CHAPTER* [~~COUNCIL~~]. (a) The *department* [~~council~~] is the lead agency designated by the governor under *Part C* [~~Subchapter VIII~~], Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section *1431* [~~1471~~] et seq.), and its subsequent amendments, for the administration, supervision, and monitoring of a statewide comprehensive system of early intervention services that will ensure that all infants and toddlers in this state who are below the age of three and have developmental

needs or are at risk of developmental delay receive services that are provided in partnership with their families and in the context of their local community.

(b) The *executive commissioner* [~~council~~] by rule shall:

(1) provide for compliance with the terms and provisions of applicable federal and state laws in the administration of programs and the delivery of services under this chapter;

(2) establish a program to monitor fiscal and program implementation *under this chapter*; and

(3) establish appropriate sanctions for providers who fail to comply with statutory and regulatory fiscal and program requirements *under this chapter*.

(c) The *department* [~~council~~] may enter into, administer, and monitor contracts with providers for programs and projects authorized under this chapter.

(d) The *department* [~~council~~] shall periodically monitor program activities and fiscal performance of the entities funded under this chapter to:

(1) determine compliance with federal and state requirements;

(2) assess the performance of the entities in identifying children under three years of age with developmental delay in populations at risk of developmental delay; and

(3) issue reports regarding program monitoring.

(e) The *department* [~~council~~] may apply for and accept gifts, grants, and donations from public and private sources for use in programs authorized under this chapter. The *department* [~~council~~] shall deposit money received under this section into the state treasury.

(f) The *department* [~~council~~] shall:

(1) cooperate with the *commission* [~~Health and Human Services Commission~~] and other local, state, and federal agencies in the strategic planning, funding, delivery, and monitoring of services authorized under this chapter; and

(2) jointly with the Department of *Family and* Protective [~~and Regulatory~~] Services develop and implement policies applicable to providers of services authorized under this chapter in situations involving service recipients who are vulnerable to abuse or neglect.

(g) The *department* [~~council~~] shall make periodic reports *relating to the department's functions under this chapter* as required by law to other agencies, the legislature, appropriate committees, the governor, and the [~~Secretary of the~~] United States *secretary of education* [~~Department of Education~~].

(h) The *department* [~~council~~] shall ensure that all programs and *department* [~~council~~] functions *under this chapter* are conducted in a nondiscriminatory manner.

(i) The *department* [~~council~~] shall include parents when deciding the appropriate treatment for the needs of their child or children *under this chapter*. After establishing an initial and ongoing treatment plan for a child, the *department* [~~council~~] shall ensure that the child's parents continue to be included in all decisions relating to the services provided to the child, including the determination of the most appropriate setting for the child to receive services. The *department* [~~council~~] shall ensure that a child's parents receive written notification of the progress toward meeting the child's treatment plan. The notification must include details to assist parents in meeting the child's treatment goals.

(j) The *department* [~~council~~] shall *provide* [~~not limit~~] services *under this chapter in the child's* [~~to solely~~] natural environments but *must* [~~shall also~~] make alternatives available when early intervention cannot be achieved satisfactorily in a natural environment.

(k) The *department* [~~council~~] shall cooperate with the *commission* [~~Health and Human Services Commission~~] to select an appropriate automated system or systems currently used by a state agency to plan, manage, and maintain records of client services *under this chapter*. If cost-effective, the *department* [~~council~~] may use the automated system or

systems to carry out other appropriate *department* [~~council~~] administrative functions *under this chapter.*

(l) The *executive commissioner* [~~council~~] by rule may establish a system of payments by families of children receiving services under this chapter, including a schedule of sliding fees, in a manner consistent with 34 C.F.R. Sections *303.13(a)(3)* [~~303.12(a)(3)(iv)~~], 303.520, and 303.521.

SECTION 4.311. Section 73.006(b), Human Resources Code, is amended to read as follows:

(b) The [~~lay~~] members of the [~~board and~~] advisory committee are entitled to reimbursement for reasonable and necessary expenses incurred in the performance of [~~board or~~] advisory committee duties, including reimbursement for child care.

SECTION 4.312. Section 73.007, Human Resources Code, is amended to read as follows:

Sec. 73.007. PUBLIC AWARENESS AND TRAINING. The *department* [~~council~~] shall develop and implement:

(1) a general public awareness strategy focusing on the importance of prenatal care and early identification of infants and toddlers with developmental delay and the availability of resources to meet their needs; and

(2) a statewide plan for conducting training and technical assistance for service providers, primary referral sources, and families with children under three years of age with developmental delay.

SECTION 4.313. Section 73.008(a), Human Resources Code, is amended to read as follows:

(a) The *department* [~~council~~] shall develop and implement a statewide strategy for:

(1) the early identification of children under three years of age with developmental delay;

(2) improving the early identification of children under three years of age with developmental delay in populations at risk of developmental delay, through measures such as:

(A) targeting at-risk populations and appropriate geographical regions; and

(B) monitoring the performance of providers of services authorized under this chapter in identifying those children; and

(3) the coordination of programs with other agencies serving children with developmental delay, including the coordination of policy issues that affect children with developmental delay who are three years of age or older.

SECTION 4.314. Sections 73.009(a) and (b), Human Resources Code, are amended to read as follows:

(a) The *department shall develop and the executive commissioner* [~~council~~] shall establish policies concerning services described by this section. A child under three years of age and the child's family may be referred for services described by this section if the child is:

(1) identified as *having a developmental delay* [~~developmentally delayed~~];

(2) suspected of *having a developmental delay* [~~being developmentally delayed~~]; or

(3) considered at risk of developmental delay.

(b) For each child referred, the *department* [~~council~~] shall *ensure the performance of*[~~:~~

[~~(1) seek~~] appropriate medical or developmental screening or evaluation, and if such screening services or evaluation services are not available, the *department* [~~council~~] shall *ensure that* [~~provide those services either directly or by contract; and~~

[~~(2) refer~~] the child *is referred* to a public or private program that can meet the child's needs.

SECTION 4.315. Section 73.011, Human Resources Code, is amended to read as follows:

Sec. 73.011. PROVIDER SELECTION. (a) The *department* [~~council~~] shall select providers of services authorized under this chapter on a best value basis in a manner that:

(1) maximizes federal, private, and local sources of funding; and

(2) promotes competition when possible.

(b) The *department* [~~council~~] shall determine best value as required by Subsection (a) when the *department* [~~council~~] initially awards a contract to a provider and when the *department* [~~council~~] considers renewal of a provider's contract.

(c) In determining whether a provider will provide best value to the *department* [~~council~~], the *department* [~~council~~] shall consider:

(1) the past performance of the provider;

(2) the quality of the provider's services;

(3) the cost of the provider's services;

(4) the ability of the provider to maximize federal, private, and local sources of funding;

(5) the ability of the provider to comply with state and federal program requirements;

(6) the availability of the provider to deliver required services; and

(7) any other relevant factor.

SECTION 4.316. Section 73.022, Human Resources Code, is amended by amending Subsections (a) and (b) and adding Subsection (a–1) to read as follows:

(a) The *executive commissioner* [~~council~~] shall:

(1) ensure compliance with requirements necessary to obtain federal funds in the maximum amount and the most advantageous proportions possible *for programs funded under this chapter*; *and*

(2) seek funding in a manner that maximizes the total amount of money available from federal, private, and local sources for programs funded under this chapter.[;]

(a–1) The department shall:

(1) [~~(3)~~] apply for, receive, administer, and spend federal and state funds for *Part C* [~~Subchapter III~~], Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1431 et seq.), and its subsequent amendments, dealing with infants and toddlers from birth to age three with developmental delay and their families; and

(2) [~~(4)~~] authorize and account for the classification and spending of maintenance of effort and carryover funds from all sources in carrying out the programs funded under this chapter.

(b) All money paid to the *department* [~~council~~] under this chapter shall be deposited in the state treasury and may be used only for the administration of this chapter.

SECTION 4.317. Section 73.024, Human Resources Code, is amended to read as follows:

Sec. 73.024. *APPLICATION OF* OPEN MEETINGS *LAW,*[;] OPEN RECORDS *LAW, AND*[;] ADMINISTRATIVE PROCEDURE *LAW TO ADVISORY COMMITTEE*. The [~~board, council, and~~] advisory committee *is* [~~are~~] subject to the requirements of the open meetings law, Chapter 551, Government Code, the open records law, Chapter 552, Government Code, and Chapter 2001, Government Code.

SECTION 4.318. The heading to Title 4, Human Resources Code, is amended to read as follows:

TITLE 4. SERVICES FOR *PERSONS WHO ARE* [~~THE~~] DEAF *OR HARD OF HEARING*

SECTION 4.319. The heading to Chapter 81, Human Resources Code, is amended to read as follows:

CHAPTER 81. *FUNCTIONS OF DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES RELATING TO PERSONS WHO ARE* [~~TEXAS COMMISSION FOR THE~~] DEAF *OR* [~~AND~~] HARD OF HEARING

SECTION 4.320. Section 81.001, Human Resources Code, is amended by adding Subdivisions (2–a) and (5) to read as follows:

(2–a) "Department" means the Department of Assistive and Rehabilitative Services.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 4.321. Section 81.0055, Human Resources Code, is amended to read as follows:

Sec. 81.0055. *COMMISSIONER'S* POWERS AND DUTIES; *EFFECT OF CONFLICT WITH OTHER LAW* [~~OF COMMISSIONER OF HEALTH AND HUMAN SERVICES~~]. [~~The commissioner of health and human services has the powers and duties relating to the commission and the executive director of the commission as provided by Section 531.0055, Government Code.~~] To the extent a power or duty given to the *commissioner of assistive and rehabilitative services* [~~commission or executive director~~] by this chapter, or another law *relating to services for persons who are deaf or hard of hearing,* conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

SECTION 4.322. Section 81.006, Human Resources Code, is amended to read as follows:

Sec. 81.006. DUTIES AND POWERS *OF DEPARTMENT AND EXECUTIVE COMMISSIONER UNDER CHAPTER.* (a) The *department* [~~commission~~] shall:

(1) develop and implement a statewide program of advocacy and education to ensure continuity of services to persons who are deaf, deaf-blind, or hard of hearing;

(2) provide direct services to persons who are deaf or hard of hearing, including communication access, information and referral services, advocacy services, services to elderly persons who are deaf or hard of hearing, and training in accessing basic life skills;

(3) work to ensure more effective coordination and cooperation among public and nonprofit organizations providing social and educational services to individuals who are deaf or hard of hearing;

(4) maintain a registry of available qualified interpreters for persons who are deaf or hard of hearing by updating the registry at least quarterly and making the registry available to interested persons at cost;

(5) establish a system to approve and provide courses and workshops for the instruction and continuing education of interpreters for persons who are deaf or hard of hearing;

(6) assist institutions of higher education *that have or are* [~~in~~] initiating training programs for interpreters *for persons who are deaf or hard of hearing* [~~and develop guidelines for instruction to promote uniformity of signs taught within those programs~~];

(6–a) develop guidelines for the curricula for the programs described by Subdivision (6) to promote uniformity of the skills taught within those programs;

(7) with the assistance of the Texas Higher Education Coordinating Board, develop standards for evaluation of the programs described by Subdivision (6); and

(8) develop guidelines to clarify the circumstances under which interpreters certified by the *department* [~~commission~~] are qualified to interpret effectively, accurately,

and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(b) The *department* [~~commission~~] may:

(1) appoint one or more advisory committees to consult with and advise the *department under this chapter* [~~commission~~];

(2) [~~establish and~~] collect training fees and accept gifts, grants, and donations of money, personal property, or real property for use in expanding and improving services to persons of this state who are deaf or hard of hearing;

(3) [~~adopt rules necessary to implement this chapter;~~

[~~(4)~~] contract with or provide grants to agencies, organizations, or individuals as necessary to implement this chapter;

(4) collect [~~(5) establish~~] a reasonable fee *from* [~~and charge~~] interpreters for training to defray the cost of conducting the training;

(5) [~~(6)~~] develop guidelines for trilingual interpreter services; and

(6) [~~(7)~~] provide training programs for persons who provide trilingual interpreter services.

(c) The executive commissioner shall establish the fees described by Subsections (b)(2) and (4).

(d) The executive commissioner may adopt rules necessary to implement this chapter, including rules adopting standards and guidelines under this section.

[~~(c) The commission shall develop and implement policies that clearly define the respective responsibilities of the governing body of the commission and the staff of the commission.~~]

(f) The *executive commissioner* [~~commission~~] shall establish and *the department shall collect* [~~charge~~] reasonable fees for some or all *department* [~~commission~~] publications to cover the *department's* [~~commission's~~] publication costs. However, the *department* [~~commission~~] shall waive the fee if a person who is deaf or hard of hearing is financially unable to pay for the publication, and may waive the fees for publications provided to certain entities. The *executive commissioner* [~~commission~~] shall adopt rules to implement this subsection. The rules must specify the standards used for determining ability to pay for a publication and must specify the types of entities for which the fees will be waived.

SECTION 4.323. Section 81.007, Human Resources Code, is amended to read as follows:

Sec. 81.007. BOARD FOR EVALUATION OF INTERPRETERS. (a) The *department* [~~commission~~] may establish a program in accordance with this section for the certification of interpreters who have reached varying levels of proficiency in communication skills necessary to facilitate communication between persons who are deaf or hard of hearing and persons who are not deaf or hard of hearing.

(b) The *department* [~~commission~~] shall appoint an advisory board of seven persons to assist in administering the interpreter certification program. A board member may not receive compensation, but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the board, as provided in the General Appropriations Act.

(c) *The* [~~Subject to approval of the commission, the~~] board shall *develop, subject to the department's approval, and the executive commissioner shall adopt* [~~prescribe~~] qualifications for each of several levels of certification based on proficiency. *The board* [~~and~~] shall evaluate and certify interpreters using these qualifications.

(d) A qualified board member may serve as an evaluator under Subsection (c), and the *department* [~~commission~~] shall compensate the board member for services performed as an evaluator.

(e) The *executive commissioner by rule shall set and the department* [~~commission~~] shall *collect* [~~charge~~] fees for written and performance examinations, for annual certifi-

cate renewal, and for recertification. The fees must be in an amount sufficient to recover the costs of the certification program.

(f) The *department* [~~commission~~] may waive any prerequisite to obtaining a certificate for an applicant after reviewing the applicant's credentials and determining that the applicant holds a certificate issued by another jurisdiction that has certification requirements substantially equivalent to those of this state.

(g) The *executive commissioner* [~~commission~~] by rule may adopt a system under which certificates are valid for a five-year period, subject to the certificate holder's payment of an annual certificate renewal fee. After expiration of the five-year period, an interpreter must be recertified by the *department* [~~commission~~]. The *department* [~~commission~~] may recertify an interpreter who:

(1) receives specified continuing education credits; or

(2) achieves an adequate score on a specified examination.

(h) The *executive commissioner* [~~commission~~] shall adopt rules specifying the grounds for denying, suspending, or revoking an interpreter's certificate.

(i) The *department* [~~commission~~] shall determine the frequency for conducting the interpreter examinations. The *department* [~~commission~~] shall conduct the interpreter examinations:

(1) in a space that can be obtained free of charge; or

(2) at a facility selected in compliance with Section 2113.106, Government Code.

(k) The *department* [~~commission~~] shall compensate an evaluator based on a fee schedule as determined by *department* [~~commission~~] rule.

(l) The *department* [~~commission~~] shall recognize, prepare, or administer continuing education programs for its certificate holders. A certificate holder must participate in the programs to the extent required by the *department* [~~commission~~] to keep the person's certificate.

SECTION 4.324. Section 81.0071, Human Resources Code, is amended to read as follows:

Sec. 81.0071. EXAMINATION RESULTS. (a) Not later than the 60th day after the date on which a certification examination is administered under this chapter, the *department* [~~commission~~] shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the *department* [~~commission~~] shall notify examinees of the results of the examination not later than the 14th day after the date on which the *department* [~~commission~~] receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the *department* [~~commission~~] shall notify each examinee of the reason for the delay before the 90th day.

(c) The *department* [~~commission~~] may require a testing service to notify a person of the results of the person's examination.

SECTION 4.325. Section 81.0072, Human Resources Code, is amended to read as follows:

Sec. 81.0072. REVOCATION OR SUSPENSION OF CERTIFICATE. (a) The *department* [~~commission~~], based on the recommendation of the Board for Evaluation of Interpreters, may revoke or suspend a certificate or place a certificate holder on probation for a violation of a statute, rule, or policy of the *department* [~~commission~~]. If a certificate holder is placed on probation, the *department* [~~commission~~] may require the practitioner:

(1) to report regularly to the *department* [~~commission~~] on matters that are the basis of the probation;

(2) to limit practice to those areas prescribed by the *department* [~~commission~~]; or

(3) to continue or renew professional education until a satisfactory degree of skill has been attained in those areas that are the basis of the probation.

(b) If the *department* [~~commission~~] proposes to suspend or revoke a certificate or place a certificate holder on probation, the certificate holder is entitled to a hearing before the *department* [~~commission~~] or a hearings officer appointed by the *department* [~~commission~~]. All final decisions to suspend or revoke a certificate or place a certificate holder on probation shall be made by the *department* [~~commission~~].

SECTION 4.326. Sections 81.0073(a), (b), (c), (e), and (f), Human Resources Code, are amended to read as follows:

(a) A person who is otherwise eligible to renew a certificate may renew an unexpired certificate by paying the required renewal fee to the *department* [~~commission~~] before the expiration date of the certificate. A person whose certificate has expired may not engage in activities that require a certificate until the certificate has been renewed.

(b) A person whose certificate has been expired for 90 days or less may renew the certificate by paying to the *department* [~~commission~~] a renewal fee that is equal to 1–1/2 times the normally required renewal fee.

(c) A person whose certificate has been expired for more than 90 days but less than one year may renew the certificate by paying to the *department* [~~commission~~] a renewal fee that is equal to two times the normally required renewal fee.

(e) A person who was certified in this state, moved to another state, and is currently certified and has been in practice in the other state for the two years preceding the date of application may obtain a new certificate without reexamination. The person must pay to the *department* [~~commission~~] a fee that is equal to two times the normally required renewal fee for the certificate.

(f) Not later than the 30th day before the date a person's certificate is scheduled to expire, the *department* [~~commission~~] shall send written notice of the impending expiration to the person at the person's last known address according to the records of the *department* [~~commission~~].

SECTION 4.327. Section 81.0074, Human Resources Code, is amended to read as follows:

Sec. 81.0074. PROVISIONAL CERTIFICATE. (a) The *department* [~~commission~~] may issue a provisional certificate to an applicant currently certified in another jurisdiction who seeks a certificate in this state and who:

(1) has been certified in good standing as an interpreter for at least two years in another jurisdiction, including a foreign country, that has certification requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the *department* [~~commission~~] relating to the practice of interpretation for people who are deaf or hard of hearing; and

(3) is sponsored by a person certified by the *department* [~~commission~~] under this chapter with whom the provisional certificate holder will practice during the time the person holds a provisional certificate.

(b) The *department* [~~commission~~] may waive the requirement of Subsection (a)(3) for an applicant if the *department* [~~commission~~] determines that compliance with that *subdivision* [~~subsection~~] would be a hardship to the applicant.

(c) A provisional certificate is valid until the date the *department* [~~commission~~] approves or denies the provisional certificate holder's application for a certificate. The *department* [~~commission~~] shall issue a certificate under this chapter to the provisional certificate holder if:

(1) the provisional certificate holder is eligible to be certified under Section 81.007(f); or

(2) the provisional certificate holder passes the part of the examination under this chapter that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of interpretation for people who are deaf or hard of hearing in this state, and:

(A) the *department* [~~commission~~] verifies that the provisional certificate holder meets the academic and experience requirements for a certificate under this chapter; and

(B) the provisional certificate holder satisfies any other certification requirements under this chapter.

(d) The *department* [~~commission~~] must approve or deny a provisional certificate holder's application for a certificate not later than the 180th day after the date the provisional certificate is issued. The *department* [~~commission~~] may extend the 180-day period if the results of an examination have not been received by the *department* [~~commission~~] before the end of that period.

(e) The *executive commissioner by rule* [~~commission~~] may establish a fee for provisional certificates in an amount reasonable and necessary to cover the cost of issuing the certificate.

SECTION 4.328. Section 81.013, Human Resources Code, is amended to read as follows:

Sec. 81.013. PRIVATE OUTDOOR TRAINING PROGRAMS FOR CHILDREN WHO ARE DEAF OR HARD OF HEARING. (a) The *department* [~~commission~~] may contract with private entities to provide for the participation of children who are deaf or hard of hearing at outdoor recreational programs operated for the purpose of providing skill training and recreational experiences for children who are deaf or hard of hearing. Outdoor training programs under this section may also provide for participation by the parents of children who are deaf or hard of hearing.

(b) In selecting children to attend programs under this section, the *department* [~~commission~~] shall select qualified children from across the state that [~~the commission thinks~~] will benefit from the program.

(c) The *department* [~~commission~~] may request criminal history record information on any person who applies for a staff position in an outdoor training program from the Department of Public Safety in accordance with Section 411.1131, Government Code.

SECTION 4.329. Section 81.015, Human Resources Code, is amended to read as follows:

Sec. 81.015. ADVERTISEMENT. (a) The *executive commissioner* [~~commission~~] may not adopt rules restricting competitive bidding or advertising by a person regulated by the *department under this chapter* [~~commission~~] except to prohibit false, misleading, or deceptive practices by the person.

(b) The *executive commissioner* [~~commission~~] may not include in *department* [~~its~~] rules to prohibit false, misleading, or deceptive practices by a person regulated by the *department under this chapter* [~~commission~~] a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of *the person's* [~~his~~] voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

(c) The *department* [~~commission~~] may advertise to promote awareness and use of the programs, services, and activities conducted by the *department under this chapter* [~~commission~~]. The *department* [~~commission~~] may not use money derived from state tax revenue to pay for advertisements under this subsection.

SECTION 4.330. Section 81.016, Human Resources Code, is amended to read as follows:

Sec. 81.016. CONTRACTS FOR SERVICES. (a) Before the *department* [~~commission~~] contracts with or provides grant funding to an agency, organization, or individual to provide direct services to persons who are deaf or hard of hearing, the *department* [~~commission~~] shall make reasonable efforts to notify all potential service providers of the availability and purpose of the contract or grant.

(b) The notice shall include a request that all interested service providers submit within a specified period a contract or grant proposal for the *department's* [~~commission's~~] consideration. The notice must also clearly state the criteria that the *department* [~~commission~~] will consider in determining which applicant will be awarded the contract or grant.

(c) The *department* [~~commission~~] shall review all proposals submitted under this section and shall award the contract or grant to the applicant that the *department* [~~commission~~] determines is best able to provide the needed services. The *department* [~~commission~~] may not award contracts or grants to a former employee of the *department's Office for Deaf and Hard of Hearing Services* [~~commission~~] within two years after the person's employment with *that office* [~~the commission~~] ceased.

(d) To ensure an equitable distribution of contract or grant funds, the *department* [~~commission~~] shall develop a formula, based on population and region, to allocate those funds among the agencies, organizations, or individuals that are awarded the contracts or grants.

(e) The *executive commissioner* [~~commission~~] shall adopt rules to implement this section.

SECTION 4.331. Sections 81.017(a) and (c), Human Resources Code, are amended to read as follows:

(a) The *department* [~~commission~~] and each of the following agencies shall adopt a memorandum of understanding to coordinate the delivery of services to persons who are deaf or hard of hearing and to reduce duplication of services:

(1) the Department of Aging and Disability Services;

(2) the Department of State Health Services;

(3) the Texas Workforce Commission;

(4) the Health and Human Services Commission;

(5) the Texas Higher Education Coordinating Board;

(6) the Texas Education Agency;

(7) [~~the Department of Assistive and Rehabilitative Services;~~

[~~(8)~~] the Texas School for the Deaf;

(8) [~~(9)~~] the Texas Department of Criminal Justice; and

(9) [~~(10)~~] any other state agency that provides or is required by law to provide services to persons who are deaf or hard of hearing.

(c) Not later than the last month of each state fiscal year, the *department* [~~commission~~] and the other agencies shall review their respective memorandums.

SECTION 4.332. Section 81.019, Human Resources Code, is amended to read as follows:

Sec. 81.019. SYMBOLS OR OTHER FORMS OF IDENTIFICATION FOR *PERSONS WITH* HEARING *IMPAIRMENTS* [~~IMPAIRED PERSONS~~]. (a) The *department* [~~commission~~] shall design and provide for the issuance of a symbol or other form of identification that may be attached to a motor vehicle regularly operated by a person who is deaf or hard of hearing.

(b) A person who is deaf or hard of hearing may apply to the *department* [~~commission~~] for the symbol or other form of identification. The *department* [~~commission~~] may require acceptable medical proof that a person is deaf or hard of hearing and may *collect* [~~set~~] a fee for each symbol or other form of identification to defray the costs of administering this section. *The executive commissioner shall establish the fee.*

(c) The *department* [~~commission~~] may contract with a state or local agency for the distribution of the symbol or other form of identification.

SECTION 4.333. Section 81.020, Human Resources Code, is amended to read as follows:

Sec. 81.020. ASSISTANCE REGARDING TELECOMMUNICATIONS DEVICES. The *department* [~~commission~~] may not advertise, distribute, or publish the name or address or other related information received by the *department* [~~commission~~] about an individual who applies for assistance regarding telecommunications devices.

SECTION 4.334. Section 81.021, Human Resources Code, is amended to read as follows:

Sec. 81.021. SPECIALIZED LICENSE PLATE PROGRAM. The *department* [~~commission~~] shall develop *and the executive commissioner shall adopt* rules and guidelines for the use of funds collected from the sale of specialized license plates under Section *504.619* [~~502.2722~~], Transportation Code, *that are deposited in accordance with Section 504.6012, Transportation Code,* and appropriated to the *department* [~~commission in accordance with that section~~] for direct services programs, training, and education.

SECTION 4.335. Section 82.001(1), Human Resources Code, is amended to read as follows:

(1) "Qualified interpreter" means a person employed as an interpreter who holds a current certification issued by the Board for Evaluation of Interpreters, or another current certificate that the *Department of Assistive and Rehabilitative Services* [~~Texas Commission for the Deaf and Hard of Hearing~~] determines is comparable or appropriate and approves.

SECTION 4.336. The heading to Title 5, Human Resources Code, is amended to read as follows:

TITLE 5. SERVICES FOR THE BLIND AND *PERSONS WITH VISUAL DISABILITIES* [~~VISUALLY HANDICAPPED~~]

SECTION 4.337. The heading to Chapter 91, Human Resources Code, is amended to read as follows:

CHAPTER 91. *FUNCTIONS OF DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES RELATING TO* [~~TEXAS COMMISSION FOR~~] THE BLIND *AND PERSONS WITH VISUAL DISABILITIES*

SECTION 4.338. Section 91.002, Human Resources Code, is amended by amending Subdivisions (3) and (4) and adding Subdivisions (3–a), (3–b), and (3–c) to read as follows:

(3) "Child with visual impairments" means a child who is blind or visually impaired or who has a visual condition that requires treatment, psychological assistance counseling, or other assistance that the *department* [~~commission~~] can provide.

(3–a) "Commissioner" means the commissioner of assistive and rehabilitative services.

(3–b) "Department" means the Department of Assistive and Rehabilitative Services.

(3–c) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Visual *disability* [~~handicap~~]" includes blindness, an eye condition for which there is a medical prognosis indicating that the condition is of a progressive nature and may deteriorate either to blindness or to a substantial loss of vision, and physical or psychological *disabilities* [~~handicaps~~] that accompany or complement a disorder or imperfection of the eye.

SECTION 4.339. The heading to Section 91.012, Human Resources Code, is amended to read as follows:

Sec. 91.012. *AUTHORITY OF COMMISSIONER* [~~EXECUTIVE DIRECTOR~~].

SECTION 4.340. Section 91.012(d), Human Resources Code, is amended to read as follows:

(d) The *commissioner may* [~~executive director~~]:

(1) [~~shall appoint personnel necessary to efficiently accomplish commission purposes;~~

[~~(2) may~~] delegate to an employee a power of the *commissioner under this chapter or Subchapter E, Chapter 117,* [~~executive director~~] except the power to [~~adopt rules or~~] appoint personnel;

(2) [~~(3) shall establish appropriate administrative units within commission programs;~~

[~~(4) may~~] accept and use gifts and grants to the *department* [~~commission~~] to carry out the purposes of this title *or Subchapter E, Chapter 117*, if the *commissioner* [~~commission~~] determines that the conditions of the gift or grant are consistent with this title *or Subchapter E, Chapter 117*; and

(3) [~~(5) may~~] take other actions that the *commissioner* [~~executive director~~] considers necessary or appropriate to carry out *the department's* [~~commission~~] purposes *under this chapter or Subchapter E, Chapter 117.*

SECTION 4.341. Section 91.014(a), Human Resources Code, is amended to read as follows:

(a) All sums of money paid to the *department* [~~commission~~] under this title *or Subchapter E, Chapter 117,* shall be deposited in the *state treasury* [~~State Treasury and may be used only for the administration of this title~~].

SECTION 4.342. The heading to Section 91.016, Human Resources Code, is amended to read as follows:

Sec. 91.016. *COMPENSATION OF CERTAIN EMPLOYEES* [~~PERSONNEL POLICIES~~].

SECTION 4.343. Section 91.016(e), Human Resources Code, is amended to read as follows:

(e) The *executive commissioner* [~~commission~~] by rule may develop and *the department may* implement policies allowing shift differentials to be paid to employees in the vocational rehabilitation program *under Subchapter E, Chapter 117.*

SECTION 4.344. The heading to Section 91.018, Human Resources Code, is amended to read as follows:

Sec. 91.018. *COMPLAINTS* [~~RELATIONS WITH PUBLIC~~].

SECTION 4.345. Section 91.018(c), Human Resources Code, is amended to read as follows:

(c) Except as required by federal regulations for resolving complaints received from people who are receiving service from the *department, under this chapter or Subchapter E, Chapter 117* [~~commission~~], the *department* [~~commission~~] shall maintain a file *in the manner prescribed by Section 117.072(a)* on each written complaint filed with the *department* [~~commission~~]. [~~The file must include:~~

[~~(1) the name of the person who filed the complaint;~~

[~~(2) the date the complaint is received by the commission;~~

[~~(3) the subject matter of the complaint;~~

[~~(4) the name of each person contacted in relation to the complaint;~~

[~~(5) a summary of the results of the review or investigation of the complaint; and~~

[~~(6) an explanation of the reason the file was closed if the agency closed the file without taking action other than to investigate the complaint.~~]

SECTION 4.346. The heading to Subchapter C, Chapter 91, Human Resources Code, is amended to read as follows:

SUBCHAPTER C. GENERAL POWERS AND DUTIES [~~OF THE COMMISSION~~]

SECTION 4.347. Section 91.0205, Human Resources Code, is amended to read as

follows:

Sec. 91.0205. *COMMISSIONER'S* POWERS AND DUTIES; *EFFECT OF CONFLICT WITH OTHER LAW* [~~OF COMMISSIONER OF HEALTH AND HUMAN SERVICES~~]. [~~The commissioner of health and human services has the powers and duties relating to the commission and executive director as provided by Section 531.0055, Government Code.~~] To the extent a power or duty given to the *commissioner* [~~commission or executive director~~] by this chapter, or another law *relating to services for the blind or persons with visual disabilities,* conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

SECTION 4.348. Section 91.021, Human Resources Code, is amended to read as follows:

Sec. 91.021. RESPONSIBILITY FOR [~~VISUALLY HANDICAPPED~~] PERSONS *WITH VISUAL DISABILITIES*. (a) The *department* [~~commission~~] has primary responsibility for providing all services to [~~visually handicapped~~] persons *with visual disabilities* except welfare services and services for children provided by regularly established educational agencies and state authorities.

(b) The *department* [~~commission~~] shall negotiate interagency agreements with other state agencies to provide services for individuals who have both a visual *disability* [~~handicap~~] and another *disability* [~~handicapping condition~~] so that those [~~multiply handicapped~~] individuals *with multiple disabilities* may be provided the most beneficial services with the greatest possible economy.

(c) The *department* [~~commission~~] and other concerned state agencies may not refuse to enter *into* an interagency agreement developed to advance the state's policies regarding the rehabilitation or education of the blind and *persons with visual disabilities* [~~visually handicapped~~]. In negotiating the agreements the agencies shall seek to extend and improve the regular services provided by the agencies and to effectively use all specialty and fiscal resources that are available. The agencies shall give careful consideration to avoiding unnecessary duplication or overlap of their respective efforts.

(d) The *department* [~~commission~~] shall enter into agreements with the federal government to implement federal legislation authorizing the provision of services to *persons with visual disabilities* [~~the visually handicapped~~]. The *department* [~~commission~~] shall *use* [~~adopt~~] methods of administration required by the federal government for the proper and efficient implementation of the agreements, and shall comply with other federal requirements necessary to secure the full benefits of the federal legislation.

(e) The *department* [~~commission~~] and other concerned state agencies may not refuse to enter *into* interagency agreements designed to secure the full benefits of federal legislation authorizing services for *persons with visual disabilities* [~~the visually handicapped~~].

(f) The *department* [~~commission~~] shall:

(1) serve as an information center and referral resource for *persons with visual disabilities* [~~the visually handicapped~~]; and

(2) develop mechanisms and procedures that tend to assist [~~visually handicapped~~] individuals *with visual disabilities* in bridging gaps between educational, institutional, rehabilitative, vocational, and related types of services operated by public and private nonprofit organizations throughout the state.

SECTION 4.349. Section 91.022, Human Resources Code, is amended to read as follows:

Sec. 91.022. SERVICE DELIVERY. (a) The *department* [~~commission~~] shall establish and maintain, *in accordance with department rules* [~~by rule~~], guidelines for the delivery of services by the *department under this chapter and Subchapter E, Chapter 117* [~~commission~~]. The guidelines must be consistent with state and federal law and regulations and must include *guidelines* [~~rules~~] relating to:

(1) oversight and monitoring of *the* service delivery;

(2) guidance to counselors on *the* service delivery procedures;

(3) case management benchmarks establishing reasonable time frames for *the* service delivery; and

(4) financial planning information for the *department relating to the service delivery* [~~commission~~].

(b) The *department* [~~commission~~] shall establish written procedures relating to the evaluation of services delivered by the *department under this chapter and Subchapter E, Chapter 117,* [~~commission~~] to provide guidance to counselors and *department* [~~commission~~] employees. These procedures must include methods to evaluate:

(1) client progress;

(2) service delivery effectiveness; and

(3) counselor performance.

SECTION 4.350. Section 91.023, Human Resources Code, is amended to read as follows:

Sec. 91.023. *ASSISTANCE WITH* REHABILITATION SERVICES. The *department* [~~commission~~] may furnish materials, tools, books, and other necessary apparatus and assistance for use in rehabilitating *the* blind and [~~visually handicapped~~] persons *with visual disabilities.*

SECTION 4.351. Sections 91.027(a) and (c), Human Resources Code, are amended to read as follows:

(a) To the extent that funds are available under Sections 521.421(j) and 521.422(b), Transportation Code, the *department* [~~commission~~] shall operate a Blindness Education, Screening, and Treatment Program to provide:

(1) blindness prevention education and screening and treatment to prevent blindness for residents who are not covered under an adequate health benefit plan; and

(2) transition services to [~~blind disabled~~] individuals *with visual disabilities* eligible for vocational rehabilitation services under Section *117.102* [~~91.052~~].

(c) The *executive commissioner* [~~commission~~] by rule shall prescribe eligibility requirements for the program.

SECTION 4.352. Sections 91.028(a), (b), (c), (d), (e), and (g), Human Resources Code, are amended to read as follows:

(a) The *department* [~~commission~~] may provide services to children with visual impairments to supplement the services provided by other state agencies if the *department* [~~commission~~] determines that the provision of the services is appropriate and that the services will assist the children in achieving financial self-sufficiency and a fuller and richer life. It is the intention of the legislature that all state agencies concerned with children with visual impairments cooperate fully to achieve this purpose.

(b) The *executive commissioner* [~~commission~~] shall establish, by rule, the income level at which the Medicaid eligibility of a client applying for services under Subsection (a) shall be verified.

(c) The *department* [~~commission~~] shall verify the Medicaid eligibility of a client applying for services under Subsection (a) whose income level is equal to or less than the income level established by the *executive commissioner* [~~commission~~] under Subsection (b).

(d) The *department* [~~commission~~] shall verify the Medicaid eligibility of a client who is required by the *department* [~~commission~~] to apply for Medicaid not later than the 90th day after the date the application for services from the *department under Subsection (a)* [~~commission~~] is made.

(e) In verifying Medicaid eligibility, an employee of the *department* [~~commission~~] shall:

(1) examine appropriate state or private Medicaid eligibility databases; and

(2) record on each client's *case records* [~~application for services~~] whether Medicaid eligibility was verified, the source of the verification, and the date of the verification.

(g) A person may use the information provided under Subsection (f) in accordance with *department* [~~commission~~] rules[~~,~~] only for purposes directly connected with the administration of the children's program and for the investigation of a complaint filed against an agency, employee, or contracted provider of services.

SECTION 4.353. Section 91.0301, Human Resources Code, is amended to read as follows:

Sec. 91.0301. LOANS FOR VISUAL AIDS. (a) The *department* [~~commission~~] may establish a program to make loans to finance the purchase of technological aids for [~~visually handicapped~~] persons *with visual disabilities*. Interest on the loans may not exceed 10 percent a year.

(b) The executive *commissioner* [~~director~~] may promulgate rules to administer the loan program[~~, subject to approval of the commission~~].

SECTION 4.354. Section 91.031, Human Resources Code, is amended to read as follows:

Sec. 91.031. CONTRACTS FOR SERVICE. (a) The *department* [~~commission~~] shall include in its contracts with service providers *under this chapter or Subchapter E, Chapter 117,* provisions relating to:

(1) clearly defined and measurable program performance standards that directly relate to the service provided;

(2) clearly defined penalties for nonperformance of a contract term; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(b) The *department* [~~commission~~] shall monitor a service provider's performance under a contract for service *under this chapter or Subchapter E, Chapter 117*. In monitoring performance, the *department* [~~commission~~] shall:

(1) use a risk-assessment methodology to institute statewide monitoring of contract compliance of service providers; and

(2) evaluate service providers based on clearly defined and measurable program performance objectives.

SECTION 4.355. Section 91.032, Human Resources Code, is amended to read as follows:

Sec. 91.032. CONTRACTS FOR *ASSISTIVE* [~~ADAPTIVE~~] TECHNOLOGY. The *department* [~~commission~~] shall include in a contract *under this chapter or Subchapter E, Chapter 117,* with a supplier of *assistive* [~~adaptive~~] technology equipment provisions that require the supplier to provide training for clients receiving the *assistive* [~~adaptive~~] technology equipment.

SECTION 4.356. Subchapter D, Chapter 91, Human Resources Code, is transferred to Chapter 117, Human Resources Code, redesignated as Subchapter E, Chapter 117, Human Resources Code, and amended to read as follows:

SUBCHAPTER *E* [~~D~~]. VOCATIONAL REHABILITATION OF *INDIVIDUALS WITH VISUAL IMPAIRMENTS* [~~THE BLIND~~]

Sec. *117.101* [~~91.051~~]. DEFINITIONS. In this subchapter:

(1) "Program" means the vocational rehabilitation program authorized in this subchapter.

(2) "Substantial impediment to employment" [~~(3) "Employment handicap"~~] means a physical or mental condition that obstructs or impairs, or if not corrected will probably obstruct or impair, an individual's performance in an occupation.

[~~(4) "Disabled individual" means a person who has a substantial employment handicap.~~]

(3) "Individual with a visual impairment" [~~(5) "Blind disabled individual"~~] means a

person who is blind or who has a visual condition for which medical prognosis indicates a progressive deterioration that may result in a substantial *impediment to employment* [~~vocational handicap~~].

(4) [~~(6)~~] "Vocational rehabilitation" or "vocational rehabilitation services" means services that are provided directly by the *department* [~~commission~~] or through a public or private agency and that the *department* [~~director~~] determines are necessary to compensate *an* [~~a blind disabled~~] individual *with a visual impairment* for *a substantial impediment to* [~~an~~] employment [~~handicap~~] so that the individual may engage in a remunerative occupation. The terms include, but are not limited to, medical and vocational diagnosis; vocational guidance, counseling, and placement; rehabilitation training; physical restoration; transportation; occupational licenses; customary occupational tools and equipment; maintenance; training books and materials; and other goods and services for which the *department* [~~commission~~] receives financial support under federal law.

(5) [~~(7)~~] "Rehabilitation training" means all necessary training provided to *an* [~~a blind disabled~~] individual *with a visual impairment* to compensate for *a substantial impediment to* [~~an~~] employment [~~handicap~~]. The term includes, but is not limited to, manual, preconditioning, prevocational, vocational, and supplementary training and training to achieve broader and more lucrative skills and capacities.

(6) [~~(8)~~] "Physical restoration" means medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a *substantial impediment to* [~~blind disabled individual's~~] employment *of an individual with a visual impairment* [~~handicap~~] within a reasonable period of time. The term includes, but is not limited to, medical, surgical, dental, and psychiatric treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances. The term excludes treatment to cure acute or transitory conditions.

(7) [~~(9)~~] "Prosthetic appliance" means an artificial device necessary to support or replace a part of the body or to increase the acuity of a sensory organ.

(8) [~~(10)~~] "Occupational license" means a license, permit, or other written authorization required by a governmental unit as a condition for engaging in an occupation.

(9) [~~(11)~~] "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation.

(10) "Blind" has the meaning assigned by Section 91.002.

Sec. *117.102* [~~91.052~~]. VOCATIONAL REHABILITATION PROGRAM FOR *INDIVIDUALS WITH VISUAL IMPAIRMENTS* [~~THE BLIND~~]. (a) The *department* [~~commission~~] shall conduct a program to provide vocational rehabilitation services to eligible [~~blind disabled~~] individuals *with visual impairments.*

(b) To achieve the purposes of the program, the *department* [~~commission~~] may:

(1) cooperate with other public and private agencies in studying the problems involved in providing vocational rehabilitation and in establishing, developing, and providing necessary or desirable facilities and services;

(2) enter *into* reciprocal agreements with other states to provide vocational rehabilitation for the residents of the states concerned; and

(3) conduct research and compile statistics relating to the vocational rehabilitation of [~~blind disabled~~] individuals *with visual impairments.*

Sec. *117.103* [~~91.053~~]. COOPERATION WITH FEDERAL GOVERNMENT. (a) The *department* [~~commission~~] shall cooperate with the federal government to accomplish the purposes of federal laws relating to vocational rehabilitation and closely related activities.

(b) The *department* [~~commission~~] shall negotiate agreements or plans with the federal government and shall *use* [~~adopt~~] efficient methods of administration and comply with other conditions required to secure the full benefits of the federal laws. If the *department* [~~commission~~] determines that a provision of state law precludes conformity with a federal requirement and limits federal financial support, the *department* [~~commission:~~

[~~(1)~~] may waive or modify the state law to the extent necessary to obtain the full benefits of the federal law[~~; and~~

[~~(2) shall include in the report required by Section 91.019 a description of the manner in which state law conflicts with federal law~~].

Sec. *117.104* [~~91.055~~]. ELIGIBILITY FOR VOCATIONAL REHABILITATION SERVICES. The *department* [~~commission~~] shall provide vocational rehabilitation services to *an* [~~a blind disabled~~] individual *with a visual impairment* eligible for those services under federal law.

Sec. *117.105* [~~91.056~~]. RECEIPT AND DISBURSEMENT OF FUNDS. (a) The comptroller is custodian of federal funds received by the state to implement federal law relating to vocational rehabilitation.

(b) The *commissioner* [~~executive director~~] shall certify for disbursement funds available for the vocational rehabilitation program in accordance with regulations.

(c) The comptroller shall disburse state and federal vocational rehabilitation funds on certification by the *commissioner* [~~executive director~~].

Sec. *117.106* [~~91.058~~]. HEARINGS. An applicant for or recipient of vocational rehabilitation services who is aggrieved by an action or inaction under the program is entitled to a hearing by the *department* [~~commission~~] in accordance with law.

Sec. *117.107* [~~91.059~~]. MISUSE OF INFORMATION. Except for purposes directly connected with the administration of the vocational rehabilitation program and according to *department* [~~commission~~] rules, no person may solicit, disclose, receive, use, or knowingly permit the use of records or other information concerning an applicant for or recipient of vocational rehabilitation services that is directly or indirectly acquired by an officer or employee of the state or its political subdivisions in the course of his or her official duties.

SECTION 4.357. Section 91.081(a), Human Resources Code, is amended to read as follows:

(a) The purpose of this subchapter is to establish a comprehensive central state depository for braille, large print, slow speed records and machines, tape recordings and tape players, and related forms of media that will enable the Texas State Library *and Archives Commission*, the Texas Education Agency, the *department* [~~Texas Commission for the Blind~~], volunteer organizations involved in the production of braille or recorded materials for the blind, the Library of Congress, and related types of organizations to work together more closely and effectively.

SECTION 4.358. Section 91.082, Human Resources Code, is amended to read as follows:

Sec. 91.082. ESTABLISHMENT OF CENTRAL MEDIA DEPOSITORY. (a) The Texas State Library and Archives Commission shall generally supervise the establishment and operation of a central media depository in Austin to house materials and devices required by *the* blind and [~~visually handicapped~~] individuals *with visual disabilities* or by other individuals who are unable to use ordinary printed materials.

(b) With the approval of the *Texas State Library and Archives Commission* [~~library and archives commission~~], the agencies and organizations maintaining and operating the central media depository shall develop and periodically evaluate and modify specific arrangements for administrative support, sharing of staff and equipment, and related matters involved in the operation of the program.

SECTION 4.359. Section 91.083, Human Resources Code, is amended to read as follows:

Sec. 91.083. ANCILLARY SERVICES. The *Texas State Library and Archives Commission* [~~library and archives commission~~] shall allow the central media depository to be used for the repair of special media and equipment required by individuals who are unable to use ordinary print and for research and demonstration, training, and the production of materials in special media by volunteer organizations.

SECTION 4.360. Chapter 94, Human Resources Code, is amended to read as follows:

CHAPTER 94. VENDING FACILITIES OPERATED BY BLIND PERSONS

Sec. 94.001. DEFINITIONS. In this chapter:

(1) "Blind person" means a person having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(1-a) "Department" means the Department of Assistive and Rehabilitative Services.

(1-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(2) "Vending facility" means a facility in which food, drinks, drugs, novelties, souvenirs, tobacco products, notions, or related items are sold regularly. The term excludes facilities consisting solely of vending machines that do not compete directly or indirectly with a facility that is or could be operated by a [~~vocationally handicapped~~] person *with a disability*.

(3) "State property" means land and buildings owned, leased, or otherwise controlled by the state.

(4) "Agency" means the state agency in charge of state property.

(5) *"Disability"* [~~"Handicapped"~~] means a physical or mental condition that the *department* [~~commission or rehabilitation commission~~] determines to constitute a substantial vocational disadvantage.

[~~(6) "Commission" means the Texas Commission for the Blind.~~

[~~(7) "Rehabilitation commission" means the Texas Rehabilitation Commission.~~]

Sec. 94.002. LICENSE OR PERMIT REQUIRED. (a) No person may operate a vending facility or a facility with vending machines or other coin-operated devices on state property unless the person is licensed to do so by the *department* [~~commission~~] or is authorized to do so by an agency granted a permit to arrange for vending facilities.

(b) Subsection (a) [~~of this section~~] does not apply to a building in which the *Texas Facilities* [~~State Purchasing and General Services~~] Commission leases space to a private tenant under Subchapter E, Chapter 2165, Government Code.

Sec. 94.003. LICENSING PROCEDURE. (a) On its own initiative or at the request of an agency that controls state property, the *department* [~~commission~~] shall survey the property, or blueprints and other available information concerning the property, to determine whether the installation of a vending facility is feasible and consonant with the *department's* [~~commission's~~] vocational rehabilitation objectives.

(b) If the installation of the facility is feasible, the *department* [~~commission~~] shall either license a blind person to operate a facility to be installed by the *department* [~~commission~~] or [~~allow the rehabilitation commission to~~] install a facility to be operated by a [~~handicapped~~] person *with a disability* who is not blind according to rules and procedures [~~comparable to those~~] adopted by the *executive commissioner* [~~commission. The commission and the rehabilitation commission may enter into agreements relating to management services and related forms of necessary assistance~~].

Sec. 94.004. LOCATION OF VENDING FACILITIES. (a) With the concurrence of the agency in charge of state property, the *department* [~~commission~~] shall designate the location of vending facilities that have been requested by the agency.

(b) The agency responsible for state property shall alter the property to make it suitable for the proper operation of the vending facilities. To this end, the agency in charge of constructing new state property shall consult with the *department* [~~commission~~] during the planning stage on the construction.

Sec. 94.005. ISSUANCE OF LICENSES; ELIGIBILITY. (a) The *department* [~~commission~~] may issue a license to operate its vending facilities on state property to blind

citizens of the state who are capable of operating the facilities in a manner that is reasonably satisfactory to all parties concerned.

(b) Before issuing a license to a person, the *department* [~~commission~~] shall determine whether the person has the physical, psychological, and personal traits and abilities required to operate a vending facility in a satisfactory manner.

(c) The *department* [~~commission~~] shall maintain a roster of the names of each person who has been certified as suitable for licensing. If two or more equally qualified persons are listed on the roster and apply for a license to operate an available vending facility, the *department* [~~commission~~] shall issue the license to the person who is most in need of employment.

(d) The granting of a license does not vest the licensee with property or other rights which may constitute the basis of a cause of action, at law or in equity, against the state or its officers or employees.

Sec. 94.006. EXPIRATION, RENEWAL, AND REVOCATION OF LICENSES. (a) A license or general permit to operate a vending facility on state property is valid for a period of three years from the date it is issued.

(b) The *department* [~~commission~~] shall review each license or permit prior to its expiration and shall issue a new or different license or permit as the circumstances warrant.

(c) The *department* [~~commission~~] and the agency may consent mutually to revoke a general permit prior to its expiration if changed circumstances warrant that action.

(d) A blind person's wilful failure to comply with the *department's* [~~commission's~~] rules or the provisions of this chapter constitutes grounds for the automatic revocation of the person's license.

(e) The *executive commissioner* [~~commission~~] shall adopt substantive and procedural rules governing the revocation of licenses.

Sec. 94.007. OPERATION OF VENDING FACILITIES *BY CERTAIN PERSONS WHO ARE NOT BLIND* [~~UNDER THE REHABILITATION COMMISSION~~]. [~~(a)~~] If the *department* [~~commission~~] determines that a blind person could not properly operate a vending facility at a particular location, the *department* [~~rehabilitation commission~~] may survey the property to determine whether a [~~handicapped~~] person *with a* [~~whose~~] disability *that* is not of a visual nature could operate the facility in a proper manner.

[~~(b) The commission and the rehabilitation commission may develop procedures and methods of exchanging information necessary to implement cooperative activities.~~

[~~(c) The installation and operation of a vending facility by the rehabilitation commission must conform to the provisions of this chapter applicable to vending facilities installed by the commission.~~]

Sec. 94.008. CLOSING CERTAIN FACILITIES PROHIBITED. Neither a vending facility operated by *an* [~~a blind or otherwise vocationally handicapped~~] individual *with a disability,* nor a vending facility location surveyed by the *department,* [~~commission~~] may be closed as a result of the transfer of state property from one agency to another, the alteration of a state building, or the reorganization of a state agency unless the *department* [~~commission or the rehabilitation commission~~] agrees to the closing.

Sec. 94.009. EMPLOYMENT OF ASSISTANTS. (a) If an individual licensed to operate a vending facility on state property requires an assistant, a qualified [~~visually handicapped~~] person *with a disability of a visual nature* must be given preference for employment. If the *department* [~~commission~~] determines that a [~~visually handicapped~~] person *with a disability of a visual nature* could not perform the labor for which an assistant is required, or if a [~~visually handicapped~~] person *with a disability of a visual nature* is not available, a [~~handicapped~~] person *with a* [~~whose~~] disability *that* is not of a visual nature must be given preference for employment. If no [~~handicapped~~] person *with a disability* is available for the job, preference must be given to a person who is socially, culturally, economically, or educationally disadvantaged.

(b) An assistant employed by a blind person licensed by the *department* [~~commission~~] must be approved by the *department* [~~commission~~], and the deliberate refusal of a blind licensee to comply with this section constitutes grounds for the revocation of his or her license.

Sec. 94.010. COMPETING VENDING MACHINES. (a) If the *department* [~~commission~~] and an agency agree to the installation and operation of an additional vending facility or vending machine on property that already has a *department-sponsored* [~~commission-sponsored~~] vending facility, no additional permit or license is required. However, the installation of a competing vending facility consisting of vending machines or other coin-operated devices must be authorized by the *department* [~~commission~~]. The *department's* [~~commission's~~] authorization must be made with a view toward providing the greatest economic benefits for blind persons consonant with supplying the additional services required at the building.

(b) State agencies shall cooperate and negotiate in good faith to accomplish the purposes of this chapter.

(c) *Individuals with disabilities* [~~Vocationally handicapped individuals~~] who operate vending facilities on state property are entitled to receive all commissions from vending machines installed on the same property. If two or more vending facilities are operated by *individuals with disabilities* [~~vocationally handicapped persons~~] in a building in which vending machines are installed, the *department* [~~commission~~] shall divide the commissions from the vending machines among the [~~handicapped~~] operators *with disabilities* in a manner that will achieve equity and equality in the incomes of *those* [~~the handicapped~~] operators. If the *department has* [~~commission and the rehabilitation commission have~~] decided not to locate a vending facility in a building, the agency to whom a general permit has been issued shall determine the assignment of the commissions from vending machines installed in the building.

Sec. 94.011. VENDING FACILITY EQUIPMENT AND STOCK. (a) The *department* [~~commission~~] may supply a blind vending facility operator with equipment and initial stock necessary for the operator to begin business.

(b) The *department* [~~commission~~] shall collect and set aside from the proceeds of the operation of its vending facilities enough money:

(1) to insure a sufficient amount of initial stock for the facilities and for their proper maintenance;

(2) to pay the costs of supervision and other expenses incidental to the operation of the facilities; and

(3) to pay other program costs to the extent necessary to assure fair and equal treatment of the blind persons licensed to operate the facilities and to the extent allowed under federal programs that provide financial support to the *department* [~~commission~~].

(c) Except for purchasing and installing original equipment, the operation of *department-sponsored* [~~commission-sponsored~~] vending facilities must be as self-supporting and self-sustaining as possible. To achieve this end, the *department* [~~commission~~] shall periodically review and, when necessary, revise its schedules for collecting and setting aside money from the proceeds of its vending facilities.

Sec. 94.012. DUTIES AND PRIVILEGES OF PARTIES. (a) The *executive commissioner* [~~commission~~] may promulgate rules and *the department may* initiate procedures necessary to implement this chapter.

(b) A blind person licensed to operate a vending facility on state property shall operate the facility in accordance with law and the *department's* [~~commission's~~] rules and policies.

(c) The agency in charge of state property shall cooperate with the *department* [~~commission~~] and its blind licensees to accomplish the purposes of this chapter. The agency shall also furnish all necessary utility service, including connections and outlets required for the installation of the facility, janitorial and garbage disposal services where feasible,

and other related assistance.

Sec. 94.013. TRAINING PROGRAMS. The *department* [~~commission~~] may establish training or experimentation locations necessary to train blind persons who desire to be licensed to operate vending facilities and to develop techniques which will allow blind persons to operate the facilities or related types of small businesses more efficiently and productively.

Sec. 94.014. CONFORMITY WITH FEDERAL STATUTES. (a) This chapter shall be construed in a manner consistent with the requirements of federal programs that provide financial assistance to the *department* [~~commission~~].

(b) If a provision of this chapter conflicts with a federal program requirement, the *department* [~~commission~~] may waive or modify the provision to the extent necessary to secure the full benefits of the federal program.

Sec. 94.015. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) property over which the federal government maintains partial or complete control;

(2) property maintained and operated by state-supported institutions of higher education; provided, however, that the *department* [~~commission~~] may enter into agreements with state institutions of higher education concerning the use of blind labor in vending facilities at the institutions; or

(3) property purchased by the state or an agency of the state, property to which title is transferred from one state agency to another, or property control of which is transferred from one state agency to another, if:

(A) at the time of purchase or transfer of title or control, a vending facility is being operated on the property under lease, license, or contract; and

(B) prior to the time of purchase or transfer of title or control, the provisions of this chapter were rendered inapplicable to such property by this section or other law.

(b) This chapter does not apply to vending facilities operated by an institution *for persons with mental illness or intellectual disabilities that is* under the control of the *Department of State Health Services, the Department of Aging and Disability Services, or a successor to one of those departments* [~~Texas Department of Mental Health and Mental Retardation, or its successor~~], if the vending facilities are operated without profit for the benefit of the patients at the institution.

(c) This chapter does not prohibit the *department* [~~commission~~] from selecting blind persons to operate other suitable types of vending facilities or business enterprises, and the chapter does not prohibit the installation of automated vending facilities serviced by blind persons.

Sec. 94.016. BUSINESS ENTERPRISES PROGRAM. (a) The *department* [~~commission~~] is authorized to administer the Business Enterprises Program in accordance with the provisions of the Randolph–Sheppard Act (20 U.S.C. Section 107 et seq.).

(b) The *department* [~~commission~~] is authorized to administer a retirement program for individuals licensed to operate vending facilities in accordance with applicable state and federal laws.

(c) A trust fund for a retirement program for individuals licensed to operate vending facilities under the Business Enterprises Program is established with the comptroller [~~of public accounts~~]. This trust fund will be set up in the state treasury.

(d) All federal vending machine income shall be credited to this Business Enterprises Program trust fund. Vending machine income, as defined by 34 C.F.R. Section 395.1(z), means receipts (other than those of a blind vendor) from vending machine operations on federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs) in accordance with customary business practices of commercial vending concerns, where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commis-

sions paid (other than to a blind vendor) by a commercial vending concern which operates, services, and maintains vending machines on federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

(e) All expenditures authorized by the Randolph–Sheppard Act from federal vending revenue funds shall be paid from the Business Enterprises Program trust fund.

(f) The *department* [~~commission~~] may contract with a professional management service to administer the Business Enterprises Program trust fund. In administering the trust fund, the professional management service may acquire, exchange, sell, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire, exchange, sell, or retain under the circumstances, taking into consideration the investment of all the assets of the trust fund.

(g) With the approval of the comptroller, the *department* [~~commission~~] may select a commercial bank, depository trust company, or other entity to serve as a custodian of the Business Enterprises Program trust fund's securities, and money realized from those securities, pending completion of an investment transaction. Money realized from those securities must be:

(1) reinvested not later than one business day after the date it is received; or

(2) deposited in the treasury not later than the fifth business day after the date it is received.

SECTION 4.361. Title 6, Human Resources Code, is amended to conform to Chapter 101, Human Resources Code, as it existed on August 31, 2006, and to Section 1.20(a)(1), Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, by adding Chapter 101A to read as follows:

CHAPTER 101A. STATE SERVICES FOR THE AGING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101A.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Sec. 101A.002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this chapter or another law relating to state services for the aging conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Sec. 101A.003. COOPERATION WITH FEDERAL AND STATE AGENCIES. (a) The department is the state agency designated to handle federal programs relating to the aging that require action within the state and that are not the specific responsibility of another state agency under federal or state law.

(b) The department is not intended to supplant or to take over from the counties and municipalities of this state or from other state agencies or facilities any of the specific responsibilities relating to services for the aging that they hold. The department shall cooperate with federal and state agencies, counties, and municipalities and private agencies or facilities in the state in accomplishing the purposes of this chapter.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND EXECUTIVE COMMISSIONER

Sec. 101A.051. RULES. The executive commissioner shall adopt rules governing the functions of the department under this chapter, including rules that prescribe the policies and procedures followed by the department in the administration of any local services programs, employment programs for the aged, volunteer programs for the aged, or other

programs.

Sec. 101A.052. GENERAL FUNCTIONS OF DEPARTMENT RELATED TO AGING SERVICES. (a) The department shall provide expertise and advice to state agencies and the legislature and other elected officials on aging issues, including recommendations to meet the needs of this state's elderly population.

(b) The department shall develop and strengthen the services available for the aged in the state by coordinating services provided by governmental and private agencies and facilities.

(c) The department shall extend and expand services for the aged by coordinating the interest and efforts of local communities in studying the problems of the aged citizens of this state.

(d) The department shall encourage, promote, and aid in the establishment of area agencies on aging for the development of programs and services on a local level that improve the living conditions of the aged by enabling them to more fully enjoy and participate in family and community life.

(e) The department shall sponsor voluntary community rehabilitation and recreational facilities to improve the general welfare of the aged.

(f) The department shall cooperate with state and federal agencies and other organizations in conducting studies and surveys on the special problems of the aged in matters such as mental and physical health, housing, family relationships, employment, income, vocational rehabilitation, recreation, transportation, insurance, legal rights, and education. The department shall make appropriate reports and recommendations to the governor and to state and federal agencies.

(g) The department shall conduct research and long-range planning regarding long-term care, community care, and other issues that affect elderly individuals.

(h) The department shall make recommendations to the governor, the legislature, and state agencies regarding:

(1) opportunities to coordinate programs for elderly individuals;

(2) unnecessary duplication in providing services to elderly individuals; and

(3) gaps in services to elderly individuals.

(i) The department shall:

(1) cooperate with the Texas Department of Housing and Community Affairs to provide affordable housing for elderly individuals and for families in which an elderly individual is head of the household;

(2) assess the need for housing for elderly individuals and for families in which an elderly individual is head of the household in different localities;

(3) set standards relating to the design and construction of housing for elderly individuals;

(4) provide planning assistance to builders; and

(5) publicize the availability of the housing program to potential developers and residents.

Sec. 101A.053. OLDER AMERICANS ACT; STATE PLAN. (a) The department shall develop this state's plan on aging, as required by the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.).

(b) The department shall conduct a statewide needs assessment for long-term care and other services for older individuals and their caregivers. The assessment shall include input from:

(1) area agencies on aging;

(2) regional and local state agency staff; and

(3) community-based organizations.

SUBCHAPTER C. PROGRAMS AND SERVICES

Sec. 101A.101. COMMUNITY SENIOR CITIZENS EMPLOYMENT PROGRAMS. (a) In this section, "suitable employment" means employment that is commensurate with the individual's skills and ability and for which compensation is paid equal to the federal minimum wage rate.

(b) The Texas Workforce Commission may administer a community program for persons 55 years of age or older who lack suitable employment and have family incomes under federal poverty guidelines.

(c) The Texas Workforce Commission may contract with a public agency or a private, nonprofit organization with experience in managing similar programs to employ persons under this program in providing recreation, beautification, conservation, or restoration services, or public service employment positions for state, county, city, or regional governments or school districts. The Texas Workforce Commission may not contract with an organization that is not a subscriber under the state workers' compensation law or that does not pay the federal minimum wage rate or the prevailing wage rate for the particular job, whichever is greater.

(d) The state shall finance 80 percent of the cost of the program, and the governments receiving the services shall finance 20 percent of the cost.

Sec. 101A.102. VOLUNTARY COMMUNITY SERVICES PROGRAMS. (a) The department shall ensure that state funds appropriated to the department for programs to recruit elderly persons to perform voluntary community services or for programs under Senior Corps are disbursed to local public agencies or private, nonprofit corporations that operate those programs.

(b) A public agency or private, nonprofit corporation may not receive state money under this section if it is not able to qualify for federal matching money for the same purpose.

(c) The executive commissioner by rule shall establish guidelines or formulas to determine the proportion of state money distributed to each public agency or private, nonprofit corporation under this section. The executive commissioner by rule may establish additional qualifications to receive the state money.

(d) State funds disbursed under this section may not be used to pay compensation to volunteer workers, except for participants in the Foster Grandparent and Senior Companion Programs of Senior Corps, or for purposes other than financing the operation or administration of the volunteer programs, but it may be used to defray expenses incurred by volunteers in the performance of volunteer work. The executive commissioner by rule may further limit the purposes for which the state money may be spent.

Sec. 101A.103. TEXAS CARES PROGRAM. (a) The executive commissioner by rule may establish and the department may operate a Texas Cares program to provide persons eligible for discount drug price programs offered by pharmaceutical companies with:

(1) information regarding the availability of those programs; and

(2) in appropriate circumstances, assistance in enrolling in those programs.

(b) The department may solicit and accept gifts, grants, and donations from any source to use in funding the Texas Cares program.

(c) The executive commissioner shall design the Texas Cares program to meet the primary goal of increasing awareness in appropriate populations of the availability of discount drug price programs offered by pharmaceutical companies. To the extent that adequate resources are available, the department shall:

(1) make information regarding discount drug price programs readily available on the department's Internet site;

(2) maintain a toll-free telephone number through which a person may obtain information regarding discount drug price programs; and

(3) make brochures or other written informational materials regarding discount drug price programs available on request by a pharmacist, physician, representative of an organization serving senior citizens, or other interested person.

(d) The department may:

(1) conduct community outreach and education activities to increase awareness of the availability of discount drug price programs offered by pharmaceutical companies;

(2) solicit and train volunteers to perform functions associated with the Texas Cares program, including:

(A) providing assistance to eligible persons in enrolling in discount drug price programs offered by pharmaceutical companies; and

(B) conducting community outreach and education activities; and

(3) coordinate operation of the Texas Cares program with the activities of area agencies on aging.

Sec. 101A.104. PUBLIC INFORMATION ON COST OF LONG-TERM CARE. The department shall develop programs to provide information to the public relating to:

(1) the cost of long-term care;

(2) the limits on Medicaid eligibility;

(3) the adequacy or inadequacy of other financing options, including Medicare; and

(4) possible methods of financing long-term care, including group insurance policies and other methods designed to assist individuals.

Sec. 101A.105. SERVICES OF OTHER AGENCIES. The department may accept services performed by other agencies to accomplish the purposes of this chapter.

Sec. 101A.106. REVIEW OF ADMINISTRATIVE COSTS AND PROGRAMS. (a) The executive commissioner by rule shall define "administrative costs" as used in this section. However, if a standard definition of administrative costs is required by law to be used by state agencies, the executive commissioner shall use that definition.

(b) To determine the administrative costs incurred by an entity, including an area agency on aging and including an entity that spends money distributed by the department under Section 101A.101 or 101A.102 in engaging in a program that is funded in any part by money derived from the department under this chapter, the department shall request appropriate information from the entity.

(c) The executive commissioner shall establish the maximum amount of administrative costs that may be incurred by the entity in engaging in the program.

(d) The department periodically shall review the actions of entities receiving funds from the department under this chapter and shall document its review. The review of an entity that spends money distributed under Section 101A.102 must include on-site evaluations of the entity and must include the review of documentation, which shall be required by the department, of the services performed by the aged in programs under Section 101A.102.

Sec. 101A.107. REPORT ON UNIT COSTS. The department shall file with the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy a report that clearly identifies the unit cost of each service, other than services related to community service volunteering and subsidized employment services, provided by an area agency on aging. The report must be filed twice each year on or before the date specified by the Legislative Budget Board. The report must be in the form required by the Legislative Budget Board.

SUBCHAPTER D. OPTIONS FOR INDEPENDENT LIVING PROGRAM

Sec. 101A.151. DEFINITIONS. In this subchapter:

(1) "Case management" means the process of assessing service needs, developing a plan of care, and arranging for and monitoring delivery of care to an elderly person under this subchapter.

(2) "Case management unit" is an entity that coordinates and administers case management.

(3) "Elderly person" means a person who is 60 years of age or older.

(4) "Service area" means a geographical area of the state designated for purposes of planning, development, and overall administration of services provided under this subchapter.

Sec. 101A.152. OPTIONS FOR INDEPENDENT LIVING PROGRAM. (a) The department shall establish a statewide Options for Independent Living program to help elderly persons remain at home despite limited self-care capacities and to prevent institutionalization.

(b) The Options for Independent Living program shall provide short-term support services to elderly persons for the purposes of:

(1) restoring functional capacities after illness or hospitalization; and

(2) educating and preparing elderly persons and their caregivers to provide self-care.

Sec. 101A.153. PERSONS TO BE SERVED. (a) The Options for Independent Living program shall give priority to an elderly person who:

(1) has recently suffered a major illness or health care crisis or has recently been hospitalized;

(2) lives in a rural area;

(3) has insufficient caregiver support;

(4) has a mild to moderate impairment or a temporary severe impairment; and

(5) is in great economic or social need, with particular attention to low-income minority older persons.

(b) In awarding funding under this subchapter, the department shall serve priority populations consistent with the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.).

Sec. 101A.154. PROVISION OF SERVICES. (a) Support services shall include:

(1) case management;

(2) homemaking assistance, including personal care;

(3) residential repair and modification;

(4) benefits counseling;

(5) respite care;

(6) emergency response;

(7) education and training for caregivers;

(8) home-delivered meals;

(9) transportation; and

(10) other appropriate services identified by the case manager and client through the assessment and care planning process.

(b) A case manager shall conduct an individual assessment of an elderly person's needs and shall, in consultation with the elderly person and the elderly person's family, create a plan of care that specifies the type, amount, frequency, and duration of support services the elderly person needs.

(c) A plan of care must coordinate the available public and private services and resources that are most appropriate to meet the elderly person's needs.

(d) An area agency on aging may not directly provide homemaker, home health, residential repair, respite, meal delivery, or transportation service unless the area agency:

(1) receives no response to a request for proposals that meets department standards; and

(2) has exhausted all other procurement options available under department rules.

(e) An area agency on aging that wants to provide directly a service not available through a local public or private entity must obtain approval from the department in ac-

cordance with department rules governing the granting of such approval.

Sec. 101A.155. CASE MANAGEMENT UNITS. (a) The department shall designate one or more case management units for each service area to provide case management services according to department rules and standards.

(b) The department shall designate an area agency on aging as a case management unit for a service area. The area agency on aging may act as the case management unit, after obtaining approval from the department in accordance with department rules governing the granting of such approval, or the area agency on aging may subcontract with a local service agency or hospital to act as the case management unit.

(c) A case manager must be an employee of a case management unit.

(d) The department shall periodically review a case management unit.

Sec. 101A.156. ADMINISTRATION OF PROGRAM. (a) The department shall administer the Options for Independent Living program through grants to area agencies on aging.

(b) Area agencies on aging shall maintain their service provision levels in effect on September 1, 1989, independent of the Options for Independent Living program. Funds made available under this program may not be used to supplant service funds for services provided on September 1, 1989.

(c) An area agency on aging that receives funds under this section shall ensure the availability of the services for which the funds were granted.

Sec. 101A.157. FEES. (a) The executive commissioner by rule shall establish a copayment system using a sliding scale that is based on an elderly person's income.

(b) An elderly person whose income exceeds the basic income and resources requirements for eligibility for the community care for aged and disabled program of the department, but whose income is less than 200 percent of that level, shall pay a portion of the cost of support services provided to the person by a case management unit according to the fee scale.

(c) An elderly person whose income exceeds 200 percent of the level established by the department for the community care for aged and disabled program shall pay the full cost of support services provided by a case management unit.

(d) A local case management unit shall collect and account for all fees imposed for services provided by the case management unit and shall submit reports to the department as prescribed by department rules.

(e) Fees collected shall be used to defray program costs and to expand the Options for Independent Living program.

Sec. 101A.158. ANNUAL REPORT. (a) The department shall annually report on the Options for Independent Living program to the governor and the presiding officer of each house of the legislature.

(b) The report must include information concerning the manner in which the department has provided services under the Options for Independent Living program to elderly persons entitled to priority under Section 101A.153(a).

(c) The report must be submitted not later than November 1 of each even-numbered year.

SUBCHAPTER E. FUNDING

Sec. 101A.201. AUTHORITY TO ACCEPT, EXPEND, AND TRANSFER FUNDS. The department may accept, expend, and transfer federal and state funds appropriated for programs authorized by federal and state law and administered by the department under this chapter. The department may accept, expend, and transfer funds received in relation to this chapter from any source, including a county, municipality, or public or private agency. The funds shall be deposited in the state treasury and may be used for the purposes of this chapter, subject to any conditions attached to the funds.

Sec. 101A.202. CONTRIBUTIONS TO LOCAL ORGANIZATIONS: CERTAIN COUNTIES. (a) This section applies only to counties having a population of not less than 22,140 and not more than 22,340 and to cities and towns within those counties.

(b) Each county and each city or town to which this section applies may cooperate with the department in carrying out the department's purposes under this chapter on a local level by contributing funds to any local organization the functions of which are to cooperate with the department in carrying out those purposes. The organization must operate with the approval and sanction of the department.

(c) The operation of buildings, facilities, services, and programs by an organization for other community services or benefits does not prohibit the contribution of the funds under this section for the part of the organization's program for the aging if that part of the program is approved by the department.

Sec. 101A.203. FUNDING TO AREA AGENCIES ON AGING. (a) The executive commissioner by rule shall adopt a formula that meets the intent of the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) for allocating among area agencies on aging funds that the department receives under the Act.

(b) The formula must provide for the allocation of the funds among the area agencies on aging according to the most recent population estimates available from the Health and Human Services Commission.

(c) The executive commissioner shall update the formula biennially and the department shall include the formula and population estimates in each state plan on aging.

(d) Unless otherwise provided for by department rules regarding the carryover of unexpended funds allocated under this section, at the end of a fiscal year excess unexpended funds of an area agency on aging's allocations for that fiscal year shall be deducted from the allocation for the new fiscal year and that same amount of new fiscal year funds shall be reallocated. The executive commissioner by rule shall adopt a reallocation formula that includes performance as a criterion, in addition to other criteria adopted by the executive commissioner.

(e) The funds that the department receives under the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) shall be allocated and reallocated to area agencies on aging under the formulas adopted under this section.

Sec. 101A.204. TRUSTS FOR CERTAIN RECIPIENTS OF MEDICAL ASSISTANCE. (a) An area agency on aging may contract with one or more private attorneys to establish trusts described by 42 U.S.C. Section 1396p(d)(4)(B) for the benefit of recipients of medical assistance under Chapter 32 who, without the establishment of these trusts, would become ineligible for medical assistance.

(b) The department shall allocate available state funds to the area agencies on aging for use in contracting for the establishment of trusts under Subsection (a).

SUBCHAPTER F. OFFICE OF STATE LONG-TERM CARE OMBUDSMAN

Sec. 101A.251. DEFINITIONS. In this subchapter:

(1) "Elderly resident" means a resident of a long-term care facility who is 60 years of age or older.

(2) "Long-term care facility" means a facility that serves persons who are 60 years of age or older and that is licensed or regulated or that is required to be licensed or regulated by the department under Chapter 242 or 247, Health and Safety Code.

(3) "Office" means the office of the state long-term care ombudsman.

(4) "Representative" means an employee or volunteer specifically designated by the office as a representative of the office.

(5) "State ombudsman" means the chief administrator of the office.

Sec. 101A.252. OPERATION OF OFFICE. (a) The department shall operate the office of the state long-term care ombudsman.

(b) The department may operate the office directly or by contract or memorandum of agreement with a public agency or other appropriate private nonprofit organization. The department may not use an agency or organization that is:

(1) responsible for licensing or certifying long-term care services; or

(2) an association of long-term care facilities or of any other residential facility that serves persons who are 60 years of age or older, or an affiliate of such an association.

(c) The department shall consider the views of elderly persons, provider organizations, advocacy groups, and area agencies on aging in planning and operating the office.

(d) The department shall ensure that a person involved in designating the state ombudsman or in designating an employee or representative of the office does not have a conflict of interest.

Sec. 101A.253. ROLE OF OFFICE. The office and the ombudsman program shall operate in cooperation with any regulatory agency funded and mandated by the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and state statute.

Sec. 101A.254. POWERS AND DUTIES OF STATE OMBUDSMAN AND OFFICE. (a) The state ombudsman and the office have the powers and duties required by state and federal law.

(b) The office may use appropriate administrative, legal, and other remedies to assist elderly residents as provided by department rules.

Sec. 101A.255. OMBUDSMEN. (a) The office shall recruit volunteers and citizen organizations to participate in the ombudsman program. A paid staff member of an area agency on aging network or a nonprofit social service agency may be an ombudsman. An ombudsman is a representative of the office.

(b) The office shall provide training to ombudsmen as required by this subchapter and federal law.

(c) The office shall coordinate ombudsman services with the protection and advocacy systems that exist for persons with developmental disabilities or mental illness.

Sec. 101A.256. LEGAL ASSISTANCE. The department shall ensure that the office receives adequate legal advice and representation. The attorney general shall represent the ombudsman or a representative if a suit or other legal action is brought or threatened to be brought against that person in connection with the person's performance of the official duties of the office.

Sec. 101A.257. INVESTIGATIONS. (a) The office shall have access to elderly residents and shall investigate and resolve complaints made by or on behalf of elderly residents.

(b) The department shall ensure that each ombudsman who investigates complaints has received proper training and has been approved by the office as qualified to investigate complaints.

Sec. 101A.258. ACCESS TO RECORDS AND CONFIDENTIALITY. (a) The state ombudsman or the state ombudsman's designee, specifically identified by the commissioner, shall have access to patient care records of elderly residents of long-term care facilities as provided by Subsection (a–1). The executive commissioner by rule shall establish procedures for obtaining access to the records. All records and information to which the state ombudsman or the state ombudsman's designee obtains access remain confidential.

(a–1) The state ombudsman or the state ombudsman's designee, specifically identified by the commissioner, shall have access to patient care records of elderly residents of long-term care facilities if:

(1) the resident or the resident's legal representative consents to the access;

(2) the resident is unable to consent to the access and the resident has no legal representative; or

(3) access to the records is necessary to investigate a complaint and:

(A) a legal guardian of the resident refuses to consent to the access;

(B) the state ombudsman or the state ombudsman's designee has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(C) the state ombudsman approves the access.

(b) The office shall ensure that the identity of a complainant or any facility resident may be disclosed only with the written consent of the person or the person's legal representative or on court order.

(c) The information in files maintained by the office may be disclosed only by the ombudsman who has authority over the disposition of the files.

Sec. 101A.259. REPORTING SYSTEM. The office shall maintain a statewide ombudsman uniform reporting system to collect and analyze information relating to complaints and conditions in long-term care facilities as long as such system does not duplicate other state reporting systems. The office shall provide the information to the department and the Health and Human Services Commission.

Sec. 101A.260. ANALYSIS OF LAWS. The office shall analyze and monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies relating to long-term care facilities and services and shall recommend any changes the office considers necessary.

Sec. 101A.261. PUBLIC INFORMATION. The office shall provide information to public agencies, legislators, and others that relates to the problems and concerns of elderly residents.

Sec. 101A.262. ANNUAL REPORT. (a) The office shall prepare an annual report that contains:

(1) information and findings relating to the problems and complaints of elderly residents; and

(2) policy, regulatory, and legislative recommendations to solve the problems, resolve the complaints, and improve the quality of the elderly residents' care and lives.

(b) The report must be submitted to the governor and the presiding officer of each house of the legislature not later than November 1 of each even-numbered year.

Sec. 101A.263. LIMITATION OF LIABILITY. An ombudsman or a representative is not liable for civil damages or subject to criminal prosecution for performing official duties unless the ombudsman or representative acts in bad faith or with a malicious purpose.

Sec. 101A.264. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) intentionally interferes with an ombudsman attempting to perform official duties; or

(2) commits or attempts to commit an act of retaliation or reprisal against any resident or employee of a long-term care facility for filing a complaint or providing information to an ombudsman.

(b) An offense under this section is a Class B misdemeanor.

(c) The department shall assure that criminal sanctions will be initiated only after all administrative procedures are exhausted.

SECTION 4.362. Section 102.001(1), Human Resources Code, is amended to read as follows:

(1) "Convalescent and nursing home" means an institution licensed by the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services under Chapter 242, Health and Safety Code.

SECTION 4.363. Sections 102.003(d), (i), and (t), Human Resources Code, are amended to read as follows:

(d) *An* [~~A mentally retarded~~] elderly individual with *an intellectual disability who has* a court-appointed guardian of the person may participate in a behavior modification

program involving use of restraints or adverse stimuli only with the informed consent of the guardian.

(i) An elderly individual may manage the individual's personal financial affairs. The elderly individual may authorize in writing another person to manage the individual's *financial affairs* [~~money~~]. The elderly individual may choose the manner *of financial management, which may include management through or under* [~~in which the individual's money is managed, including~~] a money management program, a representative payee program, a financial power of attorney, a trust, or a similar method, and the individual may choose the least restrictive of these methods. A person designated to manage an elderly individual's *financial affairs* [~~money~~] shall do so in accordance with each applicable program policy, law, or rule. On request of the elderly individual or the individual's representative, the person designated to manage the elderly individual's *financial affairs* [~~money~~] shall make available the related financial records and provide an accounting *relating to the financial management* [~~of the money~~]. An elderly individual's designation of another person to manage the individual's *financial affairs* [~~money~~] does not affect the individual's ability to exercise another right described by this chapter. If an elderly individual is unable to designate another person to manage the individual's *financial* affairs and a guardian is designated by a court, the guardian shall manage the individual's *financial affairs* [~~money~~] in accordance with the *Estates* [~~Probate~~] Code and other applicable laws.

(t) An elderly individual may:

(1) make a living will by executing a directive under *Subchapter B, Chapter 166* [~~the Natural Death Act (Chapter 672~~], Health and Safety Code[~~)~~];

(2) execute a *medical* [~~durable~~] power of attorney [~~for health care~~] under *Subchapter D,* Chapter *166, Health and Safety* [~~135, Civil Practice and Remedies~~] Code; or

(3) designate a guardian in advance of need to make decisions regarding the individual's health care should the individual become incapacitated.

SECTION 4.364. Section 103.001, Human Resources Code, is amended to read as follows:

Sec. 103.001. PURPOSE. It is the purpose of this chapter to establish programs of quality adult day care and day health care that will enable *persons with disabilities who have medical or functional impairments and* elderly [~~and handicapped~~] persons [~~with medical or functional impairments~~] to maintain maximum independence and to prevent premature or inappropriate institutionalization. It is the purpose of this chapter to provide adequately regulated supervision for elderly *persons* and [~~handicapped~~] persons *with disabilities* while enabling them to remain in a family environment and affording the family a measure of normality in its daily activities. The legislature intends to provide for the development of policies and programs that will:

(1) provide alternatives to institutionalization;

(2) establish facilities for adult day care and day health care throughout the state that offer services and are accessible to economically disadvantaged persons; and

(3) prevent inappropriate institutionalization.

SECTION 4.365. Section 103.003, Human Resources Code, is amended by amending Subdivisions (1), (3), and (5) and adding Subdivision (4-a) to read as follows:

(1) "Adult day-care facility" means a facility that provides services under an adult day-care program on a daily or regular basis but not overnight to four or more elderly *persons* or [~~handicapped~~] persons *with disabilities* who are not related by blood, marriage, or adoption to the owner of the facility.

(3) "Department" means the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) *"Person with a disability"* [~~"Handicapped person"~~] means a person whose

functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

SECTION 4.366. The heading to Section 103.004, Human Resources Code, is amended to read as follows:

Sec. 103.004. DEPARTMENT *AND EXECUTIVE COMMISSIONER* DUTIES.

SECTION 4.367. Sections 103.004(a) and (b), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] shall adopt rules for implementing this chapter.

(b) The *executive commissioner* [~~department~~] shall set standards for:

(1) the health and welfare of persons attending a facility;

(2) the eligibility of persons to attend a facility;

(3) the scope of services provided by a facility;

(4) adequate supervision for persons attending a facility;

(5) the professional staff and other personnel at a facility;

(6) adequate and healthful food service, where it may be offered;

(7) procedures for consultation with family members, case workers, or other persons responsible for the welfare of a person attending a facility; and

(8) prohibiting racial discrimination.

SECTION 4.368. Section 103.005, Human Resources Code, is amended to read as follows:

Sec. 103.005. LICENSING DUTIES. The *executive commissioner* [~~department~~] shall:

(1) adopt rules for the licensing procedures *for a licensed facility;* and

(2) set standards for the safety and sanitation requirements for a licensed facility.

SECTION 4.369. Section 103.006(b), Human Resources Code, is amended to read as follows:

(b) The license expires two years from the date of its issuance. The executive commissioner [~~of the Health and Human Services Commission~~] by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, the department shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months for which the license is valid. A license holder shall pay the total license renewal fee at the time of renewal.

SECTION 4.370. Sections 103.0075(a) and (c), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* [~~department~~] by rule shall adopt a procedure under which a person proposing to construct or modify an adult day-care facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the *executive commissioner* [~~department~~] shall set reasonable deadlines by which the department must complete review of submitted plans.

(c) The department may charge a reasonable fee *adopted by the executive commissioner by rule* for conducting a review under this section.

SECTION 4.371. Section 103.012(d), Human Resources Code, is amended to read as follows:

(d) The *executive commissioner* [~~department~~] shall establish gradations of penalties in accordance with the relative seriousness of the violation.

SECTION 4.372. Sections 103.014(g), (h), and (i), Human Resources Code, are amended to read as follows:

(g) Not later than the 20th day after the date on which a notice under Subsection (f)(2) is received, the person charged with the violation may:

(1) give to the department written notice that the person agrees with the department's report and consents to the recommended penalty; or

(2) make a written request for a hearing *as provided under department rules.*

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the *department* [~~department's commissioner or the commissioner's designee~~] shall assess the *recommended* penalty [~~recommended by the department~~].

(i) If the *department* [~~department's commissioner or the commissioner's designee~~] assesses the recommended penalty, the department shall give written notice of the decision to the person charged with the violation and the person shall pay the penalty.

SECTION 4.373. Section 103.015(d), Human Resources Code, is amended to read as follows:

(d) Based on the findings of fact and conclusions of law, and the recommendation of the administrative law judge, the *department* [~~department's commissioner or the commissioner's designee~~] by order shall find:

(1) a violation has occurred and assess an administrative penalty; or

(2) a violation has not occurred.

SECTION 4.374. Sections 103.016(a), (b), (f), and (g), Human Resources Code, are amended to read as follows:

(a) The *department* [~~department's commissioner or the commissioner's designee~~] shall give notice of the findings made under Section 103.015(d) to the person charged with a violation. If the *department* [~~commissioner or the commissioner's designee~~] finds that a violation has occurred, the *department* [~~commissioner or the commissioner's designee~~] shall give to the person charged written notice of:

(1) the findings;

(2) the amount of the administrative penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue; and

(4) the person's right to judicial review of the *department's* order [~~of the commissioner or the commissioner's designee~~].

(b) Not later than the 30th day after the date on which the *department's* order [~~of the department's commissioner or the commissioner's designee~~] is final, the person assessed the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) If the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, the *department* [~~department's commissioner or the commissioner's designee~~] shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on the amount remitted by the *department* [~~department's commissioner or the commissioner's designee~~] under Subsection (f)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged with the violation.

SECTION 4.375. The heading to Chapter 105, Human Resources Code, is amended to read as follows:

CHAPTER 105. RESIDENTIAL FACILITIES FOR *PERSONS WITH DISABILITIES OR WHO ARE* [~~THE~~] ELDERLY

SECTION 4.376. Section 105.001(1), Human Resources Code, is amended to read as follows:

(1) "Establishment" means a facility providing sleeping accommodations to two or more qualifying adult residents, at least 80 percent of whom are 65 years of age or older or are *persons with disabilities* [~~disabled~~], and offering, for a fee, one or more supportive services through contract with an agency licensed under Chapter 142, Health and Safety Code, or with another entity.

SECTION 4.377. The heading to Chapter 111, Human Resources Code, is amended to read as follows:

CHAPTER 111. *REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS WITH DISABILITIES* [~~TEXAS REHABILITATION COMMISSION~~]

SECTION 4.378. Section 111.002, Human Resources Code, is amended by amending Subdivisions (2) and (5) and adding Subdivisions (2–a) and (2–b) to read as follows:

(2) "Commissioner" means the *commissioner of assistive and rehabilitative services* [~~chief administrative officer of the commission~~].

(2–a) "Department" means the Department of Assistive and Rehabilitative Services.

(2–b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Rehabilitation services" means any equipment, supplies, goods, or services necessary to enable an individual with a disability to engage in a gainful occupation or to achieve maximum personal independence. To enable an individual with a disability to engage in a gainful occupation or achieve maximum personal independence, the *department* [~~commission~~] may engage in or contract for activities, including but not limited to:

(A) evaluation of rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for services and the nature and scope of services to be provided;

(B) counseling and guidance;

(C) physical and mental restoration services necessary to correct or substantially modify a physical or mental condition that is stable or slowly progressive;

(D) training;

(E) maintenance for additional costs incurred while participating in rehabilitation services;

(F) transportation;

(G) placement in suitable employment;

(H) postemployment services necessary to maintain suitable employment;

(I) obtaining occupational licenses, including any license, permit, or other written authority required by a state, city, or other governmental unit to be obtained in order to enter an occupation or small business, and providing tools, equipment, initial stocks, goods, and supplies; and

(J) providing other equipment, supplies, services, or goods that can reasonably be expected to benefit an individual with a disability in terms of employment in a gainful occupation or achievement of maximum personal independence.

SECTION 4.379. Section 111.016, Human Resources Code, is amended to read as

follows:

Sec. 111.016. REHABILITATION COUNCIL OF TEXAS. The Rehabilitation Council of Texas *operates* ~~[is created by this section]~~ in accordance with the federal Rehabilitation Act Amendments of 1992, Pub. L. 102–569, and the federal Rehabilitation Act Amendments of 1998, Pub. L. 105–220. The *executive commissioner* ~~[board]~~ shall adopt rules for the implementation of regulations and the administration of the council.

SECTION 4.380. Section 111.0161, Human Resources Code, is amended to read as follows:

Sec. 111.0161. *ADVICE OF* ADVISORY COMMITTEES ~~[REPORT TO BOARD]~~. (a) Each advisory committee established by law or rule to advise the *department under this chapter or Subchapter F, Chapter 117,* ~~[commission]~~ shall report to and advise the *commissioner and executive commissioner* ~~[board]~~ on the committee's activities and the results of the committee's work. For the purpose of performing its advisory functions, each committee shall work with the commissioner, the *department's* ~~[commission's]~~ staff, and the *executive commissioner* ~~[board]~~.

(b) The *executive commissioner* ~~[board]~~ shall adopt rules to implement this section.

SECTION 4.381. The heading to Section 111.018, Human Resources Code, is amended to read as follows:

Sec. 111.018. *GENERAL DUTIES OF EXECUTIVE COMMISSIONER AND COMMISSIONER RELATING TO REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS WITH DISABILITIES* ~~[ADMINISTRATIVE REGULATIONS AND POLICIES]~~.

SECTION 4.382. Sections 111.018(a) and (b), Human Resources Code, are amended to read as follows:

(a) The *executive commissioner* ~~[board]~~ shall:

(1) adopt policies and rules to effectively carry out the purposes of this chapter *and Subchapter F, Chapter 117*; and

(2) supervise the commissioner's administration of this chapter *and Subchapter F, Chapter 117.*

(b) In carrying out his or her duties under this chapter *and Subchapter F, Chapter 117,* the commissioner shall, with the approval of the *executive commissioner* ~~[board]~~, implement policies addressing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations *relating to this chapter or Subchapter F, Chapter 117,* ~~[subject to this section]~~ as necessary to carry out the purposes of this chapter *and Subchapter F, Chapter 117.*

SECTION 4.383. Section 111.019, Human Resources Code, is amended to read as follows:

Sec. 111.019. PLANNING. The *commissioner* ~~[commission]~~ shall make long-range and intermediate plans for the scope and development of the program and make decisions regarding the allocation of resources in carrying out the plans.

SECTION 4.384. Section 111.0205, Human Resources Code, is amended to read as follows:

Sec. 111.0205. WORK INCENTIVES AND SUPPLEMENTAL SECURITY INCOME (SSI). The *department* ~~[commission]~~ shall employ *staff* ~~[a person]~~ at the *department's* ~~[commission's]~~ central office to:

(1) train counselors to understand and use work incentives *in relation to services under this chapter or Subchapter F, Chapter 117*; and

(2) review cases to ensure that *department* ~~[commission]~~ clients *receiving services under this chapter or Subchapter F, Chapter 117,* are informed of the availability of and assisted in obtaining work incentives and Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.).

SECTION 4.385. Section 111.021, Human Resources Code, is amended to read as follows:

Sec. 111.021. REPORTS. (a) The commissioner shall prepare and submit to the *executive commissioner* [~~board~~] annual reports of activities and expenditures *under this chapter and Subchapter F, Chapter 117,* and, prior to each regular session of the legislature, estimates of funds required for carrying out the purposes of this chapter *and Subchapter F, Chapter 117.*

(c) The *department* [~~commission~~] shall post on the Internet in an accessible format the reports required under this section and any other agency performance data *relating to this chapter or Subchapter F, Chapter 117,* required to be reported to this state or the federal government. If a report or performance data contains confidential information, the *department* [~~commission~~] shall remove the confidential information before posting the report or performance data.

SECTION 4.386. Section 111.022, Human Resources Code, is amended to read as follows:

Sec. 111.022. DISBURSEMENT OF FUNDS. The *department* [~~commission~~] shall make certification for disbursement, in accordance with regulations, of funds available for carrying out the purposes of this chapter *or Subchapter F, Chapter 117.*

SECTION 4.387. Section 111.023, Human Resources Code, is amended to read as follows:

Sec. 111.023. OTHER DUTIES. The *executive commissioner* [~~board~~] shall take other action as necessary or appropriate to carry out the purposes of this chapter *or Subchapter F, Chapter 117.*

SECTION 4.388. The heading to Subchapter C, Chapter 111, Human Resources Code, is amended to read as follows:

SUBCHAPTER C. POWERS AND DUTIES OF *DEPARTMENT* [~~COMMISSION~~]

SECTION 4.389. Section 111.0505, Human Resources Code, is amended to read as follows:

Sec. 111.0505. *COMMISSIONER'S* POWERS AND DUTIES*; EFFECT OF CONFLICT WITH OTHER LAW* [~~OF COMMISSIONER OF HEALTH AND HUMAN SERVICES~~]. [~~The commissioner of health and human services has the powers and duties relating to the commission and commissioner as provided by Section 531.0055, Government Code.~~] To the extent a power or duty given to the [~~commission or~~] commissioner by this chapter, or another law *relating to rehabilitation services for individuals with disabilities,* conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

SECTION 4.390. Section 111.051, Human Resources Code, is amended to read as follows:

Sec. 111.051. *DEPARTMENT* [~~COMMISSION~~] AS PRINCIPAL AUTHORITY. The *department* [~~Texas Rehabilitation Commission~~] is the principal authority in the state on rehabilitation of individuals with disabilities[~~, except for those matters relating to individuals whose disabilities are of a visual nature~~]. All other state agencies engaged in rehabilitation activities and related services to individuals *with* [~~whose~~] disabilities [~~are not of a visual nature~~] shall coordinate those activities and services with the *department* [~~commission~~].

SECTION 4.391. Section 111.052, Human Resources Code, is amended to read as follows:

Sec. 111.052. GENERAL FUNCTIONS *OF DEPARTMENT RELATING TO REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS WITH DISABILITIES.* (a) The *department* [~~commission~~] shall, to the extent of resources available and priorities established by the *executive commissioner* [~~board~~], provide rehabilitation services

directly or through public or private resources to individuals determined by the *department* [~~commission~~] to be eligible for the services under a vocational rehabilitation program or other program established to provide *rehabilitation* [~~rehabilitative~~] services.

(b) In carrying out the purposes of this chapter *and Subchapter F, Chapter 117*, the *department* [~~commission~~] may:

(1) cooperate with other departments, agencies, political subdivisions, and institutions, both public and private, in providing the services authorized by this chapter *and Subchapter F, Chapter 117,* to eligible individuals, in studying the problems involved, and in planning, establishing, developing, and providing necessary or desirable programs, facilities, and services, including those jointly administered with state agencies;

(2) enter into reciprocal agreements with other states;

(3) establish or construct rehabilitation facilities and workshops, contract with or provide grants to agencies, organizations, or individuals as necessary to implement this chapter *and Subchapter F, Chapter 117*, make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities, and operate facilities for carrying out the purposes of this chapter *and Subchapter F, Chapter 117*;

(4) conduct research and compile statistics relating to the provision of services to or the need for services by [~~disabled~~] individuals *with disabilities*;

(5) provide for the establishment, supervision, management, and control of small business enterprises to be operated by individuals with significant disabilities where their operation will be improved through the management and supervision of the *department* [~~commission~~];

(6) contract with schools, hospitals, private industrial firms, and other agencies and with doctors, nurses, technicians, and other persons for training, physical restoration, transportation, and other rehabilitation services; and

(7) assess the statewide need for services necessary to prepare students with disabilities for a successful transition to employment, establish collaborative relationships with each school district with education service centers to the maximum extent possible within available resources, and develop strategies to assist vocational rehabilitation counselors in identifying and reaching students in need of transition planning.

SECTION 4.392. Sections 111.0525(b) and (c), Human Resources Code, are amended to read as follows:

(b) The *department* [~~commission~~] shall enter into an agreement with the *Department of Aging and Disability Services and the* [~~Texas~~] Department of *State Health Services* [~~Mental Health and Mental Retardation~~] to reduce duplication and fragmentation of employment services by defining each agency's role and responsibilities for shared client populations.

(c) The *department* [~~commission~~] shall establish a formal referral process with the Texas Workforce Commission to ensure that appropriate vocational rehabilitation clients are referred to and receive services provided by the Texas Workforce Commission or local workforce development *boards* [~~agencies~~].

SECTION 4.393. Section 111.053, Human Resources Code, is amended to read as follows:

Sec. 111.053. COOPERATION WITH THE FEDERAL GOVERNMENT. (a) The *department* [~~commission~~] shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this chapter *and Subchapter F, Chapter 117,* or of any federal statutes pertaining to rehabilitation, and to this end may adopt methods of administration that are found by the federal government to be necessary, and that are not contrary to existing state laws, for the proper and efficient operation of the agreements, arrangements, or plans for rehabilitation.

(b) To the extent resources are made available by the federal government, the *depart-*

ment [~~commission~~] may make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of any federal statute pertaining to the disability determination function under the Social Security Act and to this end shall adopt methods of administration that are found by the federal government to be necessary to the disability determination function and that are not contrary to existing state laws.

SECTION 4.394. Section 111.054, Human Resources Code, is amended to read as follows:

Sec. 111.054. OBTAINING FEDERAL FUNDS. The *department* [~~commission~~] may comply with any requirements necessary to obtain federal funds *relating to this chapter or Subchapter F, Chapter 117,* in the maximum amount and most advantageous proportion possible.

SECTION 4.395. Section 111.055(a), Human Resources Code, is amended to read as follows:

(a) All money paid to the *department* [~~commission~~] under this chapter *or Subchapter F, Chapter 117,* shall be deposited in the *state treasury* [~~State Treasury and may be used only for the administration of this chapter~~].

SECTION 4.396. Section 111.0553, Human Resources Code, is amended to read as follows:

Sec. 111.0553. PROCUREMENT METHODS. (a) The *executive commissioner* [~~commission~~] shall *adopt* [~~develop~~] and *the department shall* [~~, following review and approval by the board,~~] implement *in relation to this chapter and Subchapter F, Chapter 117,* agency-wide procurement procedures to:

(1) ensure compliance with the best-value purchasing requirements of Section 2155.144(c), Government Code;

(2) document that a best-value review of vendors has occurred;

(3) document the reasons for selecting a vendor;

(4) negotiate price discounts with high-volume vendors;

(5) consolidate purchases with other agencies, including the [~~Texas~~] Department of *State* Health *Services* and the comptroller, to achieve best value; and

(6) provide effective public notification to potential vendors of planned *department* [~~commission~~] purchases.

(b) Nothing in this section shall be construed to limit the *department's* [~~commission's~~] ability to procure goods and services from persons with disabilities.

SECTION 4.397. Section 111.056, Human Resources Code, is amended to read as follows:

Sec. 111.056. GIFTS AND DONATIONS [~~TO THE COMMISSION~~]. The *department* [~~commission~~] may receive and use gifts and donations for carrying out the purposes of this chapter *and Subchapter F, Chapter 117.* No person may receive payment for solicitation of any funds.

SECTION 4.398. Sections 111.057(b) and (c), Human Resources Code, are amended to read as follows:

(b) The *department* [~~commission~~] is authorized to provide client and other information to and receive client and other information from any state agency for the purpose of increasing and enhancing services to clients and improving agency operations *under this chapter and Subchapter F, Chapter 117,* except where federal law or regulations preclude such sharing.

(c) The *executive commissioner* [~~commission~~] shall adopt rules to carry out the purposes of this section.

SECTION 4.399. Section 111.059, Human Resources Code, is amended to read as follows:

Sec. 111.059. SUBROGATION. (a) In furnishing a person rehabilitation services, including medical care services, under this chapter *or Subchapter F, Chapter 117*, the *department* [~~commission~~] is subrogated to the person's right of recovery from:

(1) personal insurance;

(2) another person for personal injury caused by the other person's negligence or wrongdoing; or

(3) any other source.

(b) The *department's* [~~commission's~~] right of subrogation is limited to the cost of the services provided.

(c) The commissioner may totally or partially waive the *department's* [~~commission's~~] right of subrogation when the commissioner finds that enforcement would tend to defeat the purpose of rehabilitation.

(d) The *executive commissioner* [~~commission~~] may adopt rules for the enforcement of *the department's* [~~its~~] right of subrogation.

SECTION 4.400. Section 111.060, Human Resources Code, is amended to read as follows:

Sec. 111.060. COMPREHENSIVE REHABILITATION *ACCOUNT* [~~FUND~~]. (a) The comprehensive rehabilitation *account* [~~fund~~] is *an account* [~~created~~] in the *general revenue fund* [~~state treasury~~]. Money in the *account* [~~fund~~] is derived from court costs collected under *Section 133.102, Local Government Code* [~~Subchapter D, Chapter 102, Code of Criminal Procedure~~]. Money in the *account* [~~fund~~] may be appropriated only to the *department* [~~commission~~] for the purposes provided by Section 111.052.

(b) The comptroller, on requisition by the *department* [~~commission~~], shall draw a warrant on the *account* [~~fund~~] for the amount specified in that requisition for a use authorized in Section 111.052, except that the total of warrants issued during a state fiscal year may not exceed the amount appropriated for that fiscal year. At the end of each state fiscal year, the comptroller shall transfer to the *general revenue fund* [~~General Revenue Fund~~] any unexpended balance in the comprehensive rehabilitation *account* [~~fund~~] that exceeds $1.5 million.

(c) The court costs remitted to the comptroller and deposited in the *general revenue fund* [~~state treasury~~] pursuant to this section are dedicated to the *department* [~~commission~~].

SECTION 4.401. Section 111.061, Human Resources Code, is amended to read as follows:

Sec. 111.061. CONTRACT PAYMENT. The *department* [~~commission~~] shall base payment under a contract for vocational rehabilitation services on outcome-based performance standards defined in the contract.

SECTION 4.402. Subchapter D, Chapter 111, Human Resources Code, is transferred to Chapter 117, Human Resources Code, redesignated as Subchapter F, Chapter 117, Human Resources Code, and amended to read as follows:

SUBCHAPTER *F* [~~D~~]. VOCATIONAL REHABILITATION SERVICES *FOR CERTAIN INDIVIDUALS WITH DISABILITIES*

Sec. 117.151. DEFINITIONS. In this subchapter, "rehabilitation services" and "vocational rehabilitation program" have the meanings assigned by Section 111.002.

Sec. *117.152* [~~111.070~~]. PROVISION OF SERVICES. (a) The *executive commissioner* [~~board~~] by rule shall establish and maintain guidelines for providing vocational rehabilitation services that are consistent with state and federal laws and regulations and that include:

(1) a system of organization for the delivery of vocational rehabilitation services statewide;

(2) eligibility requirements for vocational rehabilitation services;

(3) requirements for the rehabilitation planning process;

(4) the types of services that may be provided to a client through a vocational rehabilitation program; and

(5) requirements for client participation in the costs of vocational rehabilitation services, including documentation that a client has sought benefits for which the client is eligible from sources other than the *department* [~~commission~~] and that may assist the client in obtaining vocational rehabilitation goods or services.

(b) The *executive commissioner* [~~board~~] shall annually assess the effectiveness of the state's vocational rehabilitation program.

Sec. *117.153* [~~111.071~~]. TRAINING AND SUPERVISION OF COUNSELORS. (a) The *department* [~~commission~~] shall provide specific guidance to vocational rehabilitation counselors *under this subchapter* in:

(1) selecting vocational objectives according to a client's skills, experience, and knowledge;

(2) documenting a client's impediment to employment;

(3) selecting rehabilitation services that are reasonable and necessary to achieve a client's vocational objective;

(4) measuring client progress toward the vocational objective, including the documented, periodic evaluation of the client's rehabilitation and participation; and

(5) determining eligibility of employed and unemployed applicants for rehabilitation services using criteria defined by *department* [~~board~~] rule to document whether a client is substantially underemployed or at risk of losing employment.

(b) The *executive commissioner* [~~board~~] by rule shall require monitoring and oversight of vocational rehabilitation counselor performance and decision making in accordance with this section.

Sec. *117.154* [~~111.072~~]. CLIENT ORIENTATION MATERIALS. The *department* [~~commission~~] shall develop and distribute at intake client orientation materials for the vocational rehabilitation program that include information on the *department's* [~~commission's~~] decision-making criteria.

SECTION 4.403. Section 112.001(4), Human Resources Code, is amended to read as follows:

(4) "Applicable federal developmental disability laws" refers to the various Acts of *Congress* [~~congress~~] providing for assistance and services to persons with developmental disabilities and codified as 42 U.S.C. Section *15001* [~~6000~~] et seq.

SECTION 4.404. Section 112.014(b), Human Resources Code, is amended to read as follows:

(b) If a position on the council becomes vacant, the chair shall provide written notice to the governor[~~, agency commissioner, or executive director, as appropriate,~~] requesting a new appointment to fill the remainder of the member's term.

SECTION 4.405. Section 112.022(a), Human Resources Code, is amended to read as follows:

(a) The council shall hire an executive director in accordance with 42 U.S.C. Section *15025* [~~6024(c)~~] and its subsequent amendments to carry out the policies and activities established by the council.

SECTION 4.406. Section 112.0221(c), Human Resources Code, is amended to read as follows:

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the *Texas Workforce* [~~state~~] Commission *civil rights division* [~~on Human Rights~~] for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

SECTION 4.407. Section 112.043, Human Resources Code, is amended to read as follows:

Sec. 112.043. OFFICE FOR THE PREVENTION OF DEVELOPMENTAL DISABILITIES; ADMINISTRATIVE ATTACHMENT. (a) The Office for the Prevention of Developmental Disabilities is administratively attached to the *Health and Human Services Commission* [~~Texas Department of Mental Health and Mental Retardation~~].

(b) The *Health and Human Services Commission* [~~Texas Department of Mental Health and Mental Retardation~~] shall:

(1) provide administrative assistance, services, and materials to the office;

(2) accept, deposit, and disburse money made available to the office;

(3) accept gifts and grants on behalf of the office from any public or private entity;

(4) pay the salaries and benefits of the executive director and staff of the office;

(5) reimburse the travel expenses and other actual and necessary expenses of the executive committee, executive director, and staff of the office incurred in the performance of a function of the office, as provided by the General Appropriations Act;

(6) apply for and receive on behalf of the office any appropriations, gifts, or other money from the state or federal government or any other public or private entity, subject to limitations and conditions prescribed by legislative appropriation;

(7) provide the office with adequate computer equipment and support; and

(8) provide the office with adequate office space and permit the executive committee to meet in facilities of the *commission* [~~department~~].

(c) The executive director and staff of the office are employees of the office and not employees of the *Health and Human Services Commission* [~~Texas Department of Mental Health and Mental Retardation~~].

SECTION 4.408. Section 112.0472(c), Human Resources Code, is amended to read as follows:

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the *Texas Workforce* [~~state~~] Commission *civil rights division* [~~on Human Rights~~] for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

SECTION 4.409. Section 115.002(c), Human Resources Code, is amended to read as follows:

(c) The ex officio members are:

(1) the executive director of the Texas Workforce Commission;

(2) the commissioner of *assistive and rehabilitative services* [~~the Texas Rehabilitation Commission;~~

[~~(3) the executive director of the Texas Commission for the Blind;~~

[~~(4) the executive director of the Texas Commission for the Deaf and Hard of Hearing~~]; and

(3) [~~(5)~~] other officials designated by the governor who serve with other state agencies that provide services to persons with disabilities.

SECTION 4.410. Section 115.009, Human Resources Code, is amended to read as follows:

Sec. 115.009. FUNCTIONS. The committee shall:

(1) serve as a central source of information and education on the abilities, rights, problems, and needs of persons with disabilities and, as necessary, issue reports;

(2) provide information to and advise the governor and the governor's staff on matters relating to the full participation of persons with disabilities in all aspects of life;

(3) before the end of each even-numbered year, submit to the governor and to the legislature a report that includes:

(A) the status of the state's compliance with federal and state laws pertaining to rights and opportunities for persons with disabilities and recommendations to achieve further compliance, if necessary;

(B) a long-range state plan for persons with disabilities and recommendations to implement that plan; and

(C) any recommended changes in state laws relating to persons with disabilities;

(4) serve as the state's liaison agency in working with the President's Committee on Employment of Persons with Disabilities and other entities involved in activities or concerns affecting persons with disabilities;

(5) develop and work with a statewide network of volunteer community-level committees to promote dissemination of information about and implementation of federal and state laws addressing rights and opportunities for persons with disabilities;

(6) evaluate the state's compliance with the [~~federal~~] Americans with Disabilities Act of 1990 *(42 U.S.C. Section 12101 et seq.)* [~~(Pub. L. No. 101-336)~~] and other federal and state statutes relating to rights and opportunities for persons with disabilities;

(7) provide information and technical assistance to public and private agencies and businesses to promote and facilitate implementation of the [~~federal~~] Americans with Disabilities Act of 1990 *(42 U.S.C. Section 12101 et seq.)* [~~(Pub. L. No. 101-336)~~] and other federal and state statutes relating to rights and opportunities of persons with disabilities;

(8) collect and evaluate data on employment of persons with disabilities by state agencies;

(9) work with legislative committees and with state agencies on the development of laws and policies that affect persons with disabilities;

(10) promote the compilation and publication of state laws relating to persons with disabilities; and

(11) issue awards and other forms of recognition to persons and organizations making outstanding contributions to the employment of persons with disabilities and to public awareness of issues impacting persons with disabilities.

SECTION 4.411. Section 117.021(b), Human Resources Code, is amended to read as follows:

(b) The council is composed of nine members of the public appointed by the governor with the advice and consent of the senate. To be eligible for appointment to the council, a person must have demonstrated an interest in and knowledge of problems and available services related to early childhood intervention services or to persons with disabilities, other than *intellectual and* developmental *disabilities,* [~~delay and mental retardation~~] and persons who are blind, deaf, or hard of hearing.

SECTION 4.412. Section 117.051(c), Human Resources Code, is amended to read as follows:

(c) Subject to the control of the executive commissioner, the commissioner shall:

(1) act as the department's chief administrative officer;

(2) in accordance with the procedures prescribed by Section 531.00551, Government Code, assist the executive commissioner in the development and implementation of policies and guidelines needed for the administration of the department's functions;

(3) in accordance with the procedures adopted by the executive commissioner under Section 531.00551, Government Code, assist the executive commissioner in the development of rules relating to the matters within the department's jurisdiction, including the delivery of services to persons and the rights and duties of persons who are served or regulated by the department; and

(4) serve as a liaison between the department and commission.

SECTION 4.413. Section 117.056(c), Human Resources Code, is amended to read as follows:

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the *Texas Workforce* [~~state~~] Commission *civil rights division* [~~on Human Rights~~] for compliance with Subsection (b)(1); and

(3) filed with the governor's office.

SECTION 4.414. Subchapter D, Chapter 117, Human Resources Code, is amended by adding Sections 117.0711 and 117.0712 to read as follows:

Sec. 117.0711. MANAGEMENT AND DIRECTION BY EXECUTIVE COMMISSIONER. The department's powers and duties prescribed by this chapter and other law, including enforcement activities and functions, are subject to the executive commissioner's oversight under Chapter 531, Government Code, to manage and direct the operations of the department.

Sec. 117.0712. CONTRACTING AND AUDITING AUTHORITY; DELEGATION. (a) The executive commissioner, as authorized by Section 531.0055, Government Code, may delegate to the department the executive commissioner's authority under that section for contracting and auditing relating to the department's powers, duties, functions, and activities.

(b) If the executive commissioner does not make a delegation under Subsection (a), a reference in law to the department with respect to the department's contracting or auditing authority means the executive commissioner. If the executive commissioner makes a delegation under Subsection (a), a reference in law to the department's contracting or auditing authority means that authority the executive commissioner has delegated to the department.

(c) If the executive commissioner revokes all or part of a delegation made under Subsection (a), a reference in law to the department with respect to a function for which the delegation was revoked means the executive commissioner or another entity to which the executive commissioner delegates that authority.

(d) It is the legislature's intent that the executive commissioner retain the authority over and responsibility for contracting and auditing at each health and human services agency as provided by Section 531.0055, Government Code. A statute enacted on or after January 1, 2015, that references the contracting or auditing authority of the department does not give the department direct contracting or auditing authority unless the statute expressly provides that the contracting or auditing authority:

(1) is given directly to the department; and

(2) is an exception to the exclusive contracting and auditing authority given to the executive commissioner under Section 531.0055, Government Code.

SECTION 4.415. Section 121.0014(b), Human Resources Code, is amended to read as follows:

(b) In this section, "health and human services agency" means an agency listed by *Section 531.001(4), Government Code* [~~Section 19, Article 4413(502), Revised Statutes~~].

SECTION 4.416. Section 121.003(a), Human Resources Code, is amended to read as follows:

(a) Persons with disabilities have the same right as *persons without disabilities* [~~the able-bodied~~] to the full use and enjoyment of any public facility in the state.

SECTION 4.417. Section 122.003(i), Human Resources Code, is amended to read as follows:

(i) If the *comptroller* [~~executive director of the commission~~] has knowledge that a potential ground for removal exists, the *comptroller* [~~executive director~~] shall notify the presiding officer of the council of the potential ground. If the presiding officer is notified under this section, or if the presiding officer has knowledge that a potential ground for

removal exists, the presiding officer shall notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the *comptroller* [~~executive director~~] shall notify the next highest officer of the council, who shall notify the governor and the attorney general that a potential ground for removal exists.

SECTION 4.418. Section 122.0057(d), Human Resources Code, is amended to read as follows:

(d) The council shall make reasonable attempts to have balanced representation on all advisory committees, including attempting to seek representation from:

(1) the Lighthouse for the Blind *and Visually Impaired* community rehabilitation programs;

(2) the Goodwill community rehabilitation programs;

(3) [~~the Texas Department of Mental Health and Mental Retardation community rehabilitation program;~~

[~~(4)~~] other community rehabilitation programs;

(4) [~~(5)~~] representatives from central nonprofit agencies;

(5) [~~(6)~~] representatives of disability advocacy groups;

(6) [~~(7)~~] government purchasing agents with knowledge of this chapter;

(7) [~~(8)~~] private industry representatives with knowledge of this chapter; and

(8) [~~(9)~~] private citizens *with disabilities* who [~~have a disability and~~] have knowledge of the sale of products and services.

SECTION 4.419. Sections 122.007(d) and (e), Human Resources Code, are amended to read as follows:

(d) Before offering for sale products and services manufactured or provided by persons with disabilities to state agencies and political subdivisions, the council shall test the goods and services in accordance with Section 2155.069, Government Code, to the extent necessary to ensure quality. The council may enter into a contract with a private or public entity to assist with testing. The *comptroller* [~~commission~~] shall make awards under this section based on proposed goods and services meeting formal state specifications developed by the *comptroller* [~~commission~~] or meeting commercial specifications approved by the *comptroller* [~~commission~~].

(e) Requisitions for products and services required by state agencies are processed by the *comptroller* [~~commission~~] according to rules established by the *comptroller* [~~commission~~].

SECTION 4.420. Section 122.009(b), Human Resources Code, is amended to read as follows:

(b) The *comptroller* [~~commission~~] is the depository for all records concerning the council's operations.

SECTION 4.421. Sections 122.0095(a), (d), and (e), Human Resources Code, are amended to read as follows:

(a) Each state agency that purchases products or services through a program under this chapter shall:

(1) designate an agency employee to ensure that the agency complies with this chapter; and

(2) report to the *comptroller* [~~commission~~] and the council the purchase of products or services available from a central nonprofit agency or community rehabilitation program under this chapter, but purchased from another business that is not a central nonprofit agency or community rehabilitation program under this chapter.

(d) The *comptroller* [~~commission~~] shall post the reports required by Subsection (a)(2) on the *comptroller's* [~~commission's~~] website.

(e) The council shall review the information contained in the reports under this sec-

tion and Sections 122.012 and 122.016. The *comptroller* [~~commission~~] shall assist the council in reviewing and analyzing the reports in order to improve state agency compliance with this chapter.

SECTION 4.422. Section 122.012, Human Resources Code, is amended to read as follows:

Sec. 122.012. DUTIES OF *COMPTROLLER* [~~COMMISSION~~]; INTERAGENCY COOPERATION. (a) The *comptroller* [~~commission~~] shall provide legal and other necessary support to the council in accordance with legislative appropriation. The *comptroller* [~~commission~~] shall assign an upper-level management employee to ensure that the *comptroller* [~~commission~~] meets the requirements of this chapter.

(b) State agencies responsible for the provision of rehabilitation and related services to persons with disabilities shall cooperate with the council in the operation of the program. The *Department of Assistive and Rehabilitative Services* [~~Texas Commission for the Blind, the Texas Rehabilitation Commission,~~] and other state human services agencies responsible for assisting persons with disabilities may, through written agreements or interagency contracts, provide space, storage, logistical support, consultation, expert services, communications services, or financial assistance with respect to any function or responsibility of the council.

(c) The *comptroller* [~~commission~~] or a state agency may not assume the marketing or fiscal responsibility for the expense of marketing the products and services of persons with disabilities under the program.

(d) The *comptroller* [~~commission~~] shall include the programs administered under this chapter in the *comptroller's* [~~commission's~~] procurement policy manuals.

(e) After any audit or review the *comptroller* [~~commission~~] conducts with regard to state agency compliance with purchasing laws and procedures, the *comptroller* [~~commission~~] shall report to the council a state agency that is not complying with this chapter.

SECTION 4.423. Section 122.013(b), Human Resources Code, is amended to read as follows:

(b) The *comptroller* [~~commission~~] shall provide legal support to assist the council in adopting rules under this section.

SECTION 4.424. Section 122.014, Human Resources Code, is amended to read as follows:

Sec. 122.014. PRODUCT SPECIFICATIONS. Except as otherwise provided by this section, a product manufactured for sale through the *comptroller* [~~commission~~] to any office, department, institution, or agency of the state under this chapter shall be manufactured or produced according to specifications developed by the *comptroller* [~~commission~~]. If the *comptroller* [~~commission~~] has not adopted specifications for a particular product, the production shall be based on commercial or federal specifications in current use by industry for the manufacture of the product for sale to the state.

SECTION 4.425. Section 122.016, Human Resources Code, is amended to read as follows:

Sec. 122.016. EXCEPTIONS. (a) Exceptions from the operation of the mandatory provisions of Section 122.014 may be made in any case where:

(1) under the rules of the *comptroller* [~~commission~~], the product or service so produced or provided does not meet the reasonable requirements of the office, department, institution, or agency; or

(2) the requisitions made cannot be reasonably complied with through provision of products or services produced by persons with disabilities.

(b) Each month, the *comptroller* [~~commission~~] shall provide the council with a list of all items purchased under the exception provided by Subsection (a) [~~of this section~~]. The council shall adopt the form in which the list is to be provided and may require the list to include the date of requisition, the type of product or service requested, the reason for purchase under the exception, and any other information that the council considers rele-

vant to a determination of why the product or service was not purchased in accordance with Section 122.014.

(c) No office, department, institution, or agency may evade the intent of this section by slight variations from standards adopted by the *comptroller* [~~commission~~], when the products or services produced or provided by persons with disabilities, in accordance with established standards, are reasonably adapted to the actual needs of the office, department, institution, or agency.

SECTION 4.426. Section 122.018, Human Resources Code, is amended to read as follows:

Sec. 122.018. POLITICAL SUBDIVISIONS EXCLUDED. There are excluded from the mandatory application of this chapter the political subdivisions of the state that are not covered by Title V of the *federal* [~~Federal~~] Rehabilitation Act of 1973, as amended (29 *U.S.C.* [~~U.S. Code~~] Sections *791 through 794f* [~~790 through 794~~]). This chapter does not prohibit a political subdivision from acting as a willing buyer outside a bid system.

SECTION 4.427. Section 122.019(f), Human Resources Code, is amended to read as follows:

(f) A percentage of the management fee described by Subsection (e) shall be paid to the council and is subject to Section 122.023. The percentage shall be set by the council in the amount necessary to reimburse the general revenue fund for direct and reasonable costs incurred by the *comptroller* [~~commission~~], the council, and the council staff in administering the council's duties under this chapter.

SECTION 4.428. Section 122.022(b), Human Resources Code, is amended to read as follows:

(b) As part of the report filed under Subsection (a), the council shall provide:

(1) the number of persons with disabilities, according to their type of disability, who are employed in community rehabilitation programs participating in the programs established by this chapter or who are employed by businesses or workshops that receive supportive employment from community rehabilitation programs;

(2) the amount of annual wages paid to a person participating in the program;

(3) a summary of the sale of products offered by a community rehabilitation program;

(4) a list of products and services offered by a community rehabilitation program;

(5) the geographic distribution of the community rehabilitation programs;

(6) the number of [~~nondisabled~~] workers *without disabilities* who are employed in community rehabilitation programs under this chapter; and

(7) the average and range of weekly earnings for *workers with disabilities* [~~disabled~~] and [~~nondisabled~~] workers *without disabilities* who are employed in community rehabilitation programs under this chapter.

SECTION 4.429. The heading to Chapter 123, Human Resources Code, is amended to read as follows:

CHAPTER 123. COMMUNITY HOMES FOR [~~DISABLED~~] PERSONS *WITH DISABILITIES* [~~LOCATION ACT~~]

SECTION 4.430. Section 123.001, Human Resources Code, is amended to read as follows:

Sec. 123.001. SHORT TITLE. This chapter may be cited as the Community Homes for [~~Disabled~~] Persons *With Disabilities* [~~Location~~] Act.

SECTION 4.431. Section 123.002, Human Resources Code, is amended to read as follows:

Sec. 123.002. DEFINITION. In this chapter, "person with a disability" means a person whose ability to care for himself *or herself*, perform manual tasks, learn, work, walk, see, hear, speak, or breathe is substantially limited because the person has:

(1) an orthopedic, visual, speech, or hearing impairment;

(2) Alzheimer's disease;

(3) pre-senile dementia;

(4) cerebral palsy;

(5) epilepsy;

(6) muscular dystrophy;

(7) multiple sclerosis;

(8) cancer;

(9) heart disease;

(10) diabetes;

(11) *an intellectual disability* [~~mental retardation~~];

(12) autism; or

(13) *mental* [~~emotional~~] illness.

SECTION 4.432. Section 123.004, Human Resources Code, is amended to read as follows:

Sec. 123.004. QUALIFICATION AS COMMUNITY HOME. To qualify as a community home, an entity must comply with Sections 123.005 through 123.008 and be:

(1) a community-based residential home operated by:

(A) the [~~Texas~~] Department of *Aging and Disability Services* [~~Mental Health and Mental Retardation~~];

(B) a community center organized under Subchapter A, Chapter 534, Health and Safety Code, that provides services to persons with disabilities;

(C) an entity subject to the Texas *Nonprofit* [~~Non-Profit~~] Corporation *Law as described by Section 1.008(d), Business Organizations Code* [~~Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)~~]; or

(D) an entity certified by the [~~Texas~~] Department of *Aging and Disability* [~~Human~~] Services as a provider under the *ICF-IID* medical assistance program [~~serving persons in intermediate care facilities for persons with mental retardation~~]; or

(2) an assisted living facility licensed under Chapter 247, Health and Safety Code, provided that the exterior structure retains compatibility with the surrounding residential dwellings.

SECTION 4.433. Section 123.010, Human Resources Code, is amended to read as follows:

Sec. 123.010. ENSURING [~~THE~~] SAFETY OF RESIDENTS. The [~~Texas~~] Department of *Aging and Disability Services* [~~Mental Health and Mental Retardation~~] shall make every reasonable effort to ensure the safety of [~~community home~~] residents *of a community home operated by or under the regulatory jurisdiction of the department* and the residents of a neighborhood that is affected by the location of *the* [~~a~~] community home.

SECTION 4.434. Chapter 132, Human Resources Code, is amended to read as follows:

CHAPTER 132. FACILITATION OF DELIVERY OF HEALTH AND HUMAN SERVICES

Sec. 132.001. GOVERNOR'S AGENDA. (a) The governor shall establish an agenda that addresses needed adjustments in federal legislation, agency rules and regulations, programs, and policies that affect:

(1) health and human services delivery;

(2) client and provider eligibility;

(3) administration; and

(4) funding.

(b) The governor shall develop and amend the agenda in conjunction and cooperation with federal and state elected officials, state agency staff, *the executive commissioner of the Health and Human Services Commission,* and *the* executive *director* [~~directors~~] of *the Texas Workforce Commission* [~~state agencies providing health and human services programs~~].

(c) The agenda must include:

(1) a list of specific issues of federal law or policy identified and ranked by health and human services agencies;

(2) impact statements concerning the needed adjustments to federal law or policy;

(3) a discussion of fiscal matters concerning each ranked issue; and

(4) specific recommendations for changes in federal law or policy.

(d) The governor shall submit the agenda to the Texas congressional delegation and to the Office of State–Federal Relations and shall annually amend the agenda and rank agenda items. The agenda must identify issues of federal law, rules and regulations, or programs of common concern to different state agencies and programs.

Sec. 132.002. EXPANSION OF CLIENT ELIGIBILITY SCREENING AND DETERMINATION. (a) Based on a cost-benefit analysis, the *Health and Human Services Commission* [~~Texas Department of Human Services~~], where feasible, shall relocate an employee with the ability to certify eligibility for financial and medical programs to an office or facility that would enhance client access.

(b) Based on a cost-benefit analysis, the Health and Human Services Commission shall coordinate the expansion and use of integrated eligibility screening instruments and the relocation of state employees on a timetable determined by the commission.

Sec. 132.003. LOCATION OF OFFICES AND FACILITIES. (a) As leases on office space expire, the Health and Human Services Commission shall determine the needs for space and the location of offices of the health and human services agencies to enable the commission to achieve a cost-effective, one-stop or service center method of service delivery.

(b) In this section, "health and human services agencies" includes the:

(1) *Department of Aging and Disability Services* [~~Interagency Council on Early Childhood Intervention Services~~];

(2) *Department of State Health Services* [~~Texas Department on Aging~~];

(3) *Department of Family and Protective Services* [~~Texas Commission on Alcohol and Drug Abuse~~];

(4) *Department of Assistive and Rehabilitative Services* [~~Texas Commission for the Blind~~]; *and*

(5) *Health and Human Services Commission* [~~Texas Commission for the Deaf and Hard of Hearing;~~

[~~(6) Texas Department of Health;~~

[~~(7) Texas Department of Human Services;~~

[~~(8) Texas Department of Mental Health and Mental Retardation;~~

[~~(9) Texas Rehabilitation Commission; and~~

[~~(10) Department of Protective and Regulatory Services~~].

SECTION 4.435. The heading to Chapter 136, Human Resources Code, is amended to read as follows:

CHAPTER 136. TEXAS COMMUNITY HEALTH CENTER REVOLVING LOAN *PROGRAM* [~~FUND~~]

SECTION 4.436. Section 136.002, Human Resources Code, is amended by adding Subdivision (3–a) to read as follows:

(3–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 4.437. Section 136.003, Human Resources Code, is amended to read as follows:

Sec. 136.003. *GIFTS AND GRANTS* [~~TRUST FUND~~]. [~~(a) The community health center revolving loan fund is a trust fund outside the state treasury held by a financial institution and administered by the commission as trustee on behalf of community health centers in this state.~~

[~~(b) The fund is composed of:~~

[~~(1) money appropriated to the fund by the legislature;~~

[~~(2) gifts or grants received from public or private sources; and~~

[~~(3) income from other money in the fund.~~

[~~(c)~~] The commission may accept [~~on behalf of the fund~~] gifts and grants for the use and benefit of the program.

SECTION 4.438. Section 136.007, Human Resources Code, is amended to read as follows:

Sec. 136.007. SELF–FUNDING. The commission shall develop the [~~fund~~] program as a revolving loan *program* [~~fund~~] that will become self-funding over the life of the program.

SECTION 4.439. Section 136.009, Human Resources Code, is amended to read as follows:

Sec. 136.009. RULES. (a) The *executive commissioner* [~~commission~~] shall adopt rules to administer this chapter, including rules that require:

(1) the commission to review the lending and servicing practices of a development corporation to ensure the practices conform to generally accepted accounting principles;

(2) an eligible community health center to enter into an agreement with the development corporation that states the terms of the loan made to the center;

(3) the development corporation to provide to the commission semiannual reports giving details of the status of each loan made under the program;

(4) the development corporation to require annual audits of community health centers receiving loans under the program; and

(5) the commission to provide oversight of the development corporation as necessary to qualify the development corporation for loan guarantees from federal and state programs.

(b) Under rules adopted by the *executive commissioner* [~~commission~~], the development corporation may:

(1) make grants to eligible community health centers from money other than money [~~that is received from the fund and~~] that was derived from a legislative appropriation; or

(2) seek *money* [~~funds~~] from state or federal agencies or private sources to supplement and complement the *money* [~~funds~~] received under the program.

(c) The *executive commissioner* [~~commission~~] may adopt other rules as necessary to accomplish the purposes of this chapter.

SECTION 4.440. Section 161.003, Human Resources Code, is amended to read as follows:

Sec. 161.003. SUNSET PROVISION. The *department* [~~Department of Aging and Dis-~~

~~ability Services~~] is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2015.

SECTION 4.441. Section 161.021(b), Human Resources Code, is amended to read as follows:

(b) The council is composed of nine members of the public appointed by the governor with the advice and consent of the senate. To be eligible for appointment to the council, a person must have demonstrated an interest in and knowledge of issues and available services related to the aging and persons with developmental disabilities or *an intellectual disability* [~~mental retardation~~].

SECTION 4.442. Section 161.030, Human Resources Code, is amended to read as follows:

Sec. 161.030. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. The [~~executive~~] commissioner, with the advice of the council and subject to the approval of the executive commissioner, shall develop and the department shall implement policies that clearly delineate the policymaking responsibilities of the executive commissioner from the management responsibilities of the commission, the commissioner, and the staff of the department.

SECTION 4.443. Section 161.051(c), Human Resources Code, is amended to read as follows:

(c) Subject to the control of the executive commissioner, the commissioner shall:

(1) act as the department's chief administrative officer;

(2) in accordance with the procedures prescribed by Section 531.00551, Government Code, assist the executive commissioner in the development and implementation of policies and guidelines needed for the administration of the department's functions;

(3) in accordance with the procedures adopted by the executive commissioner under Section 531.00551, Government Code, assist the executive commissioner in the development of rules relating to the matters within the department's jurisdiction, including the delivery of services to persons and the rights and duties of persons who are served or regulated by the department; and

(4) serve as a liaison between the department and commission.

SECTION 4.444. The heading to Section 161.0515, Human Resources Code, is amended to read as follows:

Sec. 161.0515. ASSISTANT COMMISSIONER *FOR* [~~OF~~] STATE SUPPORTED LIVING CENTERS.

SECTION 4.445. Sections 161.0515(a), (d), and (e), Human Resources Code, are amended to read as follows:

(a) The commissioner shall employ an assistant commissioner *for* [~~of~~] state supported living centers. The assistant commissioner must be selected based on education, training, experience, and demonstrated ability.

(d) The assistant commissioner shall coordinate with the appropriate staff of the Department of State Health Services to ensure that the *ICF-IID* [~~ICF-MR~~] component of the Rio Grande State Center implements and enforces state law and rules that apply to the operation of state supported living centers.

(e) The assistant commissioner shall consult with the appropriate staff at the Department of State Health Services to ensure that an individual with a dual diagnosis of mental illness and *an intellectual disability* [~~mental retardation~~] who is a resident of a state supported living center or the *ICF-IID* [~~ICF-MR~~] component of the Rio Grande State Center is provided with appropriate care and treatment.

SECTION 4.446. Section 161.056(c), Human Resources Code, is amended to read as follows:

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the *Texas Workforce* [~~state~~] Commission *civil rights division* [~~on Human Rights~~] for compliance with Subsection (b)(1); and

(3) filed with the governor's office.

SECTION 4.447. Section 161.071, Human Resources Code, is amended to read as follows:

Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The department is responsible for administering human services programs for the aging and *persons with disabilities* [~~disabled~~], including:

(1) administering and coordinating programs to provide community-based care and support services to promote independent living for populations that would otherwise be institutionalized;

(2) providing institutional care services, including services through convalescent and nursing homes and related institutions under Chapter 242, Health and Safety Code;

(3) providing and coordinating programs and services for persons with disabilities, including programs for the treatment, rehabilitation, or benefit of persons with developmental disabilities or *an intellectual disability* [~~mental retardation~~];

(4) operating state facilities for the housing, treatment, rehabilitation, or benefit of persons with disabilities, including *state supported living centers* [~~state schools~~] for persons with *an intellectual disability* [~~mental retardation~~];

(5) serving as the state unit on aging required by the federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its subsequent amendments, including performing the general functions under Section *101A.052* [~~101.022~~] to ensure:

(A) implementation of the federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its subsequent amendments, including implementation of services and volunteer opportunities under that Act for older residents of this state through area agencies on aging;

(B) advocacy for residents of nursing facilities through the office of the state long-term care ombudsman;

(C) fostering of the state and community infrastructure and capacity to serve older residents of this state; and

(D) availability of a comprehensive resource for state government and the public on trends related to and services and programs for an aging population;

(6) performing all licensing and enforcement activities and functions related to long-term care facilities, including licensing and enforcement activities related to convalescent and nursing homes and related institutions under Chapter 242, Health and Safety Code;

(7) performing all licensing and enforcement activities related to assisted living facilities under Chapter 247, Health and Safety Code;

(8) performing all licensing and enforcement activities related to intermediate care facilities for persons with *an intellectual disability* [~~mental retardation~~] under Chapter 252, Health and Safety Code;

(9) performing all licensing and enforcement activities and functions related to home and community support services agencies under Chapter 142, Health and Safety Code; and

(10) serving as guardian of the person or estate, or both, for an incapacitated individual as provided by Subchapter E of this chapter and *Title 3, Estates* [~~Chapter XIII, Texas Probate~~] Code.

SECTION 4.448. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Sections 161.0711 and 161.0712 to read as follows:

Sec. 161.0711. CONTRACTING AND AUDITING AUTHORITY; DELEGATION. (a) The executive commissioner, as authorized by Section 531.0055, Government Code, may delegate to the department the executive commissioner's authority under that section for contracting and auditing relating to the department's powers, duties, functions, and activities.

(b) If the executive commissioner does not make a delegation under Subsection (a), a reference in law to the department with respect to the department's contracting or auditing authority means the executive commissioner. If the executive commissioner makes a delegation under Subsection (a), a reference in law to the department's contracting or auditing authority means that authority the executive commissioner has delegated to the department.

(c) If the executive commissioner revokes all or part of a delegation made under Subsection (a), a reference in law to the department with respect to a function for which the delegation was revoked means the executive commissioner or another entity to which the executive commissioner delegates that authority.

(d) It is the legislature's intent that the executive commissioner retain the authority over and responsibility for contracting and auditing at each health and human services agency as provided by Section 531.0055, Government Code. A statute enacted on or after January 1, 2015, that references the contracting or auditing authority of the department does not give the department direct contracting or auditing authority unless the statute expressly provides that the contracting or auditing authority:

(1) is given directly to the department; and

(2) is an exception to the exclusive contracting and auditing authority given to the executive commissioner under Section 531.0055, Government Code.

Sec. 161.0712. MANAGEMENT AND DIRECTION BY EXECUTIVE COMMISSIONER. The department's powers and duties prescribed by this chapter and other law, including enforcement activities and functions, are subject to the executive commissioner's oversight under Chapter 531, Government Code, to manage and direct the operations of the department.

SECTION 4.449. Sections 161.075(a)(1) and (2), Human Resources Code, are amended to read as follows:

(1) "Area agency on aging" means an agency described by 42 U.S.C. Section *3002(6)* [~~3002(17)~~] and through which the department ensures the implementation of services and volunteer opportunities for older persons in this state as provided by Section 161.071(5)(A).

(2) "Texas nonprofit organization" means a nonprofit corporation:

(A) that is organized under the Texas *Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code* [~~Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)~~]; and

(B) the funding of which is managed by an organization that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code.

SECTION 4.450. Section 161.077(a), Human Resources Code, is amended to read as follows:

(a) The department, in consultation with the Department of Family and Protective Services, shall develop and maintain an electronic database to collect and analyze information regarding the investigation and prevention of abuse, neglect, and exploitation of individuals with *an intellectual disability* [~~mental retardation~~] who reside in a publicly or privately operated intermediate care facility for persons with *an intellectual disability* [~~mental retardation~~] or in a group home, other than a foster home, at which a Home and Community-based Services (HCS) provider provides services and the results of regulatory investigations or surveys performed by the department regarding those facilities or providers.

SECTION 4.451. Section 161.078(b), Human Resources Code, is amended to read as follows:

(b) Subsection (a) does not prevent the department from establishing an age requirement with respect to other programs or services offered to persons who are deaf-blind *with* [~~and have~~] multiple disabilities, including the summer outdoor training program for [~~deaf-blind multihandicapped~~] individuals *who are deaf-blind with multiple disabilities* established under Section 22.036(c).

SECTION 4.452. Section 161.079(a)(2), Human Resources Code, is amended to read as follows:

(2) "Local entity" means an area agency on aging or other entity that provides services and support for older *persons* or [~~disabled~~] persons *with disabilities* and their caregivers.

SECTION 4.453. Section 161.080(b), Human Resources Code, is amended to read as follows:

(b) Notwithstanding any other law, a state supported living center may provide nonresidential services to support an individual if:

(1) the individual:

(A) is receiving services in a program funded by the department;

(B) meets the eligibility criteria for the intermediate care facility for persons with *an* intellectual *disability* [~~disabilities~~] program; and

(C) resides in the area in which the state supported living center is located; and

(2) the provision of services to the individual does not interfere with the provision of services to a resident of the state supported living center.

SECTION 4.454. Section 161.087(a), Human Resources Code, is amended to read as follows:

(a) The department may accept gifts and grants of money, personal property, and real property from public or private sources to expand and improve the human services programs for the aging and *persons with disabilities* [~~disabled~~] available in this state.

SECTION 4.455. Section 161.092, Human Resources Code, is amended to read as follows:

Sec. 161.092. APPLICABILITY. This subchapter applies only to administration of medication provided to certain persons with intellectual and developmental disabilities who are served:

(1) in a small facility with not less than one and not more than eight beds that is licensed or certified under Chapter 252, Health and Safety Code;

(2) in a medium facility with not less than *9* [~~nine~~] and not more than 13 beds that is licensed or certified under Chapter 252, Health and Safety Code; or

(3) by one of the following Section 1915(c) waiver programs administered by the *department* [~~Department of Aging and Disability Services~~] to serve persons with intellectual and developmental disabilities:

(A) the Home and Community–Based Services waiver program; or

(B) the Texas Home Living waiver program.

SECTION 4.456. Sections 161.101(a), (b), (c), (c–1), (c–2), (d), and (f), Human Resources Code, are amended to read as follows:

(a) The department shall file an application under Section *1101.001 or 1251.003, Estates* [~~682 or 875, Texas Probate~~] Code, to be appointed guardian of the person or estate, or both, of a minor referred to the department under Section 48.209(a)(1) for guardianship services if the department determines:

(1) that the minor, because of a mental or physical condition, will be substantially unable to provide for the minor's own food, clothing, or shelter, to care for the minor's own physical health, or to manage the individual's own financial affairs when the minor becomes an adult; and

(2) that a less restrictive alternative to guardianship is not available for the minor.

(b) The department shall conduct a thorough assessment of the conditions and circumstances of an elderly *person* or [~~disabled~~] person *with a disability* referred to the department under Section 48.209(a)(2) for guardianship services to determine whether a guardianship is appropriate for the individual or whether a less restrictive alternative is available for the individual. In determining whether a guardianship is appropriate, the department may consider the resources and funds available to meet the needs of the elderly *person* or [~~disabled~~] person *with a disability*. The executive commissioner shall adopt rules for the administration of this subsection.

(c) Subject to Subsection (c–1), if after conducting an assessment of an elderly *person* or [~~disabled~~] person *with a disability* under Subsection (b) the department determines that:

(1) guardianship is appropriate for the elderly *person* or [~~disabled~~] person *with a disability*, the department shall:

(A) file an application under Section *1101.001 or 1251.003, Estates* [~~682 or 875, Texas Probate~~] Code, to be appointed guardian of the person or estate, or both, of the individual; or

(B) if the department determines that an alternative person or program described by Section 161.102 is available to serve as guardian, refer the individual to that person or program as provided by that section; or

(2) a less restrictive alternative to guardianship is available for the elderly *person* or [~~disabled~~] person *with a disability*, the department shall pursue the less restrictive alternative instead of taking an action described by Subdivision (1).

(c–1) Not later than the 70th day after the date the department receives a referral under Section 48.209(a)(2) for guardianship services, the department shall make the determination required by Subsection (c) and, if the department determines that guardianship is appropriate and that the department should serve as guardian, file the application to be appointed guardian under Section *1101.001 or 1251.003, Estates* [~~682 or 875, Texas Probate~~] Code. If the department determines that an alternative person or program described by Section 161.102 is available to serve as guardian, the department shall refer the elderly *person* or [~~disabled~~] person *with a disability* to that *alternative* person or program in a manner that would allow the *alternative* person or program sufficient time to file, not later than the 70th day after the date the department received the referral, an application to be appointed guardian.

(c–2) With the approval of the Department of Family and Protective Services, the department may extend, by not more than 30 days, a period prescribed by Subsection (c–1) if the extension is:

(1) made in good faith, including any extension for a person or program described by Section 161.102 that intends to file an application to be appointed guardian; and

(2) in the best interest of the elderly *person* or [~~disabled~~] person *with a disability*.

(d) The department may not be required by a court to file an application for guardianship, and except as provided by Subsection (f) and Section *1203.108(b), Estates* [~~695(c), Texas Probate~~] Code, the department may not be appointed as permanent guardian for any individual unless the department files an application to serve or otherwise agrees to serve as the individual's guardian of the person or estate, or both.

(f) On appointment by a probate court under Section *1203.108(b), Estates* [~~695(c), Texas Probate~~] Code, the department shall serve as the successor guardian of the person or estate, or both, of a ward described by that section.

SECTION 4.457. Section 161.102(b), Human Resources Code, is amended to read as follows:

(b) If requested by a court, the department shall notify the court of any referral made to the department by the Department of Family and Protective Services relating to any individual who is domiciled or found in a county where the requesting court has probate jurisdiction and who may be appropriate for a court-initiated guardianship proceeding under *Chapter 1102, Estates* [~~Section 683, Texas Probate~~] Code. In making a referral

under this subsection and if requested by the court, the department shall, to the extent allowed by law, provide the court with all relevant information in the department's records relating to the individual. The court, as part of this process, may not require the department to:

(1) perform the duties of a guardian ad litem or court investigator as prescribed by *Chapter 1102, Estates* [~~Section 683, Texas Probate~~] Code; or

(2) gather additional information not contained in the department's records.

SECTION 4.458. Section 161.103, Human Resources Code, is amended to read as follows:

Sec. 161.103. CONTRACT FOR GUARDIANSHIP SERVICES. If appropriate, the department may contract with a political subdivision of this state, a guardianship program as defined by *Section 1002.016, Estates* [~~Section 601, Texas Probate~~] Code, a private agency, or another state agency for the provision of guardianship services under this section.

SECTION 4.459. Section 161.105, Human Resources Code, is amended to read as follows:

Sec. 161.105. OATH. A representative of the department shall take the oath required by the *Estates* [~~Texas Probate~~] Code on behalf of the department if the department is appointed guardian of the person or estate, or both, of a ward under *Title 3* [~~Chapter XIII~~] of that code.

SECTION 4.460. Section 161.106, Human Resources Code, is amended to read as follows:

Sec. 161.106. GUARDIANSHIP POWERS AND DUTIES. In serving as guardian of the person or estate, or both, for an incapacitated individual, the department has all the powers granted and duties prescribed to a guardian under *Title 3, Estates* [~~Chapter XIII, Texas Probate~~] Code, or any other applicable law.

SECTION 4.461. Sections 161.107(a), (b), and (d), Human Resources Code, are amended to read as follows:

(a) The department or a political subdivision of this state or state agency with which the department contracts under Section 161.103 is not required to post a bond or pay any cost or fee associated with a bond otherwise required by the *Estates* [~~Texas Probate~~] Code in guardianship matters.

(b) The department is not required to pay any cost or fee otherwise imposed for court proceedings or other services, including:

(1) a filing fee or fee for issuance of service of process imposed by Section 51.317, 51.318(b)(2), or 51.319, Government Code;

(2) a court reporter *service* fee imposed by Section 51.601, Government Code;

(3) a judicial fund fee imposed by Section 51.702, Government Code;

(4) a judge's fee imposed by Section 25.0008 or 25.0029, Government Code;

(5) a cost or security fee imposed by Section *53.051, 53.052, 1053.051, or 1053.052, Estates* [~~12 or 622, Texas Probate~~] Code; or

(6) a fee imposed by a county officer under Section 118.011 or 118.052, Local Government Code.

(d) A political subdivision of this state or state agency with which the department contracts under Section 161.103 is not required to pay any cost or fee otherwise required by the *Estates* [~~Texas Probate~~] Code.

SECTION 4.462. Section 161.108, Human Resources Code, is amended to read as follows:

Sec. 161.108. SUCCESSOR GUARDIAN. The department shall review each of the department's pending guardianship cases at least annually to determine whether a more suitable person, including a guardianship program or private professional guardian, is

willing and able to serve as successor guardian for a ward of the department. If the department becomes aware of any person's willingness and ability to serve as successor guardian, the department shall notify the court in which the guardianship is pending as required by *Section 1203.151, Estates* [~~Section 695A, Texas Probate~~] Code.

SECTION 4.463. Section 161.111(d), Human Resources Code, is amended to read as follows:

(d) The *executive commissioner* [~~department~~] shall establish a policy and procedures for the exchange of information with another state agency or governmental entity, including a court, with a local guardianship program to which an individual is referred for services, or with any other entity who provides services to a ward of the department, as necessary for the department, state agency, governmental entity, or other entity to properly execute its respective duties and responsibilities to provide guardianship services or other needed services to meet the needs of the ward under this subchapter or other law. An exchange of information under this subsection does not constitute a release for purposes of waiving the confidentiality of the information exchanged.

SECTION 4.464. Section 161.351, Human Resources Code, is amended to read as follows:

Sec. 161.351. LEGISLATIVE FINDINGS. The legislature finds that:

(1) in 2008, 1.14 million older Texans were expected to sustain falls;

(2) the risk factors associated with falling increase with age;

(3) approximately 20 to 30 percent of older adults who fall suffer moderate to severe injuries, resulting in almost 80,000 hospitalizations annually and constituting 40 percent of all nursing *facility* [~~home~~] placements;

(4) according to the Centers for Disease Control *and Prevention* of the United States Public Health Service, the total direct cost of all fall-related injuries in 2000 for people 65 years of age and older exceeded $19 billion nationwide; and

(5) research shows that a well-designed fall prevention program that includes risk factor assessments, a focused physical activity program, and improvement of the home environment can reduce the incidence of falls by 30 to 50 percent.

SECTION 4.465. (a) The following provisions of the Human Resources Code are repealed:

(1) Section 21.001;

(2) Section 21.002;

(3) Section 21.003;

(4) Section 21.0031;

(5) Section 21.0032;

(6) Section 21.004;

(7) Section 21.005;

(8) Section 21.0051;

(9) Section 21.0052;

(10) Section 21.006;

(11) Section 21.00605;

(12) Section 21.0061;

(13) Section 21.008;

(14) Section 21.009;

(15) Section 21.010;

(16) Section 21.014;

(17) Section 21.015;

(18) Section 21.016;
(19) Section 21.018;
(20) Section 21.019;
(21) Sections 22.005(a), (b), (c), and (e);
(22) Section 22.010;
(23) Section 22.018(e);
(24) Section 22.0291;
(25) Section 22.034;
(26) Section 22.037;
(27) Section 22.038;
(28) Section 31.0037;
(29) Section 31.005(c);
(30) Section 31.009;
(31) Section 31.0125;
(32) Section 31.014;
(33) Section 31.031(g);
(34) Sections 31.0355(d), (e), and (f);
(35) Sections 32.003(2) and (3);
(36) Sections 32.024(j), (k), and (m);
(37) Section 32.0246;
(38) Section 32.027(b);
(39) Section 32.030;
(40) Section 32.041;
(41) Sections 32.052(e) and (f);
(42) Section 32.060;
(43) Section 32.101(1);
(44) Section 32.201(2);
(45) Section 32.251(5);
(46) Section 33.007;
(47) Section 33.010;
(48) Section 33.026(a);
(49) Section 33.051;
(50) Sections 40.001(2) and (4–a);
(51) Section 40.0562;
(52) Section 40.0563;
(53) Section 40.058(b–1);
(54) Section 42.0221;
(55) Section 48.002(a)(7);
(56) Section 73.002;
(57) Section 73.0021;
(58) Section 73.0022;
(59) Section 73.0023;
(60) Section 73.0024;

(61) Section 73.0025;

(62) Section 73.0052;

(63) Sections 73.006(a), (c), and (d);

(64) Sections 73.022(c), (d), and (e);

(65) Section 73.023;

(66) Section 74.006(c);

(67) Section 81.001(1);

(68) Section 81.002;

(69) Section 81.0021;

(70) Section 81.0022;

(71) Section 81.003;

(72) Section 81.004;

(73) Section 81.005;

(74) Section 81.0051;

(75) Section 81.008;

(76) Section 81.009;

(77) Section 81.014;

(78) Section 91.001;

(79) Section 91.002(1);

(80) Section 91.011;

(81) Sections 91.012(a), (b), and (c);

(82) Section 91.013;

(83) Section 91.014(b);

(84) Section 91.015;

(85) Sections 91.016(a), (b), (c), and (d);

(86) Section 91.017;

(87) Sections 91.018(a), (b), (d), (e), (f), and (g);

(88) Section 91.020;

(89) Chapter 101;

(90) Section 103.0075(d);

(91) Section 103.010(b);

(92) Sections 111.002(1) and (8);

(93) Sections 111.011, 111.012, 111.013, 111.0131, 111.0132, 111.014, and 111.015;

(94) Section 111.017, as amended by Chapters 393 (H.B. 1402) and 1460 (H.B. 2641), Acts of the 76th Legislature, Regular Session, 1999;

(95) Sections 111.018(c), (d), (e), (f), (g), and (h);

(96) Section 111.020;

(97) Section 111.024;

(98) Section 111.025;

(99) Section 111.026;

(100) Section 111.055(b);

(101) Chapter 116;

(102) Section 121.0015;

(103) Sections 122.0011 and 122.002(2);

(104) Chapter 134; and

(105) Section 136.002(4).

(b) Section 22.005(d), Human Resources Code, as amended by Chapters 1050 (S.B. 71) and 1083 (S.B. 1179), Acts of the 82nd Legislature, Regular Session, 2011, is repealed.

ARTICLE 5. OCCUPATIONS CODE

SECTION 5.001. Section 110.001(3), Occupations Code, is amended to read as follows:

(3) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

SECTION 5.002. Section 110.101, Occupations Code, is amended to read as follows:

Sec. 110.101. EXECUTIVE DIRECTOR. The commissioner of *state* [~~public~~] health *services* shall employ an executive director, chosen with the advice and consent of the council, who is the executive head of the council and performs its administrative duties.

SECTION 5.003. Section 110.158(a), Occupations Code, is amended to read as follows:

(a) The council may adopt rules consistent with this chapter. In adopting rules, the council shall:

(1) consider the rules and procedures of the [~~board and the~~] department; and

(2) adopt procedural rules consistent with similar existing rules and procedures of the [~~board or the~~] department.

SECTION 5.004. The heading to Section 110.159, Occupations Code, is amended to read as follows:

Sec. 110.159. [~~COLLECTION OF~~] FEES.

SECTION 5.005. Section 110.159, Occupations Code, is amended by adding Subsection (a–1) to read as follows:

(a–1) Notwithstanding Subsection (a), the council shall set fees for issuing or renewing a license in amounts designed to allow the department and the council to recover from the license holders all of the direct and indirect costs to the department and to the council in administering and enforcing this chapter.

SECTION 5.006. Section 110.202(a), Occupations Code, is amended to read as follows:

(a) The executive head of each of the following agencies or that person's designated representative shall serve as a member of the interagency advisory committee:

(1) Texas Department of Criminal Justice;

(2) Texas Juvenile *Justice Department* [~~Probation Commission~~];

(3) *the department* [~~Texas Department of Mental Health and Mental Retardation~~];

(4) [~~Texas Youth Commission;~~

[~~(5)~~] Sam Houston State University;

(5) [~~(6)~~] Department of *Family and* Protective [~~and Regulatory~~] Services; and

(6) [~~(7)~~] Texas Council of Community [~~Mental Health and Mental Retardation~~] Centers.

SECTION 5.007. Section 110.255(a), Occupations Code, is amended to read as follows:

(a) In an investigation of a complaint filed with the council, the council may request that the commissioner of *state* [~~public~~] health *services* or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the council may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence in this state. The council may delegate the authority granted under this subsection to the executive director of the council.

SECTION 5.008. Section 110.256(b), Occupations Code, is amended to read as follows:

(b) The information described by Subsection (a) may be disclosed to:

(1) persons involved with the council in a complaint and investigation;

(2) professional sex offender treatment provider licensing or disciplinary boards in other jurisdictions;

(3) *an approved* peer assistance *program, as defined by Section 467.001* [~~programs approved by the board under Chapter 467~~], Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information is deleted.

SECTION 5.009. Section 110.302(b), Occupations Code, is amended to read as follows:

(b) In developing the rules, the council shall coordinate with the Texas Department of Criminal Justice [~~, the Texas Youth Commission,~~] and the Texas Juvenile *Justice Department* [~~Probation Commission~~].

SECTION 5.010. Subchapter G, Chapter 110, Occupations Code, is amended by adding Section 110.3045 to read as follows:

Sec. 110.3045. LICENSE TERM. A license issued under this chapter is valid for two years.

SECTION 5.011. Section 203.104(b), Occupations Code, is amended to read as follows:

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the *Texas Workforce* Commission *civil rights division* [~~on Human Rights~~] for compliance with Subsection (a)(1); and

(4) be filed with the governor.

SECTION 5.012. Section 203.152(a), Occupations Code, is amended to read as follows:

(a) Subject to the approval of the executive commissioner, the midwifery board by rule shall establish reasonable and necessary fees that, in the aggregate, produce sufficient revenue to cover the costs of administering this chapter. *Fees for the issuance or renewal of a license under this chapter shall be set in amounts designed to allow the department and the midwifery board to recover from the license holders all of the direct and indirect costs to the department and to the midwifery board in administering and enforcing this chapter.*

SECTION 5.013. Section 203.252(c), Occupations Code, is amended to read as follows:

(c) The term of the initial license begins on the date the requirements are met and extends through *March 1* [~~December 31~~] of the *second* year *after the year* in which the initial license is issued.

SECTION 5.014. Section 203.455, Occupations Code, is amended to read as follows:

Sec. 203.455. HEARING. (a) If the person timely requests a hearing, the midwifery board or its designee shall set a hearing and give written notice of the hearing to the person. *An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.* [~~The midwifery board or its designee may employ a hearings examiner for this purpose.~~]

(b) The *administrative law judge* [~~hearings examiner~~] shall make findings of fact and conclusions of law and promptly issue to the midwifery board a proposal for decision as to the occurrence of the violation and the amount of the proposed administrative penalty.

SECTION 5.015. Sections 203.502(b) and (c), Occupations Code, are amended to read as follows:

(b) If the *department* [~~commissioner~~] or a health authority determines that a person has violated this chapter and that the violation creates an immediate threat to the health and safety of the public, the *department,* [~~commissioner~~] or the health authority[,] with the concurrence of the *department* [~~commissioner~~], may request the attorney gen-

eral or a district, county, or city attorney to bring an action in a district court for a restraining order to restrain the violation.

(c) If a person has violated this chapter, the *department,* [~~commissioner~~] or a health authority[,] with the concurrence of the *department* [~~commissioner~~], may bring an action in a district court for an injunction to prohibit the person from continuing the violation.

SECTION 5.016. Section 352.002, Occupations Code, is amended by amending Subdivisions (3) and (4) and adding Subdivision (5–a) to read as follows:

(3) "Contact lens prescription" means a written specification from a physician, optometrist, or therapeutic optometrist for therapeutic, corrective, or cosmetic contact lenses that states the refractive power of the product and other information required to be in the specification by the physician, optometrist, therapeutic optometrist, Texas [~~State Board of~~] Medical *Board* [~~Examiners~~], or Texas Optometry Board.

(4) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(5–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 5.017. Section 352.003(a), Occupations Code, is amended to read as follows:

(a) This chapter does not:

(1) authorize a dispensing optician to perform an act on the optician's own authority that the optician is not otherwise authorized to perform, including an act that constitutes the practice of medicine, therapeutic optometry, or optometry;

(2) prevent or restrict a person licensed in this state under another law from engaging in the profession or occupation for which the person is licensed without being registered under this chapter;

(3) prevent or restrict an employee of a person licensed in this state from performing an employment duty required by the licensed person without being registered under this chapter;

(4) prevent or restrict an individual, firm, or corporation from employing a person registered under this chapter or from engaging in spectacle or contact lens dispensing through a person registered under this chapter who is employed at the location at which the dispensing occurs;

(5) prevent or restrict an individual, firm, or corporation from employing a person as an assistant, trainee, or apprentice to:

(A) engage in spectacle or contact lens dispensing; or

(B) provide instruction in the care and handling of contact lenses;

(6) prohibit the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~], the Texas Optometry Board, the attorney general, or another person authorized by law from bringing an appropriate action to enforce a state statute relating to the practice of medicine, therapeutic optometry, or optometry without a license; or

(7) require that a person be registered:

(A) under this chapter to sell or dispense contact lenses; or

(B) as a contact lens dispenser to work in a contact lens manufacturing facility that does not sell its finished product directly to the public.

SECTION 5.018. The heading to Subchapter B, Chapter 352, Occupations Code, is amended to read as follows:

SUBCHAPTER B. POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER AND* DEPARTMENT [~~AND BOARD~~]

SECTION 5.019. Section 352.053, Occupations Code, is amended to read as follows:

Sec. 352.053. RULEMAKING. (a) The *executive commissioner* [~~board~~] shall adopt procedural rules to implement the registration procedures under this chapter.

(b) The *executive commissioner* [~~board~~] may adopt substantive and procedural rules relating to:

(1) establishing minimum requirements for the registration of a dispensing optician;

(2) suspending, denying, or revoking a certificate of registration or placing a certificate holder on probation;

(3) prescribing fees under this chapter; and

(4) adopting forms required by this chapter.

(c) The *executive commissioner* [~~board~~] may not adopt substantive rules relating to this chapter other than substantive rules described by Subsection (b) of this section, Section 352.055, and Section 352.153.

SECTION 5.020. Section 352.054, Occupations Code, is amended to read as follows:

Sec. 352.054. FEES. *(a)* The *executive commissioner* [~~board~~] by rule shall prescribe fees in reasonable amounts sufficient to cover the costs of administering this chapter, including fees for:

(1) an initial application for a certificate of registration;

(2) issuance of a certificate of registration;

(3) issuance of a renewal certificate of registration; and

(4) issuance of a duplicate certificate of registration or duplicate renewal certificate of registration.

(b) The executive commissioner shall set fees for issuing or renewing a certificate of registration in amounts designed to allow the department to recover from the certificate of registration holders all of the department's direct and indirect costs in administering and enforcing this chapter.

SECTION 5.021. Section 352.055, Occupations Code, is amended to read as follows:

Sec. 352.055. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The *executive commissioner* [~~board~~] may not adopt rules restricting advertising or competitive bidding by a registrant except to prohibit false, misleading, or deceptive practices.

(b) In *the executive commissioner's* [~~its~~] rules to prohibit false, misleading, or deceptive practices, the *executive commissioner* [~~board~~] may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a registrant's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the registrant; or

(4) restricts the registrant's advertisement under a trade name.

SECTION 5.022. Sections 352.102(a) and (b), Occupations Code, are amended to read as follows:

(a) The department shall issue a certificate of registration to an applicant who:

(1) applies and pays a registration fee;

(2) presents evidence satisfactory to the department that the applicant has successfully completed the number of classroom hours of training required by the *executive commissioner* [~~board~~]; and

(3) passes the appropriate examination required under Section 352.103.

(b) The *executive commissioner* [~~board~~] may not require more than 30 classroom hours of training as a prerequisite to registration.

SECTION 5.023. Section 352.104(a), Occupations Code, is amended to read as follows:

(a) A person issued a certificate of registration shall publicly display the certificate in an appropriate manner specified by *department* [~~board~~] rule.

SECTION 5.024. Sections 352.151(a) and (b), Occupations Code, are amended to read as follows:

(a) A certificate of registration is valid for *two years* [~~one year~~] after the date of issuance.

(b) The *executive commissioner* [~~department~~] shall adopt a system under which certificates of registration expire and are renewed on various dates.

SECTION 5.025. Sections 352.152(a) and (b), Occupations Code, are amended to read as follows:

(a) To renew a certificate of registration, a person must submit an application for renewal in the manner prescribed by the *executive commissioner* [~~board~~].

(b) The application must be accompanied by evidence that the applicant has successfully completed the continuing education courses required by *department* [~~board~~] rule.

SECTION 5.026. Section 352.153, Occupations Code, is amended to read as follows:

Sec. 352.153. CONTINUING EDUCATION. (a) The *executive commissioner* [~~board~~] shall *provide for the recognition, preparation, or administration of* [~~recognize, prepare, or administer~~] continuing education programs for [~~its~~] registrants. A person registered under this chapter must participate in the programs to the extent required by the *executive commissioner* [~~board~~] to keep the person's certificate of registration.

(b) The *executive commissioner* [~~board~~] may not require more than 10 classroom hours of continuing education courses each year.

SECTION 5.027. Section 352.251, Occupations Code, is amended to read as follows:

Sec. 352.251. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. The department shall deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under this chapter if the person:

(1) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(2) sells, barters, or offers to sell or barter a certificate of registration;

(3) violates a *department* rule [~~adopted by the board~~];

(4) violates Section 352.101; or

(5) practices medicine, therapeutic optometry, or optometry without a license.

SECTION 5.028. Section 352.2525, Occupations Code, is amended to read as follows:

Sec. 352.2525. PROBATION. The *department* [~~board~~] may place on probation a person whose certificate of registration is suspended. If the suspension is probated, the *department* [~~board~~] may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the *department* [~~board~~]; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the *department* [~~board~~] in those areas that are the basis of the probation.

SECTION 5.029. Section 352.304(b), Occupations Code, is amended to read as follows:

(b) If the person accepts the department's determination, the *department* [~~commissioner of public health or the commissioner's designee~~] by order shall approve the determination and assess the proposed penalty.

SECTION 5.030. Section 352.305(b), Occupations Code, is amended to read as follows:

(b) The hearings examiner shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the *department* [~~commissioner of public health or the commis-~~

~~sioner's designee~~] a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

SECTION 5.031. The heading to Section 352.306, Occupations Code, is amended to read as follows:

Sec. 352.306. DECISION BY *DEPARTMENT* [~~BOARD~~].

SECTION 5.032. Section 352.306(a), Occupations Code, is amended to read as follows:

(a) Based on the findings of fact, conclusions of law, and proposal for decision, the *department* [~~commissioner of public health or the commissioner's designee~~] by order may determine that:

(1) a violation occurred and assess an administrative penalty; or

(2) a violation did not occur.

SECTION 5.033. Section 352.310(c), Occupations Code, is amended to read as follows:

(c) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the *department* [~~commissioner of public health or the commissioner's designee~~] requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of expenses and costs.

SECTION 5.034. Section 352.351(a), Occupations Code, is amended to read as follows:

(a) The *department* [~~board~~], the attorney general, or the district or county attorney for the county in which an alleged violation of this chapter occurs shall, on receipt of a verified complaint, bring an appropriate administrative or judicial proceeding to enforce this chapter or a rule adopted under this chapter.

SECTION 5.035. Section 353.002, Occupations Code, is amended by amending Subdivisions (2) and (7) and adding Subdivision (3–a) to read as follows:

(2) "Department" means the Department of State Health Services [~~or the Health and Human Services Commission, as consistent with the respective duties of those agencies under the laws of this state~~].

(3–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(7) "Physician" means a person licensed to practice medicine by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~].

SECTION 5.036. Section 353.004, Occupations Code, is amended to read as follows:

Sec. 353.004. PUBLIC INFORMATION ON PRESCRIPTION RELEASE. (a) The *department* [~~board~~] and the Texas Optometry Board shall prepare and provide to the public and appropriate state agencies information regarding the release and verification of contact lens prescriptions.

(b) The *executive commissioner* [~~board~~] may adopt rules necessary to implement this section.

SECTION 5.037. Section 353.005, Occupations Code, is amended to read as follows:

Sec. 353.005. RULES. (a) The executive commissioner [~~of the Health and Human Services Commission~~] shall adopt rules, including rules that require a person dispensing contact lenses to maintain certain information when verifying a prescription under Section 353.1015, as necessary to:

(1) govern and implement verification procedures under Section 353.1015; and

(2) enter into interagency and other agreements to implement and enforce this chapter.

(b) The executive commissioner [~~of the Health and Human Services Commission~~] and the Texas Optometry Board shall each adopt rules relating to contact lens prescriptions

and the dispensing of contact lenses, including rules that allow for interagency agreements, as necessary to implement and enforce this chapter.

(c) In implementing rules under Subsection (b), the executive commissioner [~~of the Health and Human Services Commission~~] and the Texas Optometry Board:

(1) shall cooperate with one another as necessary to adopt rules that are consistent with the rules adopted by the other agency; and

(2) may consult with the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] and the Texas State Board of Pharmacy.

SECTION 5.038. Section 353.053, Occupations Code, is amended to read as follows:

Sec. 353.053. REQUIREMENTS FOR PERMIT ISSUANCE. The *department* [~~board~~] shall issue a contact lens dispensing permit to an applicant who:

(1) agrees in writing to comply with state and federal laws and regulations regarding selling, delivering, or dispensing contact lenses;

(2) has not had a contact lens dispensing permit revoked or canceled for cause during the two-year period preceding the application date;

(3) provides the *department* [~~board~~] with the trade name and address of each location where the applicant intends to conduct business;

(4) provides the *department* [~~board~~] with other information the *department* [~~board~~] reasonably requires; and

(5) pays the required permit fee.

SECTION 5.039. Section 353.054, Occupations Code, is amended to read as follows:

Sec. 353.054. TERM OF PERMIT. (a) A contact lens dispensing permit issued under this subchapter is valid for *two years* [~~one year~~].

(b) The *department* [~~board~~] may temporarily extend or shorten the term of a permit to provide for the staggered renewal of permits or for the [~~annual~~] renewal of all permits on the same date. The *department* [~~board~~] shall prorate the permit fee to accomplish that purpose.

SECTION 5.040. Section 353.055, Occupations Code, is amended to read as follows:

Sec. 353.055. PERMIT RENEWAL. (a) To renew a contact lens dispensing permit, a permit holder must apply in the manner prescribed by *department* [~~board~~] rule and pay the permit fee.

(b) The *department* [~~board~~] may not require an applicant for renewal of a permit to provide more information than is required for issuance of an original permit.

SECTION 5.041. Section 353.056, Occupations Code, is amended to read as follows:

Sec. 353.056. [~~ANNUAL~~] PERMIT FEE. (a) The *executive commissioner by rule shall set fees for the issuance or renewal of permits under this chapter in amounts designed to allow the department to recover from permit holders all of the direct and indirect costs to the department in* [~~board may adopt annual permit fees in amounts reflecting the cost of~~] administering *and enforcing* [~~the provisions of~~] this chapter [~~relating to regulating permit holders~~].

(b) *The executive commissioner may set different fees* [~~Until changed by the board, the annual permit fee~~] for a contact lens dispensing permit *issued to* [~~is~~]:

(1) [~~$10 for~~] an optician who has registered with the department;

(2) [~~$25 for~~] an optician who has not registered with the department; and

(3) [~~$100 for~~] a business entity.

SECTION 5.042. Section 353.152, Occupations Code, is amended to read as follows:

Sec. 353.152. REQUIREMENTS FOR CONTACT LENS PRESCRIPTION. (a) A contact lens prescription must contain, at a minimum:

(1) the patient's name;

(2) the date the prescription was issued;

(3) the manufacturer of the contact lens to be dispensed, if needed;

(4) the expiration date of the prescription;

(5) the signature of the physician, optometrist, or therapeutic optometrist or a verification of the prescription described by Section 353.1015;

(6) if the prescription is issued by an optometrist, specification information required by Texas Optometry Board rule; and

(7) if the prescription is issued by a physician, specification information required by Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] rule.

(b) The Texas Optometry Board and the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] may adopt rules regarding the contents of a prescription for contact lenses.

SECTION 5.043. Section 353.202, Occupations Code, is amended to read as follows:

Sec. 353.202. DISCIPLINARY ACTION. The *department* [~~board~~] may suspend or revoke a person's contact lens dispensing permit or place the permit holder on probation for a violation of this chapter.

SECTION 5.044. Sections 353.204(b) and (c), Occupations Code, are amended to read as follows:

(b) Except as otherwise provided by this section, the *department* [~~board~~] is responsible for enforcing this chapter.

(c) The Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] is responsible for enforcing this chapter with regard to a violation of this chapter by a physician. A violation of this chapter by a physician is considered to be a violation of Subtitle B.

SECTION 5.045. Section 353.205, Occupations Code, is amended to read as follows:

Sec. 353.205. ADMINISTRATIVE PENALTY. The *department* [~~board~~] may impose an administrative penalty of not more than $1,000 for a violation of this chapter.

SECTION 5.046. Section 401.204(a), Occupations Code, is amended to read as follows:

(a) The board by rule shall establish fees in amounts *that are* reasonable and necessary. *The board shall set the fees for issuing or renewing a license in amounts designed to allow the department and the board to recover from the license holders all of the direct and indirect costs to the department and to the board in* [~~so that the fees in the aggregate are sufficient to cover the costs of~~] administering *and enforcing* this chapter.

SECTION 5.047. Section 401.2535(a), Occupations Code, is amended to read as follows:

(a) In an investigation of a complaint filed with the board, the board may request that the *department* [~~commissioner of public health or the commissioner's designee~~] approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

SECTION 5.048. Section 401.351(a), Occupations Code, is amended to read as follows:

(a) *A license issued under this chapter is valid for two years.* The board by rule may adopt a system under which licenses expire on various dates during the year.

SECTION 5.049. Section 401.352(a), Occupations Code, is amended to read as follows:

(a) Each licensed speech-language pathologist or audiologist must [~~annually~~] pay the nonrefundable fee for license renewal. The board shall allow a 60-day grace period. After expiration of the grace period, the board may renew a license on payment of a penalty set by board rule.

SECTION 5.050. Section 401.553, Occupations Code, is amended to read as follows:

Sec. 401.553. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY. [~~(a)~~] If the *department* [~~commissioner of public health or the commissioner's designee~~] determines that a violation occurred, the *department* [~~commissioner or the designee may issue to the board a report stating:~~

[~~(1) the facts on which the determination is based; and~~

[~~(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.~~

[~~(b) Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee~~] shall give written notice of the *violation* [~~report~~] to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the [~~recommended~~] administrative penalty *recommended by the department*; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 5.051. Section 401.554, Occupations Code, is amended to read as follows:

Sec. 401.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the *department* [~~commissioner of public health or the commissioner's designee~~]; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the *department* [~~commissioner of public health or the commissioner's designee~~], the board by order shall approve the determination and impose the recommended penalty.

SECTION 5.052. Section 401.555(a), Occupations Code, is amended to read as follows:

(a) If the person requests a hearing or fails to respond in a timely manner to the notice, the *department* [~~commissioner of public health or the commissioner's designee~~] shall set a hearing and give written notice of the hearing to the person.

SECTION 5.053. Sections 401.557(b) and (c), Occupations Code, are amended to read as follows:

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner of public health or the commissioner's designee~~] by certified mail.

(c) If the *department* [~~commissioner of public health or the commissioner's designee~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~commissioner or the designee~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit.

SECTION 5.054. Section 402.001, Occupations Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 5.055. Section 402.051(a), Occupations Code, is amended to read as follows:

(a) The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments is part of the department and consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) six members licensed under this chapter who have been residents of this state actually engaged in fitting and dispensing hearing instruments for at least five years preceding appointment, not more than one of whom may be licensed under Chapter 401;

(2) one member who is actively practicing as a physician licensed by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] and who:

(A) has been a resident of this state for at least two years preceding appointment;

(B) is a citizen of the United States; and

(C) specializes in the practice of otolaryngology; and

(3) two members of the public.

SECTION 5.056. Section 402.056(c), Occupations Code, is amended to read as follows:

(c) If the commissioner of *state health services* [~~the department~~] has knowledge that a potential ground for removal exists, the commissioner shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the commissioner shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5.057. Section 402.102, Occupations Code, is amended to read as follows:

Sec. 402.102. RULES. (a) Subject to the approval of the *executive commissioner* [~~board~~], the committee may adopt procedural rules as necessary for the performance of the committee's duties.

(b) A license holder under this chapter is subject to the rules adopted by the committee and approved by the *executive commissioner* [~~board~~] under this chapter.

SECTION 5.058. Section 402.106(a), Occupations Code, is amended to read as follows:

(a) The committee by rule shall adopt fees in amounts *that are* reasonable and necessary. *The committee shall set the fees for issuing or renewing a license in amounts designed to allow the department and the committee to recover from the license holders all of the direct and indirect costs to the department and to the committee in* [~~so that the fees, in the aggregate, produce sufficient revenue to cover the costs of~~] administering *and enforcing* this chapter.

SECTION 5.059. Sections 402.154(a) and (h), Occupations Code, are amended to read as follows:

(a) In an investigation of a complaint filed with the committee, the committee may request that the *department* [~~commissioner of public health or the commissioner's designee~~] approve the issuance of a subpoena. If the request is approved, the committee may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(h) All information and materials subpoenaed or compiled by the committee in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the committee or its agents or employees who are involved in discipline of the holder of a license, except that this information may be disclosed to:

(1) persons involved with the committee in a disciplinary action against the holder of a license;

(2) professional licensing or disciplinary boards for the fitting and dispensing of hearing instruments in other jurisdictions;

(3) peer assistance programs approved by the *executive commissioner* [~~board~~] under Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

SECTION 5.060. Section 402.451(b), Occupations Code, is amended to read as follows:

(b) A license or permit holder may not:

(1) solicit a potential customer by telephone unless the license or permit holder clearly discloses the holder's name and business address and the purpose of the communication;

(2) use or purchase for use a list of names of potential customers compiled by telephone by a person other than the license or permit holder, the license or permit holder's authorized agent, or another license or permit holder; or

(3) perform any act that requires a license from the Texas Optometry Board or the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~].

SECTION 5.061. Section 402.452, Occupations Code, is amended to read as follows:

Sec. 402.452. INVESTIGATION BY *DEPARTMENT* [~~BOARD~~]. The [~~board, with the aid of the~~] department[;] shall investigate a person who violates this chapter.

SECTION 5.062. Section 402.453(a), Occupations Code, is amended to read as follows:

(a) A license holder may not treat the ear in any manner for any defect or administer any drug or physical treatment unless the license holder is a physician licensed to practice by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~].

SECTION 5.063. Section 402.501, Occupations Code, is amended to read as follows:

Sec. 402.501. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY ACTION. The committee may refuse to issue or renew a license, revoke or suspend a license or permit, place on probation a person whose license or permit has been suspended, or reprimand a license or permit holder who:

(1) makes a material misstatement in furnishing information to the committee or to another state or federal agency;

(2) violates this chapter or a rule adopted under this chapter;

(3) is convicted of a felony or misdemeanor that includes dishonesty as an essential element or of a crime directly related to the practice of fitting and dispensing hearing instruments;

(4) makes a misrepresentation for the purpose of obtaining or renewing a license, including falsifying the educational requirements under this chapter;

(5) is professionally incompetent or engages in malpractice or dishonorable, unethical, or unprofessional conduct that is likely to deceive, defraud, or harm the public;

(6) aids or assists another person in violating this chapter or a rule adopted under this chapter;

(7) does not provide information in response to a written request made by the *department* [~~board~~] within 60 days;

(8) directly or indirectly knowingly employs, hires, procures, or induces a person not licensed under this chapter to fit and dispense hearing instruments unless the person is exempt under this chapter;

(9) aids a person not licensed under this chapter in the fitting or dispensing of hearing instruments unless the person is exempt under this chapter;

(10) is habitually intoxicated or addicted to a controlled substance;

(11) directly or indirectly gives to or receives from a person a fee, commission, rebate, or other form of compensation for a service not actually provided;

(12) violates a term of probation;

(13) wilfully makes or files a false record or report;

(14) has a physical illness that results in the inability to practice the profession with reasonable judgment, skill, or safety, including the deterioration or loss of motor skills through aging;

(15) solicits a service by advertising that is false or misleading;

(16) participates in subterfuge or misrepresentation in the fitting or dispensing of a hearing instrument;

(17) knowingly advertises for sale a model or type of hearing instrument that cannot be purchased;

(18) falsely represents that the service of a licensed physician or other health professional will be used or made available in the fitting, adjustment, maintenance, or repair of a hearing instrument;

(19) falsely uses the term "doctor," "audiologist," "clinic," "clinical audiologist," "state licensed," "state certified," "licensed hearing instrument dispenser," "board certified hearing instrument specialist," "hearing instrument specialist," or "certified hearing aid audiologist," or uses any other term, abbreviation, or symbol that falsely gives the impression that:

(A) a service is being provided by a person who is licensed or has been awarded a degree or title; or

(B) the person providing a service has been recommended by a government agency or health provider;

(20) advertises a manufacturer's product or uses a manufacturer's name or trademark in a way that implies a relationship between a license or permit holder and a manufacturer that does not exist;

(21) directly or indirectly gives or offers to give, or permits or causes to be given, money or another thing of value to a person who advises others in a professional capacity as an inducement to influence the person to influence the others to:

(A) purchase or contract to purchase products sold or offered for sale by the license or permit holder; or

(B) refrain from purchasing or contracting to purchase products sold or offered for sale by another license or permit holder under this chapter;

(22) with fraudulent intent fits and dispenses a hearing instrument under any name, including a false name or alias;

(23) does not adequately provide for the service or repair of a hearing instrument fitted and sold by the license holder; or

(24) violates a regulation of the federal Food and Drug Administration or the Federal Trade Commission relating to hearing instruments.

SECTION 5.064. Section 402.551(a), Occupations Code, is amended to read as follows:

(a) The committee, with the *department's* [~~board's~~] approval, may impose an administrative penalty on a person described in this chapter for a violation of this chapter or a rule adopted under this chapter.

SECTION 5.065. Subchapter B, Chapter 403, Occupations Code, is amended by adding Section 403.053 to read as follows:

Sec. 403.053. FEES. The executive commissioner shall set fees for the issuance or renewal of a license under this chapter in amounts designed to allow the department to recover from the license holders all of the direct and indirect costs to the department in administering and enforcing this chapter.

SECTION 5.066. Subchapter C, Chapter 403, Occupations Code, is amended by adding Section 403.1025 to read as follows:

Sec. 403.1025. TERM OF LICENSE. A license issued under this chapter is valid for two years.

SECTION 5.067. Section 403.107(a), Occupations Code, is amended to read as follows:

(a) To obtain a license, an applicant must:

(1) pass a written examination approved by the department under Subsection (b); and

(2) pay fees set by the executive commissioner *by rule*.

SECTION 5.068. Section 403.202, Occupations Code, is amended to read as follows:

Sec. 403.202. PROHIBITED ACTIONS. A license holder may not:

(1) obtain a license by means of fraud, misrepresentation, or concealment of a material fact;

(2) sell, barter, or offer to sell or barter a license; or

(3) engage in unprofessional conduct that endangers or is likely to endanger the health, welfare, or safety of the public as defined by *department* [~~executive commissioner~~] rule.

SECTION 5.069. Section 403.205(b), Occupations Code, is amended to read as follows:

(b) The executive commissioner shall prescribe procedures for appealing to the *department* [~~commissioner~~] a decision to revoke, suspend, or refuse to renew a license.

SECTION 5.070. Section 403.251(a), Occupations Code, is amended to read as follows:

(a) A person who violates this chapter, a rule adopted by the executive commissioner *under this chapter*, or an order adopted by the *department* [~~commissioner~~] under this chapter is liable for a civil penalty not to exceed $500 for each occurrence.

SECTION 5.071. Section 403.252(a), Occupations Code, is amended to read as follows:

(a) If it appears to the *department* [~~commissioner~~] that a person who is not licensed under this chapter is violating this chapter or a rule adopted under this chapter, the *department* [~~commissioner~~] after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

SECTION 5.072. Sections 451.001(5) and (6), Occupations Code, are amended to read as follows:

(5) "Commissioner" means the commissioner of *state* [~~public~~] health *services*.

(6) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

SECTION 5.073. Section 451.002, Occupations Code, is amended to read as follows:

Sec. 451.002. INTERPRETATION; PRACTICE OF MEDICINE. This chapter does not authorize the practice of medicine by a person not licensed by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~].

SECTION 5.074. Section 451.003, Occupations Code, is amended to read as follows:

Sec. 451.003. APPLICABILITY. This chapter does not apply to:

(1) a physician licensed by the Texas *Medical* [~~State~~] Board [~~of Medical Examiners~~];

(2) a dentist, licensed under the laws of this state, engaged in the practice of dentistry;

(3) a licensed optometrist or therapeutic optometrist engaged in the practice of optometry or therapeutic optometry as defined by statute;

(4) an occupational therapist engaged in the practice of occupational therapy;

(5) a nurse engaged in the practice of nursing;

(6) a licensed podiatrist engaged in the practice of podiatry as defined by statute;

(7) a physical therapist engaged in the practice of physical therapy;

(8) a registered massage therapist engaged in the practice of massage therapy;

(9) a commissioned or contract physician, physical therapist, or physical therapist assistant in the United States Army, Navy, Air Force, or Public Health Service; or

(10) an athletic trainer who does not live in this state, who is licensed, registered,

or certified by an authority recognized by the board, and who provides athletic training in this state for a period determined by the board.

SECTION 5.075. Section 451.106, Occupations Code, is amended to read as follows:

Sec. 451.106. FEES. After consultation with the [~~commissioner of public health or the~~] department, the board by rule shall set fees under this chapter in amounts reasonable and necessary to cover the cost of administering this chapter. *The fees for issuing or renewing a license must be in amounts designed to allow the department and the board to recover from the license holders all of the direct and indirect costs to the department and to the board in administering and enforcing this chapter.*

SECTION 5.076. Section 451.201(a), Occupations Code, is amended to read as follows:

(a) A license issued under Section 451.156 expires on the *second* [~~first~~] anniversary of the date of issuance.

SECTION 5.077. Section 455.057, Occupations Code, is amended to read as follows:

Sec. 455.057. CONTINUING EDUCATION. The executive commissioner shall *provide for the recognition, preparation, or administration of* [~~recognize, prepare, or administer~~] continuing education programs for persons licensed under this chapter. A licensed person must participate in the programs to the extent required by the executive commissioner to keep the person's license.

SECTION 5.078. Subchapter B, Chapter 455, Occupations Code, is amended by adding Section 455.058 to read as follows:

Sec. 455.058. FEES. The executive commissioner shall set fees for the issuance or renewal of a license under this chapter in amounts designed to allow the department to recover from the license holders all of the direct and indirect costs to the department in administering and enforcing this chapter.

SECTION 5.079. Section 455.103(b), Occupations Code, is amended to read as follows:

(b) A memorandum must:

(1) be adopted by *the executive commissioner by* rule; and

(2) limit the total amount of the fees charged by the department and the Texas Education Agency for licensing a massage school to an amount equal to the amount of the fees the department would charge for licensing the massage school in the absence of the memorandum.

SECTION 5.080. Section 455.151(d), Occupations Code, is amended to read as follows:

(d) The department may issue one or more types of licenses not otherwise provided for by this chapter that authorize the license holder to perform a service described by Subsection (c). The *executive commissioner* [~~department~~] may adopt rules governing a license issued under this subsection.

SECTION 5.081. Section 455.153, Occupations Code, is amended to read as follows:

Sec. 455.153. APPLICATION FOR LICENSE. An applicant for a license under this chapter must:

(1) submit an application *on a* form provided by the department; and

(2) include with the application the application fee set by the *executive commissioner by rule* [~~department~~].

SECTION 5.082. Section 455.1572(e), Occupations Code, is amended to read as follows:

(e) The *executive commissioner by rule* [~~department~~] may establish a fee for a provisional license [~~in an amount reasonable and necessary to cover the cost of issuing the license~~].

SECTION 5.083. Section 455.158, Occupations Code, is amended to read as follows:

Sec. 455.158. STUDENT EXEMPTION FROM LICENSING REQUIREMENTS. A student who provides massage therapy as part of an internship program or without

compensation is exempt from licensing under this chapter if the student is enrolled in a state-approved course of instruction that consists of at least *500* [~~300~~] hours.

SECTION 5.084. Sections 455.160(a) and (b), Occupations Code, are amended to read as follows:

(a) *A license issued under this chapter is valid for two years* [~~A person licensed under this chapter must periodically renew the person's license~~]. The license expires unless the license holder submits an application for renewal accompanied by the renewal fee prescribed by the *executive commissioner by rule* [~~department~~] or by the late fee prescribed by this section.

(b) The *executive commissioner* [~~department~~] shall adopt a system under which licenses expire on various dates during the year. Fees must be prorated so that a licensed person pays only for that part of the renewal period for which the license is issued until the expiration date of the license.

SECTION 5.085. Sections 455.203(a) and (b), Occupations Code, are amended to read as follows:

(a) A massage school must meet the minimum standards of operation established by *department* [~~executive commissioner~~] rule.

(b) An instructor must meet the minimum requirements established by *department* [~~executive commissioner~~] rule.

SECTION 5.086. Section 455.251(a), Occupations Code, is amended to read as follows:

(a) The department may refuse to issue a license to a person and shall suspend, revoke, or refuse to renew the license of a person or shall reprimand a person licensed under this chapter if the person:

(1) obtains a license by fraud, misrepresentation, or concealment of material facts;

(2) sells, barters, or offers to sell or barter a license;

(3) violates a rule adopted by the executive commissioner *under this chapter*;

(4) engages in unprofessional conduct as defined by *department* [~~executive commissioner~~] rule that endangers or is likely to endanger the health, welfare, or safety of the public;

(5) violates an order or ordinance adopted by a political subdivision under Chapter 243, Local Government Code; or

(6) violates this chapter.

SECTION 5.087. Section 455.304(b), Occupations Code, is amended to read as follows:

(b) If the person accepts the department's determination, the *department* [~~executive commissioner or the commissioner's designee~~] by order shall approve the determination and require the person to pay the recommended penalty.

SECTION 5.088. Section 455.305(b), Occupations Code, is amended to read as follows:

(b) The hearings examiner shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the *department* [~~executive commissioner or the commissioner's designee~~] a proposal for decision as to the occurrence of the violation, and, if the examiner determines a penalty is warranted, the amount of the proposed administrative penalty.

SECTION 5.089. The heading to Section 455.306, Occupations Code, is amended to read as follows:

Sec. 455.306. DECISION BY *DEPARTMENT* [~~EXECUTIVE COMMISSIONER~~].

SECTION 5.090. Section 455.306(a), Occupations Code, is amended to read as follows:

(a) Based on the findings of fact, conclusions of law, and recommendations of the hearings examiner, the *department* [~~executive commissioner or the commissioner's designee~~] by order may determine that:

(1) a violation occurred and may impose an administrative penalty; or

(2) a violation did not occur.

SECTION 5.091. Section 455.310(b), Occupations Code, is amended to read as follows:

(b) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the *department* [~~executive commissioner or the commissioner's designee~~] requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of expenses and costs.

SECTION 5.092. Section 502.153(a), Occupations Code, is amended to read as follows:

(a) The board by rule shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter. *The board shall set fees for the issuance or renewal of a license under this chapter in amounts designed to allow the department and the board to recover from the license holders all of the direct and indirect costs to the department and to the board in administering and enforcing this chapter.*

SECTION 5.093. Section 502.2045(a), Occupations Code, is amended to read as follows:

(a) In an investigation of a complaint filed with the board, the board may request that the *department* [~~commissioner or the commissioner's designee~~] approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

SECTION 5.094. Section 502.254(b), Occupations Code, is amended to read as follows:

(b) An applicant for a license as a licensed marriage and family therapist associate under Section 502.252(b) must:

(1) file an application on a form prescribed by the board not later than the 90th day before the date of the examination; and

(2) pay the examination fee set by the *executive commissioner of the Health and Human Services Commission by rule* [~~Texas Board of Health~~].

SECTION 5.095. Section 502.260(c), Occupations Code, is amended to read as follows:

(c) A license holder whose license is on inactive status:

(1) is not required to pay *a* [~~an annual~~] renewal fee; and

(2) may not perform an activity regulated under this chapter.

SECTION 5.096. Section 502.401, Occupations Code, is amended to read as follows:

Sec. 502.401. IMPOSITION OF PENALTY. The *board* [~~commissioner~~] may impose an administrative penalty on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

SECTION 5.097. Section 502.403, Occupations Code, is amended to read as follows:

Sec. 502.403. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY. [~~(a)~~] If the *department* [~~commissioner~~] determines that a violation has occurred, the *department* [~~commissioner may issue to the board a report stating:~~

[~~(1) the facts on which the determination is based; and~~

[~~(2) the commissioner's recommendation on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.~~

[~~(b) Not later than the 14th day after the date the report is issued, the commissioner~~] shall give written notice of the *violation* [~~report~~] to the person on whom the penalty may be imposed. The notice may be given by certified mail. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the *administrative* [~~recommended~~] penalty *recommended by the department*; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 5.098. Section 502.404, Occupations Code, is amended to read as follows:

Sec. 502.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 502.403, the person, in writing, may:

(1) accept the *department's* [~~commissioner's~~] determination and recommended administrative penalty; or

(2) request a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the *department's* [~~commissioner's~~] determination and recommended administrative penalty, the board by order shall approve the determination and impose the recommended penalty.

SECTION 5.099. Sections 502.407(b) and (c), Occupations Code, are amended to read as follows:

(b) Within the 30–day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner~~] by certified mail.

(c) If the *department* [~~commissioner~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~commissioner~~] may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

SECTION 5.100. Section 502.408, Occupations Code, is amended to read as follows:

Sec. 502.408. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the *department* [~~commissioner~~] may refer the matter to the attorney general for collection.

SECTION 5.101. Section 503.151, Occupations Code, is amended to read as follows:

Sec. 503.151. EXECUTIVE DIRECTOR. The commissioner of *state* [~~public~~] health *services*, with the advice and consent of the board, shall appoint an executive director for the board. The executive director must be an employee of the department.

SECTION 5.102. Section 503.202(a), Occupations Code, is amended to read as follows:

(a) The board by rule shall establish fees for the board's services in amounts reasonable and necessary to cover the costs of administering this chapter without accumulating an unnecessary surplus. *The board shall set fees for the issuance or renewal of a license under this chapter in amounts designed to allow the department and the board to recover from the license holders all of the direct and indirect costs to the department and to the board in administering and enforcing this chapter.*

SECTION 5.103. Section 503.2545(a), Occupations Code, is amended to read as follows:

(a) In an investigation of a complaint filed with the board, the board may request that the *department* [~~commissioner of public health or the commissioner's designee~~] approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

SECTION 5.104. Section 503.503, Occupations Code, is amended to read as follows:

Sec. 503.503. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY. [~~(a)~~] If the *department* [~~commissioner of public health or the commissioner's designee~~] determines that a violation occurred, the *department* [~~commissioner or the designee may issue to the board a report stating:~~

[~~(1) the facts on which the determination is based; and~~

[~~(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.~~

[~~(b) Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee~~] shall give written notice of the *violation* [~~report~~] to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the [~~recommended~~] administrative penalty *recommended by the department*; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 5.105. Section 503.504, Occupations Code, is amended to read as follows:

Sec. 503.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the *department* [~~commissioner of public health or the commissioner's designee~~]; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the *department* [~~commissioner of public health or the commissioner's designee~~], the board by order shall approve the determination and impose the recommended penalty.

SECTION 5.106. Section 503.505(a), Occupations Code, is amended to read as follows:

(a) If the person requests a hearing or fails to respond in a timely manner to the notice, the *department* [~~commissioner of public health or the commissioner's designee~~] shall set a hearing and give written notice of the hearing to the person.

SECTION 5.107. Sections 503.507(b) and (c), Occupations Code, are amended to read as follows:

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner of public health or the commissioner's designee~~] by certified mail.

(c) If the *department* [~~commissioner of public health or the commissioner's designee~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~commissioner or the designee~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit.

SECTION 5.108. Section 504.053(a), Occupations Code, is amended to read as follows:

(a) The executive commissioner *by rule* shall set application, examination, license renewal, and other fees in amounts sufficient to cover the costs of administering this chapter. *The fees for the issuance or renewal of a license under this chapter shall be set in amounts designed to allow the department to recover from the license holders all of the direct and indirect costs to the department in administering and enforcing this chapter.* [~~The amount of the license renewal fee may not exceed $200.~~]

SECTION 5.109. Section 504.055(d), Occupations Code, is amended to read as follows:

(d) The department may charge a fee *in an amount set by the executive commissioner by rule* for the roster published under this section.

SECTION 5.110. Section 504.1521(b), Occupations Code, is amended to read as follows:

(b) The executive commissioner shall adopt rules necessary to:

(1) register clinical training institutions that meet the criteria established by the executive commissioner[~~, commissioner, or department~~] to protect the safety and welfare of the people of this state; and

(2) certify clinical supervisors who hold certification credentials approved by the department or by a person designated by the department, such as the International Certification and Reciprocity Consortium or another person that meets the criteria established by the executive commissioner[~~, commissioner, or department~~] to protect the safety and welfare of the people of this state.

SECTION 5.111. Section 504.1525(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the department may not issue a license, registration, or certification under this chapter to an applicant who has been:

(1) convicted or placed on community supervision during the three years preceding the date of application in any jurisdiction for an offense equal to a Class B misdemeanor specified by *department* [~~executive commissioner~~] rule;

(2) convicted or placed on community supervision in any jurisdiction for an offense equal to or greater than a Class A misdemeanor specified by *department* [~~executive commissioner~~] rule; or

(3) found to be incapacitated by a court on the basis of a mental defect or disease.

SECTION 5.112. Section 504.158(c), Occupations Code, is amended to read as follows:

(c) The *executive commissioner by rule* [~~department~~] may establish a fee for a provisional license [~~in an amount reasonable and necessary to cover the cost of issuing the license~~].

SECTION 5.113. Section 504.161(b), Occupations Code, is amended to read as follows:

(b) The department may charge a person on whom criminal history record information is sought a fee in an amount set by the *executive commissioner by rule* [~~department~~] as reasonably necessary to cover the costs of administering this section. A fee collected under this subsection may be appropriated only to the department to administer this section.

SECTION 5.114. Section 504.255(a), Occupations Code, is amended to read as follows:

(a) A person whose license, registration, or certification application is denied under Section 504.1525, whose license, registration, or certification renewal is refused under Section 504.2025, or whose license, registration, or certification is suspended under Section 504.2525 may appeal the denial, refusal to renew, or suspension on the grounds that:

(1) the sole basis for the department's determination is a conviction or placement on community supervision for an offense described by Section 504.1525; and

(2) sufficient time, as determined by *department* [~~executive commissioner~~] rule, has expired since the date of the conviction or placement.

SECTION 5.115. Section 504.304(b), Occupations Code, is amended to read as follows:

(b) If the person accepts the department's determination, the *department* [~~commissioner or the commissioner's designee~~] by order shall approve the determination and assess the proposed penalty.

SECTION 5.116. Section 504.305(c), Occupations Code, is amended to read as follows:

(c) The hearings examiner shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the *department* [~~commissioner or the commissioner's designee~~] a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

SECTION 5.117. Section 504.306(a), Occupations Code, is amended to read as follows:

(a) Based on the findings of fact, conclusions of law, and recommendations of the hearings examiner, the *department* [~~commissioner or the commissioner's designee~~] by order may determine that:

(1) a violation occurred and assess an administrative penalty; or

(2) a violation did not occur.

SECTION 5.118. Section 504.310(c), Occupations Code, is amended to read as follows:

(c) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the *department* [~~commissioner or the commissioner's designee~~] requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of expenses and costs.

SECTION 5.119. Section 505.201(b), Occupations Code, is amended to read as follows:

(b) In adopting rules under this section, the board shall consider the rules and procedures of the [~~Texas Board of Health and the~~] department. The board shall adopt procedural rules, which may not be inconsistent with similar rules and procedures of the [~~Texas Board of Health or the~~] department.

SECTION 5.120. Sections 505.203(a) and (c), Occupations Code, are amended to read as follows:

(a) The board by rule shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter. *The board shall set fees for the issuance or renewal of a license under this chapter in amounts designed to allow the department and the board to recover from the license holders all of the direct and indirect costs to the department and to the board in administering and enforcing this chapter.*

(c) *The* [~~Unless the board determines that the fees would not cover the costs associated with administering the renewal of licenses and orders of recognition of specialty under this chapter, the~~] board shall set:

(1) the renewal fee for a license or order of recognition of specialty expired for 90 days or less in an amount that is 1–1/4 times the amount of the renewal fee for an unexpired license or order; and

(2) the renewal fee for a license or order of recognition of specialty expired for more than 90 days but less than one year in an amount that is 1–1/2 times the amount of the renewal fee for an unexpired license or order.

SECTION 5.121. Section 505.2545(a), Occupations Code, is amended to read as follows:

(a) In an investigation of a complaint filed with the department and referred to the board, the board may request that the *department* [~~commissioner or the commissioner's designee~~] approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

SECTION 5.122. Section 505.401, Occupations Code, is amended to read as follows:

Sec. 505.401. *TERM OF LICENSE;* STAGGERED EXPIRATION DATES. (a) *A license issued under this chapter is valid for two years.*

(a–1) The board by rule shall adopt a system under which licenses and orders of recognition of specialty expire on various dates during the year.

(b) In the year in which the expiration date of an order of recognition of specialty is changed, the total renewal fee is payable.

SECTION 5.123. Section 505.553, Occupations Code, is amended to read as follows:

Sec. 505.553. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY. [~~(a)~~] If the *department* [~~executive director~~] determines that a violation occurred, the *department* [~~director may issue to the board a report stating:~~

[~~(1) the facts on which the determination is based; and~~

[~~(2) the director's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.~~

[~~(b) Within 14 days after the date the report is issued, the executive director~~] shall give written notice of the *violation* [~~report~~] to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the [~~recommended~~] administrative penalty *recommended by the department*; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 5.124. Section 505.554, Occupations Code, is amended to read as follows:

Sec. 505.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the *department* [~~executive director~~]; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the *department* [~~executive director~~], the board by order shall approve the determination and impose the recommended penalty.

SECTION 5.125. Section 505.555(a), Occupations Code, is amended to read as follows:

(a) If the person requests a hearing or fails to respond in a timely manner to the notice, the *department* [~~executive director~~] shall set a hearing and give written notice of the hearing to the person.

SECTION 5.126. Sections 505.557(b) and (c), Occupations Code, are amended to read as follows:

(b) Within the 30–day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~executive director~~] by certified mail.

(c) If the *department* [~~executive director~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~director~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit.

SECTION 5.127. Section 601.002, Occupations Code, is amended to read as follows:

Sec. 601.002. DEFINITIONS. In this chapter:

(1) "Authorized person" means a person who meets or exceeds the minimum educational standards of the *department* [~~board~~] under Section 601.201.

(2) [~~"Board" means the Texas Board of Health.~~

[~~(3)~~] "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(3) [~~(4)~~] "Direct supervision" means supervision and control by a medical radiologic technologist or a practitioner who:

(A) assumes legal liability for a student employed to perform a radiologic procedure and enrolled in a program that meets the requirements adopted under Section 601.053; and

(B) is physically present during the performance of the radiologic procedure to provide consultation or direct the action of the student.

(4) [~~(5)~~] "Education program" means clinical training or any other program offered by an organization approved by the *department* [~~board~~] that:

(A) has a specified objective;

(B) includes planned activities for participants; and

(C) uses an approved method for measuring the progress of participants.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Medical radiologic technologist" means a person certified under this chapter who, under the direction of a practitioner, intentionally administers radiation to another for a medical purpose. The term does not include a practitioner.

(7) "Practitioner" means a person who:

(A) is licensed in this state as a doctor of:

(i) medicine;

(ii) osteopathy;

(iii) podiatry;

(iv) dentistry; or

(v) chiropractic; and

(B) prescribes radiologic procedures for other persons.

(8) "Radiation" means ionizing radiation:

(A) in amounts beyond normal background levels; and

(B) from a source such as a medical or dental radiologic procedure.

(9) "Radiologic procedure" means a procedure or article, including a diagnostic X-ray or a nuclear medicine procedure, that:

(A) is intended for use in:

(i) the diagnosis of disease or other medical or dental conditions in humans; or

(ii) the cure, mitigation, treatment, or prevention of disease in humans; and

(B) achieves its intended purpose through the emission of radiation.

(10) "Radiologic technology" means the administration of radiation to a person for a medical purpose.

(11) "Registered nurse" means a person licensed by the Texas Board of Nursing to practice professional nursing.

SECTION 5.128. Subchapter B, Chapter 601, Occupations Code, is amended to read as follows:

SUBCHAPTER B. POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER* [~~BOARD~~] AND DEPARTMENT

Sec. 601.051. CERTIFICATION PROGRAM. The [~~bureau of licensing and compliance of the~~] department shall administer the certification program required by this chapter.

Sec. 601.052. RULES. The *executive commissioner* [~~board~~] may adopt rules necessary to implement this chapter.

Sec. 601.053. MINIMUM STANDARDS. The *executive commissioner* [~~board~~] by rule shall establish minimum standards for:

(1) issuing, renewing, suspending, or revoking a certificate issued under this chapter;

(2) approving curricula and education programs to train individuals, registered nurses, and physician assistants to perform radiologic procedures;

(3) approving instructors to teach approved curricula or education programs to train individuals to perform radiologic procedures; and

(4) rescinding an approval described by Subdivision (2) or (3).

Sec. 601.054. APPROVAL AND REVIEW OF CURRICULA AND TRAINING PROGRAMS. (a) An applicant for approval of a curriculum or training program must apply to the department on a form *prescribed by the department* and under rules adopted by the *executive commissioner* [~~board~~].

(b) The department shall approve a curriculum or training program that meets the minimum standards adopted under Section 601.053. The department may review the approval annually.

(c) The *executive commissioner* [~~board~~] may set a fee for approval of a curriculum or training program not to exceed the estimated amount that the department projects to be required for the evaluation of the curriculum or training program.

Sec. 601.055. APPROVAL AND REVIEW OF INSTRUCTOR APPROVAL. (a) An applicant for approval of an instructor must apply to the department on a form *prescribed by the department* and under rules adopted by the *executive commissioner* [~~board~~].

(b) The department shall approve an instructor who meets the minimum standards adopted under Section 601.053. The department may review the approval annually.

Sec. 601.056. DANGEROUS OR HAZARDOUS PROCEDURES. (a) The *executive commissioner* [~~board~~] with the assistance of [~~other~~] appropriate state agencies shall identify by rule radiologic procedures, other than radiologic procedures described by Subsection (c), that are dangerous or hazardous and that may be performed only by a practitioner or a medical radiologic technologist certified under this chapter.

(b) In adopting rules under Subsection (a), the *executive commissioner* [~~board~~] may consider whether the radiologic procedure will be performed by a registered nurse or a licensed physician assistant.

(c) Subsection (a) does not apply to a radiologic procedure involving a dental X-ray machine, including a panarex or other equipment designed and manufactured only for use in dental radiography.

Sec. 601.057. FEES. The *executive commissioner* [~~board~~] may set fees for examination, certificate issuance, registration of a person under Section 601.202, and application processing under Section 601.203 in amounts that are reasonable to cover the costs of administering this chapter without the use of additional general revenue. *The fees for issuing or renewing a certificate must be in amounts designed to allow the department to recover from the certificate holders all of the department's direct and indirect costs in*

administering and enforcing this chapter.

Sec. 601.058. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The *executive commissioner* [~~board~~] may not adopt rules restricting advertising or competitive bidding by a medical radiologic technologist except to prohibit false, misleading, or deceptive practices.

(b) In *adopting* [~~its~~] rules to prohibit false, misleading, or deceptive practices, the *executive commissioner* [~~board~~] may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a medical radiologic technologist's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the medical radiologic technologist; or

(4) restricts the medical radiologic technologist's advertisement under a trade name.

SECTION 5.129. Sections 601.102(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall establish classes of certificates to include all radiologic procedures used in the course and scope of the practice of practitioners licensed in this state.

(b) The *department* [~~board~~] may issue to a person:

(1) a general certificate to perform radiologic procedures; or

(2) a limited certificate that authorizes the person to perform radiologic procedures only on specific parts of the human body.

(c) The *department* [~~board~~] may issue to a person a temporary general certificate or a temporary limited certificate that authorizes the person to perform radiologic procedures for a period not to exceed one year.

SECTION 5.130. Section 601.103, Occupations Code, is amended to read as follows:

Sec. 601.103. APPLICATION; APPLICATION FEE. An applicant for a certificate under this chapter must:

(1) apply to the department on a form *prescribed by the department* and under rules adopted by the *executive commissioner* [~~board~~]; and

(2) submit with the application a nonrefundable application fee in an amount determined by the *executive commissioner* [~~board~~].

SECTION 5.131. Section 601.104, Occupations Code, is amended to read as follows:

Sec. 601.104. EXAMINATION. The *executive commissioner* [~~board~~] may *adopt rules providing for the preparation and administration of* [~~prepare and conduct~~] an examination for applicants for a certificate.

SECTION 5.132. The heading to Section 601.105, Occupations Code, is amended to read as follows:

Sec. 601.105. ISSUANCE OF CERTIFICATE*; TERM*.

SECTION 5.133. Section 601.105(b), Occupations Code, is amended to read as follows:

(b) A certificate is valid for *two years from the date of issuance* [~~a period established by the board~~].

SECTION 5.134. Section 601.107, Occupations Code, is amended to read as follows:

Sec. 601.107. CERTIFICATION BY ENDORSEMENT. In adopting minimum standards for certifying medical radiologic technologists, the *executive commissioner* [~~board~~] may establish criteria for issuing a certificate to a person licensed or otherwise registered as a medical radiologic technologist by the American Registry of Radiologic Technologists, the American Registry of Clinical Radiography Technologists, or another state

whose requirements for licensure or registration were on the date of licensing or registration substantially equal to the requirements of this chapter.

SECTION 5.135. Section 601.108, Occupations Code, is amended to read as follows:

Sec. 601.108. CONTINUING EDUCATION AND OTHER GUIDELINES. (a) The *executive commissioner* [~~board~~] may establish guidelines.

(b) The *executive commissioner* [~~board~~] shall *provide for the preparation, recognition, or administration of* [~~prepare, recognize, or administer~~] continuing education programs for medical radiologic technologists in which participation is required, to the extent required by the *department* [~~board~~], to keep the person's certificate.

SECTION 5.136. Section 601.109, Occupations Code, is amended to read as follows:

Sec. 601.109. PROVISIONAL CERTIFICATE. (a) The *department* [~~board~~] may issue a provisional certificate to an applicant currently licensed or certified in another jurisdiction who seeks certification in this state and who:

(1) has been licensed or certified in good standing as a medical radiologic technologist for at least two years in another jurisdiction, including a foreign country, that has licensing or certification requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the *department* [~~board~~] relating to the practice of radiologic technology; and

(3) is sponsored by a medical radiologic technologist certified by the *department* [~~board~~] under this chapter with whom the provisional certificate holder will practice during the time the person holds a provisional certificate.

(b) The *department* [~~board~~] may waive the requirement of Subsection (a)(3) for an applicant if the *department* [~~board~~] determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional certificate is valid until the date the *department* [~~board~~] approves or denies the provisional certificate holder's application for a certificate. The *department* [~~board~~] shall issue a certificate under this chapter to the provisional certificate holder if:

(1) the provisional certificate holder is eligible to be certified under Section 601.107; or

(2) the provisional certificate holder passes the part of the examination under Section 601.104 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of radiologic technology in this state and:

(A) the *department* [~~board~~] verifies that the provisional certificate holder meets the academic and experience requirements for a certificate under this chapter; and

(B) the provisional certificate holder satisfies any other licensing requirements under this chapter.

(d) The *department* [~~board~~] must approve or deny a provisional certificate holder's application for a certificate not later than the 180th day after the date the provisional certificate is issued. The *department* [~~board~~] may extend the 180-day period if the results of an examination have not been received by the *department* [~~board~~] before the end of that period.

(e) The *executive commissioner by rule* [~~board~~] may establish a fee for a provisional certificate in an amount *designed to allow the department to recover from the certificate holders all of the department's direct and indirect costs in administering and enforcing this chapter* [~~reasonable and necessary to cover the cost of issuing the certificate~~].

SECTION 5.137. Section 601.110(b), Occupations Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, the department shall prorate certificate fees on a monthly basis so that each certificate holder pays only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

SECTION 5.138. Section 601.154, Occupations Code, is amended to read as follows:

Sec. 601.154. HOSPITAL PROCEDURES. A person is not required to hold a certificate issued under this chapter to perform a radiologic procedure in a hospital if:

(1) the hospital participates in the federal Medicare program or is accredited by the Joint Commission on Accreditation of Hospitals; and

(2) the person has completed a training program approved by the *department* [~~board~~] under Section 601.201.

SECTION 5.139. Section 601.156, Occupations Code, is amended to read as follows:

Sec. 601.156. PROCEDURE PERFORMED AS PART OF CONTINUING EDUCATION PROGRAM. A person is not required to hold a certificate issued under this chapter or to comply with the registration requirements adopted under Section 601.252 if the person is:

(1) licensed or otherwise registered as a medical radiologic technologist by another state, the American Registry of Radiologic Technologists, the American Registry of Clinical Radiography Technologists, or a professional organization or association recognized by the *department* [~~board~~];

(2) enrolled in a continuing education program that meets the requirements adopted under Section 601.108; and

(3) performing a radiologic procedure as part of the continuing education program for not more than 10 days.

SECTION 5.140. Section 601.201, Occupations Code, is amended to read as follows:

Sec. 601.201. MANDATORY TRAINING. (a) The minimum standards of the *department* [~~board~~] for approval of a curriculum or an education program under Section 601.053 must include mandatory training guidelines for a person, other than a practitioner or a medical radiologic technologist, who intentionally uses radiologic technology, including a person who does not hold a certificate issued under this chapter and who is performing a radiologic procedure at a hospital or under the direction of a practitioner, other than a dentist.

(b) The training program approved by the *department* [~~board~~] must contain an appropriate number of hours of education that must be completed before the person may perform a radiologic procedure.

SECTION 5.141. Section 601.202, Occupations Code, is amended to read as follows:

Sec. 601.202. REGISTRY. The *executive commissioner* [~~board~~] by rule shall establish a registry of persons required to comply with this subchapter.

SECTION 5.142. Section 601.302, Occupations Code, is amended to read as follows:

Sec. 601.302. GROUNDS FOR CERTIFICATE DENIAL OR DISCIPLINARY ACTION. The department may take action under Section 601.301 against a person subject to this chapter for:

(1) obtaining or attempting to obtain a certificate issued under this chapter by bribery or fraud;

(2) making or filing a false report or record made in the person's capacity as a medical radiologic technologist;

(3) intentionally or negligently failing to file a report or record required by law;

(4) intentionally obstructing or inducing another to intentionally obstruct the filing of a report or record required by law;

(5) engaging in unprofessional conduct, including the violation of the standards of practice of radiologic technology established by the *department* [~~board~~];

(6) developing an incapacity that prevents the practice of radiologic technology with reasonable skill, competence, and safety to the public as the result of:

(A) an illness;

(B) drug or alcohol dependency; or

(C) another physical or mental condition or illness;

(7) failing to report to the department the violation of this chapter by another person;

(8) employing, for the purpose of applying ionizing radiation to a person, a person who is not certified under or in compliance with this chapter;

(9) violating this chapter, a rule adopted under this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department;

(10) having a certificate revoked, suspended, or otherwise subjected to adverse action or being denied a certificate by another certification authority in another state, territory, or country; or

(11) being convicted of or pleading nolo contendere to a crime directly related to the practice of radiologic technology.

SECTION 5.143. Section 601.305(b), Occupations Code, is amended to read as follows:

(b) The *department* [~~board~~] may not reinstate a certificate to a holder or issue a certificate to an applicant previously denied a certificate unless the *department* [~~board~~] is satisfied that the holder or applicant has complied with requirements set by the *department* [~~board~~] and is capable of engaging in the practice of radiologic technology.

SECTION 5.144. Section 601.354(b), Occupations Code, is amended to read as follows:

(b) If the person accepts the department's determination, the *department* [~~commissioner of public health or that commissioner's designee~~] by order shall approve the determination and impose the proposed penalty.

SECTION 5.145. Section 601.355(b), Occupations Code, is amended to read as follows:

(b) The hearings examiner shall make findings of fact and conclusions of law and promptly issue to the *department* [~~commissioner of public health or that commissioner's designee~~] a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

SECTION 5.146. The heading to Section 601.356, Occupations Code, is amended to read as follows:

Sec. 601.356. DECISION BY *DEPARTMENT* [~~COMMISSIONER~~].

SECTION 5.147. Section 601.356(a), Occupations Code, is amended to read as follows:

(a) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the *department* [~~commissioner of public health or the commissioner's designee~~] by order may determine that:

(1) a violation has occurred and may impose an administrative penalty; or

(2) a violation did not occur.

SECTION 5.148. Section 601.361(b), Occupations Code, is amended to read as follows:

(b) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the *department* [~~commissioner of public health or that commissioner's designee~~] requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

SECTION 5.149. Sections 601.401(a) and (c), Occupations Code, are amended to read as follows:

(a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted under this chapter, the [~~board or the~~] department may bring an action to enjoin the continued or threatened violation.

(c) At the request of the [~~board or the~~] department, the attorney general shall bring an action in the name of the state for the injunctive relief, to recover the civil penalty, or both.

SECTION 5.150. Section 602.002, Occupations Code, is amended by amending Subdivisions (1) and (2) and adding Subdivision (1–a) to read as follows:

(1) "Board" means the Texas Board of Licensure for Professional Medical Physicists [~~in the Texas Department of Health~~].

(1–a) "Commissioner" means the commissioner of state health services.

(2) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

SECTION 5.151. Section 602.056(c), Occupations Code, is amended to read as follows:

(c) If the commissioner [~~of public health~~] has knowledge that a potential ground for removal exists, the commissioner shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the commissioner shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5.152. Section 602.101, Occupations Code, is amended to read as follows:

Sec. 602.101. EXECUTIVE SECRETARY. The *department* [~~commissioner of health~~], after consulting with the board, shall designate an employee of the department to serve as the board's executive secretary.

SECTION 5.153. Section 602.104, Occupations Code, is amended to read as follows:

Sec. 602.104. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the commissioner [~~of public health~~], the executive secretary, and the staff of the department.

SECTION 5.154. Section 602.105, Occupations Code, is amended to read as follows:

Sec. 602.105. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The commissioner [~~of public health~~] or the commissioner's designee shall provide to members of the board, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

SECTION 5.155. Section 602.151, Occupations Code, is amended to read as follows:

Sec. 602.151. GENERAL POWERS AND DUTIES. The board shall:

(1) adopt and revise, with the [~~department's~~] approval *of the executive commissioner of the Health and Human Services Commission*, rules reasonably necessary to properly perform its duties under this chapter;

(2) adopt an official seal;

(3) determine the qualifications and fitness of each applicant for a license or license renewal;

(4) charge a fee[~~, in an amount necessary to cover the costs incurred by the board in administering this chapter,~~] for processing and issuing or renewing a license;

(5) conduct examinations for licensure;

(6) issue, deny, renew, revoke, and suspend licenses;

(7) adopt and publish a code of ethics; and

(8) conduct hearings on complaints concerning violations of this chapter or rules adopted under this chapter.

SECTION 5.156. Section 602.1525(a), Occupations Code, is amended to read as follows:

(a) In an investigation of a complaint filed with the board, the board may request that

the commissioner [~~of public health~~] or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

SECTION 5.157. Subchapter D, Chapter 602, Occupations Code, is amended by adding Section 602.155 to read as follows:

Sec. 602.155. FEES. The board shall set fees for the issuance or renewal of a license under this chapter in amounts designed to allow the department and the board to recover from the license holders all of the direct and indirect costs to the department and to the board in administering and enforcing this chapter.

SECTION 5.158. Section 602.205, Occupations Code, is amended to read as follows:

Sec. 602.205. TEMPORARY LICENSE. The board may issue a temporary license to an applicant who has satisfied the educational requirements for a license but who has not yet completed the experience and examination requirements of Section 602.207. *A temporary license is valid for one year from the date of issuance.*

SECTION 5.159. Section 602.210(a), Occupations Code, is amended to read as follows:

(a) A license is valid for *two years* [~~one year~~] from the date *of issuance* [~~granted~~] and may be renewed [~~annually~~].

SECTION 5.160. Section 602.213(e), Occupations Code, is amended to read as follows:

(e) The board may establish a fee for provisional licenses [~~in an amount reasonable and necessary to cover the cost of issuing the license~~].

SECTION 5.161. Section 603.051(a), Occupations Code, is amended to read as follows:

(a) The Texas State Perfusionist Advisory Committee consists of five members appointed by the commissioner as follows:

(1) two licensed perfusionist members who have been licensed under this chapter for at least three years before the date of appointment;

(2) one physician member licensed by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] who is certified by that board in cardiovascular surgery; and

(3) two members who represent the public.

SECTION 5.162. Section 603.102, Occupations Code, is amended to read as follows:

Sec. 603.102. EXECUTIVE SECRETARY POWERS AND DUTIES. In addition to performing other duties prescribed by this chapter and by the department, the executive secretary shall:

(1) administer licensing activity *under this chapter* for the department;

(2) keep full and accurate minutes of the committee's transactions and proceedings;

(3) serve as custodian of the committee's files and other records;

(4) prepare and recommend to the department plans and procedures necessary to implement the objectives of this chapter, including rules and proposals on administrative procedure;

(5) exercise general supervision over persons employed by the department in the administration of this chapter;

(6) investigate complaints and present formal complaints *made under this chapter*;

(7) attend all committee meetings as a nonvoting participant;

(8) handle the committee's correspondence; and

(9) obtain, assemble, or prepare reports and other information as directed or authorized by the committee.

SECTION 5.163. Section 603.106, Occupations Code, is amended to read as follows:

Sec. 603.106. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The *department* [~~commissioner~~] shall develop an intra-agency career ladder program.

The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The *department* [~~commissioner~~] shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees *under this chapter* must be based on the system established under this subsection.

SECTION 5.164. Section 603.107, Occupations Code, is amended to read as follows:

Sec. 603.107. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The *department* [~~commissioner~~] shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion, that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the committee workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the committee workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the *Texas Workforce* Commission *civil rights division* [~~on Human Rights~~] for compliance with Subsection (a)(1); and

(4) be filed with the governor.

SECTION 5.165. Section 603.151, Occupations Code, is amended to read as follows:

Sec. 603.151. GENERAL POWERS AND DUTIES OF *DEPARTMENT* [~~COMMISSIONER~~]. The *department* [~~commissioner~~] shall:

(1) establish the qualifications and fitness of applicants for licenses, including renewed and reciprocal licenses;

(2) revoke, suspend, or deny a license, probate a license suspension, or reprimand a license holder for a violation of this chapter, a rule adopted by the executive commissioner *under this chapter*, or the code of ethics adopted by the executive commissioner;

(3) spend money necessary to administer the department's duties;

(4) request and receive necessary assistance from another state agency, including a state educational institution;

(5) adopt an official seal; and

(6) [~~adopt and~~] publish *the* [~~a~~] code of ethics *adopted by the executive commissioner.*

SECTION 5.166. Section 603.153, Occupations Code, is amended to read as follows:

Sec. 603.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive commissioner may not adopt a rule restricting advertising or competitive bidding by a person regulated by the department *under this chapter* except to prohibit a false, misleading, or deceptive practice.

(b) The executive commissioner may not include in rules to prohibit a false, misleading, or deceptive practice by a person regulated by the department *under this chapter* a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of any advertisement by the person; or

(4) restricts the use by the person of a trade name in advertising.

SECTION 5.167. Section 603.1535(b), Occupations Code, is amended to read as follows:

(b) In rules under this section, the executive commissioner shall list the specific offenses for which a conviction would constitute grounds for the *department* [~~commissioner~~] to take action under Section 53.021.

SECTION 5.168. Section 603.154, Occupations Code, is amended to read as follows:

Sec. 603.154. FEES. *(a)* After consulting the commissioner or the department, the executive commissioner shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter.

(b) The executive commissioner shall set fees for the issuance or renewal of a license under this chapter in amounts designed to allow the department to recover from the license holders all of the direct and indirect costs to the department in administering and enforcing this chapter.

SECTION 5.169. Sections 603.159(a) and (c), Occupations Code, are amended to read as follows:

(a) The executive commissioner shall develop and implement a policy *under this chapter* to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(c) The *department* [~~commissioner~~] shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the department.

SECTION 5.170. Section 603.202(a), Occupations Code, is amended to read as follows:

(a) The executive commissioner by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints *under this chapter* to the department. The department may provide for that notice:

(1) on each license form, application, or written contract for services of a person licensed under this chapter;

(2) on a sign prominently displayed in the place of business of each person licensed under this chapter; or

(3) in a bill for services provided by a person licensed under this chapter.

SECTION 5.171. Section 603.203(a), Occupations Code, is amended to read as follows:

(a) The department shall maintain a system to promptly and efficiently act on complaints filed with the department *under this chapter*. The department shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

(2) a summary of the results of the review or investigation of the complaint; and

(3) information about the disposition of the complaint.

SECTION 5.172. Sections 603.204(a) and (d), Occupations Code, are amended to read as follows:

(a) The executive commissioner shall adopt rules concerning the investigation of a complaint filed with the department *under this chapter*. The rules shall:

(1) distinguish among categories of complaints;

(2) ensure that a complaint is not dismissed without appropriate consideration;

(3) require that the *department* [~~commissioner~~] be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the department to obtain the services of a private investigator.

(d) The executive secretary shall notify the *department* [~~commissioner~~] of a complaint that is not resolved within the time prescribed by the *department* [~~commissioner~~] for resolving the complaint so that the *department* [~~commissioner~~] may take necessary action on the complaint.

SECTION 5.173. Sections 603.2041(a), (h), and (i), Occupations Code, are amended to read as follows:

(a) In an investigation of a complaint filed with the department, the department may [~~request that the commissioner or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the department may~~] issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(h) All information and materials subpoenaed or compiled by the department in connection with a complaint and investigation *under this chapter* are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its agents or employees involved in discipline of the holder of a license, except that this information may be disclosed to:

(1) persons involved with the department in a disciplinary action against the holder of a license *under this chapter*;

(2) professional perfusionist licensing or disciplinary boards in other jurisdictions;

(3) peer assistance programs approved by the department under Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the department against a holder of a license *under this chapter*, the nature of those charges, disciplinary proceedings of the department, and final disciplinary actions, including warnings and reprimands, by the department are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

SECTION 5.174. Section 603.205, Occupations Code, is amended to read as follows:

Sec. 603.205. PUBLIC PARTICIPATION. (a) The *department* [~~State Health Services Council~~] shall develop and implement policies that provide the public with a reasonable opportunity to appear before the *department* [~~State Health Services Council~~] and to speak on any issue related to the practice of perfusion.

(b) The *department* [~~commissioner~~] shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the department's programs *under this chapter*.

SECTION 5.175. Section 603.252(b), Occupations Code, is amended to read as follows:

(b) The *department* [~~executive commissioner~~] shall prescribe the application form and *the executive commissioner* by rule may establish dates by which applications and fees must be received.

SECTION 5.176. Section 603.255(a), Occupations Code, is amended to read as follows:

(a) The department shall notify an applicant in writing of the receipt and investigation of the applicant's application and any other relevant evidence relating to qualifications established by *department* [~~an executive commissioner~~] rule not later than:

(1) the 45th day after the date a properly submitted and timely application is received; and

(2) the 30th day before the next examination date.

SECTION 5.177. Section 603.259(c), Occupations Code, is amended to read as follows:

(c) A provisionally licensed perfusionist must practice under the supervision and direction of a licensed perfusionist while performing perfusion. If the department finds that a licensed perfusionist is not reasonably available to provide supervision and direction and if the department approves an application submitted to the department by the provisionally licensed perfusionist, supervision and direction may be provided by a physician who is licensed by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~] and certified by the American Board of Thoracic *Surgery* [~~Surgeons, Inc.,~~] or certified in cardiovascular surgery by the American Osteopathic Board of Surgery.

SECTION 5.178. Section 603.304(a), Occupations Code, is amended to read as follows:

(a) To renew a license under this chapter, a person must submit proof satisfactory to the department that the person has complied with the continuing education requirements prescribed by the *executive commissioner* [~~department~~].

SECTION 5.179. Section 603.402(b), Occupations Code, is amended to read as follows:

(b) The executive commissioner shall prescribe procedures for appealing to the *department* [~~commissioner~~] a decision to revoke, suspend, or refuse to renew a license.

SECTION 5.180. Section 603.4515(a), Occupations Code, is amended to read as follows:

(a) A person who violates this chapter, a rule adopted by the executive commissioner *under this chapter*, or an order adopted by the *department* [~~commissioner~~] under this chapter is liable for a civil penalty not to exceed $5,000 a day.

SECTION 5.181. Section 603.453(a), Occupations Code, is amended to read as follows:

(a) If it appears to the *department* [~~commissioner~~] that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of perfusion, the *department* [~~commissioner~~] after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

SECTION 5.182. Section 603.502(c), Occupations Code, is amended to read as follows:

(c) The executive commissioner by rule shall adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or applicable rules to ensure that the amounts of penalties imposed are appropriate to the violation. The *department* [~~executive commissioner~~] shall provide the administrative penalty schedule to the public on request.

SECTION 5.183. Section 603.503, Occupations Code, is amended to read as follows:

Sec. 603.503. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY. [~~(a)~~] If the *department* [~~commissioner or the commissioner's designee~~] determines that a violation occurred, the *department* [~~commissioner or the designee may issue to the department a report stating:~~

[~~(1) the facts on which the determination is based; and~~

[~~(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.~~

[~~(b) Within 14 days after the date the report is issued, the commissioner or the commissioner's designee~~] shall give written notice of the *violation* [~~report~~] to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the [~~recommended~~] administrative penalty *recommended by the department*; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 5.184. Section 603.504, Occupations Code, is amended to read as follows:

Sec. 603.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the *department* [~~commissioner or the commissioner's designee~~]; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the *department* [~~commissioner or the commissioner's designee~~], the *department* [~~commissioner~~] by order shall approve the determination and impose the recommended penalty.

SECTION 5.185. Sections 603.505(a) and (c), Occupations Code, are amended to read as follows:

(a) If the person requests a hearing or fails to respond in a timely manner to the notice, the *department* [~~commissioner or the commissioner's designee~~] shall set a hearing and give written notice of the hearing to the person.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~commissioner~~] a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

SECTION 5.186. Section 603.506, Occupations Code, is amended to read as follows:

Sec. 603.506. DECISION BY *DEPARTMENT* [~~COMMISSIONER~~]. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the *department* [~~commissioner~~] by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the *department's* [~~commissioner's~~] order given to the person must include a statement of the right of the person to judicial review of the order.

SECTION 5.187. Sections 603.507(a) through (c), Occupations Code, are amended to read as follows:

(a) Within 30 days after the date the *department's* [~~commissioner's~~] order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the *department's* [~~commissioner's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner or the commissioner's designee~~] by certified mail.

(c) If the *department* [~~commissioner or the commissioner's designee~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~commissioner or the designee~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit.

SECTION 5.188. Sections 604.001(1) and (2), Occupations Code, are amended to read as follows:

(1) [~~"Board" means the Texas Board of Health.~~

[~~(2)~~] "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 5.189. The heading to Subchapter B, Chapter 604, Occupations Code, is amended to read as follows:

SUBCHAPTER B. POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER* [~~BOARD~~] AND DEPARTMENT

SECTION 5.190. Section 604.051(a), Occupations Code, is amended to read as follows:

(a) The *department* [~~department's bureau of licensing and compliance~~] shall administer the certification and permitting program under this chapter.

SECTION 5.191. Section 604.052, Occupations Code, is amended to read as follows:

Sec. 604.052. RULES. (a) The *executive commissioner* [~~board~~] by rule shall establish minimum standards for issuing, denying, renewing, suspending, suspending on an emergency basis, or revoking a certificate or temporary permit under this chapter.

(b) The *executive commissioner* [~~board~~] may adopt rules necessary to implement this chapter.

(c) The *executive commissioner* [~~board~~] may adopt rules relating to certifying, examining, or disciplining a person under this chapter only if necessary to protect the public health by ensuring that only a qualified person practices respiratory care.

SECTION 5.192. Section 604.053, Occupations Code, is amended to read as follows:

Sec. 604.053. FEES. (a) The *executive commissioner by rule* [~~board~~] shall set fees for an application, examination, certificate, temporary permit, permit and certificate renewal, and certificate reinstatement.

(b) The *executive commissioner by rule* [~~board~~] shall set fees in reasonable amounts that are sufficient to cover the costs of administering this chapter. *The executive commissioner shall set fees for issuing or renewing a certificate or permit in amounts designed to allow the department to recover from the certificate and permit holders all of the department's direct and indirect costs in administering and enforcing this chapter.*

SECTION 5.193. Section 604.055, Occupations Code, is amended to read as follows:

Sec. 604.055. PEER ASSISTANCE PROGRAM. The department may establish, approve, and fund a peer assistance program in accordance with Section 467.003, Health and Safety Code, and *department* [~~board~~] rules.

SECTION 5.194. Section 604.057, Occupations Code, is amended to read as follows:

Sec. 604.057. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The *executive commissioner* [~~board~~] may not adopt rules restricting advertising or competitive bidding by a temporary permit or certificate holder except to prohibit false, misleading, or deceptive practices.

(b) In *adopting* [~~its~~] rules to prohibit false, misleading, or deceptive practices, the *executive commissioner* [~~board~~] may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a temporary permit or certificate holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the temporary permit or certificate holder; or

(4) restricts the temporary permit or certificate holder's advertisement under a trade name.

SECTION 5.195. Section 604.101(b), Occupations Code, is amended to read as follows:

(b) A person may not practice respiratory care other than under the direction of a qualified medical director or other physician licensed by the Texas [~~State Board of~~] Medical *Board* [~~Examiners~~].

SECTION 5.196. Section 604.103, Occupations Code, is amended to read as follows:

Sec. 604.103. APPLICATION; APPLICATION FEE. An applicant for a certificate or temporary permit must:

(1) apply to the department on a form *prescribed by the department* and under rules *adopted* [~~prescribed~~] by the *executive commissioner* [~~board~~]; and

(2) submit a nonrefundable application fee with the application.

SECTION 5.197. Section 604.1041, Occupations Code, is amended to read as follows:

Sec. 604.1041. EXAMINATION. The *executive commissioner* [~~board~~] by rule shall establish examination requirements for a certificate under this chapter. The *executive commissioner* [~~board~~] may use the entry level examination prepared by the National Board for Respiratory Care or an equivalent examination.

SECTION 5.198. Section 604.108(b), Occupations Code, is amended to read as follows:

(b) A temporary permit is valid for the period set by *department* [~~board~~] rule. The period may not be less than six months or more than 12 months.

SECTION 5.199. Section 604.151(b), Occupations Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, the department shall prorate certificate fees on a monthly basis so that each certificate holder pays only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

SECTION 5.200. Section 604.154, Occupations Code, is amended to read as follows:

Sec. 604.154. CONTINUING EDUCATION REQUIREMENTS. (a) The *executive commissioner* [~~board~~] shall establish for the renewal of a certificate uniform continuing education requirements of not less than 12 or more than 24 continuing education hours for each renewal period.

(b) The *executive commissioner* [~~board~~] may adopt rules relating to meeting the continuing education requirements in a hardship situation.

SECTION 5.201. Section 604.156(b), Occupations Code, is amended to read as follows:

(b) To resume the practice of respiratory care, the practitioner must:

(1) notify the department;

(2) satisfy requirements adopted by the *executive commissioner* [~~board~~]; and

(3) pay the reinstatement fee and the renewal fee for the renewal period in which the practitioner will resume practice.

SECTION 5.202. Section 604.157(b), Occupations Code, is amended to read as follows:

(b) The department may renew a temporary permit for not more than one additional

period, pending compliance with this chapter and *department* [~~board~~] rules. The additional period may not be less than six months or more than 12 months.

SECTION 5.203. Section 604.203, Occupations Code, is amended to read as follows:

Sec. 604.203. DISCIPLINARY PROCEDURE. The procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by:

(1) *department* [~~board~~] rules for a contested case hearing; and

(2) Chapter 2001, Government Code.

SECTION 5.204. Section 604.304(b), Occupations Code, is amended to read as follows:

(b) If the person accepts the department's determination, the *department* [~~commissioner of public health or the commissioner's designee~~] by order shall approve the determination and assess the proposed penalty.

SECTION 5.205. Section 604.305, Occupations Code, is amended to read as follows:

Sec. 604.305. HEARING. (a) If the person requests a hearing in a timely manner, the department shall:

(1) set a hearing; *and*

(2) give written notice of the hearing to the person [~~; and~~

[~~(3) designate a hearings examiner to conduct the hearing~~].

(b) The hearings examiner shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the *department* [~~commissioner of public health or the commissioner's designee~~] a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

SECTION 5.206. The heading to Section 604.306, Occupations Code, is amended to read as follows:

Sec. 604.306. DECISION BY *DEPARTMENT* [~~COMMISSIONER OR DESIGNEE~~].

SECTION 5.207. Section 604.306(a), Occupations Code, is amended to read as follows:

(a) Based on the findings of fact, conclusions of law, and proposal for decision, the *department* [~~commissioner of public health or the commissioner's designee~~] by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

SECTION 5.208. Section 604.311(b), Occupations Code, is amended to read as follows:

(b) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the *department* [~~commissioner of public health or the commissioner's designee~~] requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

SECTION 5.209. Section 605.002(5), Occupations Code, is amended to read as follows:

(5) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

SECTION 5.210. Section 605.101, Occupations Code, is amended to read as follows:

Sec. 605.101. EXECUTIVE DIRECTOR. With the advice of the board, the *department* [~~commissioner~~] shall appoint an executive director to administer this chapter.

SECTION 5.211. Section 605.105(b), Occupations Code, is amended to read as follows:

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the *Texas Workforce* Commission *civil rights division* [~~on Human Rights~~] for compliance with Subsection (a)(1); and

(4) be filed with the governor.

SECTION 5.212. Section 605.152(b), Occupations Code, is amended to read as follows:

(b) If the General Appropriations Act does not set the amount of the fees, the board shall set the fees in amounts reasonable and necessary for the administration of this chapter. *The fees for issuing or renewing a license must be in amounts designed to allow the department and the board to recover from the license holders all of the direct and indirect costs to the department and to the board in administering and enforcing this chapter.*

SECTION 5.213. Section 605.2021(a), Occupations Code, is amended to read as follows:

(a) In an investigation of a complaint filed with the board, the board may request that the *department* [~~commissioner or the commissioner's designee~~] approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

SECTION 5.214. Section 605.403, Occupations Code, is amended to read as follows:

Sec. 605.403. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY. [~~(a)~~] If the *department* [~~commissioner or the commissioner's designee~~] determines that a violation occurred, the *department* [~~commissioner or the designee may issue to the board a report stating:~~

[~~(1) the facts on which the determination is based; and~~

[~~(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.~~

[~~(b) Within 14 days after the date the report is issued, the commissioner or the commissioner's designee~~] shall give written notice of the *violation* [~~report~~] to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the [~~recommended~~] administrative penalty *recommended by the department*; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 5.215. Section 605.404, Occupations Code, is amended to read as follows:

Sec. 605.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the *department* [~~commissioner or the commissioner's designee~~]; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the *department* [~~commissioner or the commissioner's designee~~], the board by order shall approve the determination and impose the recommended penalty.

SECTION 5.216. Section 605.405(a), Occupations Code, is amended to read as follows:

(a) If the person requests a hearing or fails to respond in a timely manner to the notice, the *department* [~~commissioner or the commissioner's designee~~] shall set a hearing and give written notice of the hearing to the person.

SECTION 5.217. Sections 605.407(b) and (c), Occupations Code, are amended to read as follows:

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner or the commissioner's designee~~] by certified mail.

(c) If the *department* [~~commissioner or the commissioner's designee~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~commissioner or the designee~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit.

SECTION 5.218. Section 701.106(b), Occupations Code, is amended to read as follows:

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the *Texas Workforce* Commission *civil rights division* [~~on Human Rights~~] for compliance with Subsection (a)(1); and

(4) be filed with the governor.

SECTION 5.219. Section 701.152(b), Occupations Code, is amended to read as follows:

(b) In adopting rules, the dietitians board shall consider the rules and procedures of the [~~Texas Board of Health and the~~] department and shall adopt procedural rules not inconsistent with similar rules and procedures of *the department* [~~those entities~~].

SECTION 5.220. Section 701.154(a), Occupations Code, is amended to read as follows:

(a) After consulting the [~~commissioner or the~~] department, the dietitians board by rule shall set fees in amounts reasonable and necessary to cover the cost of administering this chapter. *The fees for issuing or renewing a license must be in amounts designed to allow the department and the dietitians board to recover from the license holders all of the direct and indirect costs to the department and to the dietitians board in administering and enforcing this chapter.*

SECTION 5.221. Section 701.157, Occupations Code, is amended to read as follows:

Sec. 701.157. POWERS AND DUTIES OF *DEPARTMENT* [~~TEXAS BOARD OF HEALTH~~]. To implement this chapter, the *department* [~~Texas Board of Health~~]:

(1) shall request and receive any necessary assistance from state educational institutions or other state agencies;

(2) shall prepare information of consumer interest describing the regulatory functions of the dietitians board, the procedures by which consumer complaints are filed and resolved, and the profession of dietetics;

(3) shall prepare a registry of licensed dietitians and provisional licensed dietitians and make the registry available to the public, license holders, and appropriate state agencies; and

(4) may request the attorney general or the appropriate county or district attorney to institute a suit to enjoin a violation of this chapter in addition to any other action, proceeding, or remedy authorized by law.

SECTION 5.222. Section 701.301(b), Occupations Code, is amended to read as follows:

(b) The *dietitians board* [~~Texas Board of Health~~] by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, a license fee payable on the original expiration date shall be prorated on a monthly basis so that the license holder pays only that portion of the fee allocable to the number of months the license is valid. The license holder shall pay the total license renewal fee on renewal of the license on the new expiration date.

SECTION 5.223. Section 701.503, Occupations Code, is amended to read as follows:

Sec. 701.503. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the *department* [~~commissioner or the commissioner's designee~~] determines that a violation occurred, the *department* [~~commissioner or the designee~~] may issue to the dietitians board a report stating:

(1) the facts on which the determination is based; and

(2) the *department's* [~~commissioner's or the designee's~~] recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the *department* [~~commissioner or the commissioner's designee~~] shall give written notice of the report to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended administrative penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 5.224. Section 701.504, Occupations Code, is amended to read as follows:

Sec. 701.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the *department* [~~commissioner or the commissioner's designee~~]; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the *department* [~~commissioner or the commissioner's designee~~], the dietitians board by order shall approve the determination and impose the recommended penalty.

SECTION 5.225. Section 701.505(a), Occupations Code, is amended to read as follows:

(a) If the person requests a hearing or fails to respond in a timely manner to the notice, the *department* [~~commissioner or the commissioner's designee~~] shall set a hearing and give written notice of the hearing to the person.

SECTION 5.226. Sections 701.507(b) and (c), Occupations Code, are amended to read as follows:

(b) Within the 30–day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the dietitians board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner or the commissioner's designee~~] by certified mail.

(c) If the *department* [~~commissioner or the commissioner's designee~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~commissioner or the designee~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit.

SECTION 5.227. Section 1952.001, Occupations Code, is amended to read as follows:

Sec. 1952.001. DEFINITIONS. In this chapter:

(1) [~~"Board" means the Texas Board of Health.~~

[~~(2)~~] "Code enforcement" means the inspection of public or private premises for the purpose of:

(A) identifying environmental hazards, including:

(i) fire or health hazards;

(ii) nuisance violations;

(iii) unsafe building conditions; and

(iv) violations of any fire, health, or building regulation, statute, or ordinance; and

(B) improving and rehabilitating those premises with regard to those hazards.

(2) [~~(3)~~] "Code enforcement officer" means an agent of this state or a political subdivision of this state who engages in code enforcement.

(3) [~~(4)~~] "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 5.228. The heading to Subchapter B, Chapter 1952, Occupations Code, is amended to read as follows:

SUBCHAPTER B. [~~BOARD~~] POWERS AND DUTIES *OF EXECUTIVE COMMISSIONER AND DEPARTMENT*

SECTION 5.229. Section 1952.051, Occupations Code, is amended to read as follows:

Sec. 1952.051. RULES. The *executive commissioner* [~~board~~] by rule shall:

(1) adopt standards and education requirements consistent with those established under Chapter 654, Government Code, for the registration of:

(A) code enforcement officers; and

(B) code enforcement officers in training; and

(2) prescribe application forms for original and renewal certificates of registration.

SECTION 5.230. Section 1952.052, Occupations Code, is amended to read as follows:

Sec. 1952.052. FEES. *(a)* The *executive commissioner* [~~board~~] shall set fees in amounts that are reasonable and necessary to cover the cost of administering this chapter.

(b) The executive commissioner shall set fees for issuing or renewing a certificate of registration in amounts designed to allow the department to recover from the certificate of registration holders all of the department's direct and indirect costs in administering and enforcing this chapter.

SECTION 5.231. Section 1952.053(b), Occupations Code, is amended to read as follows:

(b) The register must include:

(1) the name, residence, date of birth, and social security number of the applicant;

(2) the name and address of the employer or business of the applicant;

(3) the date of the application;

(4) the education and experience qualifications of the applicant;

(5) the action taken by the department regarding the application and the date of the action;

(6) the serial number of any certificate of registration issued to the applicant; and

(7) any other information required by *department* [~~board~~] rule.

SECTION 5.232. Section 1952.102, Occupations Code, is amended to read as follows:

Sec. 1952.102. ELIGIBILITY TO REGISTER AS CODE ENFORCEMENT OFFICER. To be eligible to receive a certificate of registration as a code enforcement officer, a person must:

(1) have at least one year of full-time experience in the field of code enforcement;

(2) pass the examination conducted by the department or the department's designee;

(3) pay the application, examination, and registration fees; and

(4) meet any other requirements prescribed by this chapter or by *department* [~~board~~] rule.

SECTION 5.233. Section 1952.105, Occupations Code, is amended to read as follows:

Sec. 1952.105. RENEWAL OR REINSTATEMENT OF CERTIFICATE. (a) A certificate of registration issued under this chapter expires on the *second* [~~first~~] anniversary of the date of issuance and may be renewed *biennially* [~~annually~~] on payment of the required renewal fee and on completion of the [~~annual~~] continuing education requirements prescribed by *department rule* [~~the board~~].

(b) The department may reinstate as provided by *department* [~~board~~] rule a certificate of registration that was revoked for failure to pay the renewal fee.

SECTION 5.234. Section 1952.1051, Occupations Code, is amended to read as follows:

Sec. 1952.1051. CONTINUING EDUCATION. The *executive commissioner* [~~board~~] by rule shall prescribe [~~annual~~] continuing education requirements for code enforcement officers and code enforcement officers in training that:

(1) establish the number of hours of continuing education required for renewal of a certificate of registration;

(2) establish an approved curriculum that includes material regarding changes in applicable law; and

(3) provide that the approved curriculum may be taught by suitable public agencies and by private entities approved by the department.

SECTION 5.235. Section 1952.152, Occupations Code, is amended to read as follows:

Sec. 1952.152. PROCEDURE. The denial, suspension, or revocation of a certificate of registration under this chapter is governed by:

(1) *department* [~~the board's~~] rules for a contested case hearing; and

(2) Chapter 2001, Government Code.

SECTION 5.236. Section 1952.253, Occupations Code, is amended to read as follows:

Sec. 1952.253. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY. [~~(a)~~] If the *department* [~~commissioner of public health or the commissioner's designee~~] determines that a violation occurred, the *department* [~~commissioner or the designee may issue to the department a report stating:~~

[~~(1) the facts on which the determination is based; and~~

[~~(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.~~

[~~(b) Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee~~] shall give written notice of the *violation* [~~report~~] to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the [~~recommended~~] administrative penalty *recommended by the department*; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

SECTION 5.237. Section 1952.254, Occupations Code, is amended to read as follows:

Sec. 1952.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the *department* [~~commissioner of public health or the commissioner's designee~~]; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the *department* [~~commissioner of public health or the commissioner's designee~~], the department by order shall approve the determination and impose the recommended penalty.

SECTION 5.238. Section 1952.255(a), Occupations Code, is amended to read as follows:

(a) If the person requests a hearing or fails to respond in a timely manner to the notice, the *department* [~~commissioner of public health or the commissioner's designee~~] shall set a hearing and give written notice of the hearing to the person.

SECTION 5.239. Sections 1952.257(b) and (c), Occupations Code, are amended to read as follows:

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner of public health or the commissioner's designee~~] by certified mail.

(c) If the *department* [~~commissioner of public health or the commissioner's designee~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~commissioner or the designee~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit.

SECTION 5.240. Section 1953.001, Occupations Code, is amended to read as follows:

Sec. 1953.001. DEFINITIONS. In this chapter:

(1) *"Department"* [~~"Board"~~] means the *Department* [~~Texas Board~~] of *State* Health *Services.*

(2) *"Executive commissioner" means the executive commissioner of the Health and Human Services Commission.*

(3) "Sanitarian" means a person trained in sanitary science to perform duties relating to education and inspections in environmental sanitation.

(4) [~~(3)~~] "Sanitation" means the study, art, and technique of applying scientific knowledge to improve the human environment for the purpose of promoting public health and welfare.

SECTION 5.241. Section 1953.003, Occupations Code, is amended to read as follows:

Sec. 1953.003. EXEMPTIONS. This chapter does not apply to a person, including a physician, dentist, engineer, or veterinarian, who is licensed by an agency of this state other than the *department* [~~board~~] and who, by nature of the person's employment or duties, might be construed as being subject to this chapter.

SECTION 5.242. Subchapter B, Chapter 1953, Occupations Code, is amended to read as follows:

SUBCHAPTER B. [~~BOARD~~] POWERS AND DUTIES *OF EXECUTIVE COMMISSIONER AND DEPARTMENT*

Sec. 1953.051. GENERAL DUTIES OF *DEPARTMENT* [~~BOARD~~]. The *department* [~~board~~] shall:

(1) [~~adopt rules to administer and enforce this chapter;~~

[~~(2)~~] administer continuing education requirements; and

(2) [~~(3)~~] prescribe necessary forms.

Sec. 1953.0511. RULES. The executive commissioner shall adopt rules to administer and enforce this chapter.

Sec. 1953.052. FEES; PAYMENT OF ADMINISTRATIVE COSTS. (a) The *executive commissioner by rule* [~~board~~] shall prescribe fees under this chapter.

(b) General revenue of the state may not be used to pay the costs of administering this chapter in an amount that exceeds the amount of fees received under this chapter.

(c) If the fees are inadequate to pay the costs of administering this chapter, the *executive commissioner* [~~board~~] may increase the fees to an amount sufficient to pay those costs.

(d) The executive commissioner shall set fees for issuing or renewing a certificate of registration in amounts designed to allow the department to recover from the certificate of registration holders all of the department's direct and indirect costs in administering and enforcing this chapter.

Sec. 1953.053. REGISTER OF APPLICATIONS. (a) The *department* [~~board~~] shall keep a register of each application for a certificate of registration under this chapter.

(b) The register must include:

(1) the name, age, and place of residence of the applicant;

(2) the name and address of the employer or business connection of the applicant;

(3) the date of the application;

(4) complete information regarding the applicant's education and experience qualifications;

(5) the date the *department* [~~board~~] reviewed and acted on the application;

(6) a description of the *department's* [~~board's~~] action on the application;

(7) the serial number of any certificate of registration issued to the applicant; and

(8) any other information the *department* [~~board~~] determines necessary.

Sec. 1953.054. RECORD OF PROCEEDINGS. The *department* [~~board~~] shall keep a record of proceedings under this chapter.

Sec. 1953.055. REPORTS. The *department* [~~board~~] shall maintain a copy of each annual report and each report prepared by the state auditor issued in connection with this chapter.

SECTION 5.243. Sections 1953.102, 1953.103, and 1953.104, Occupations Code, are amended to read as follows:

Sec. 1953.102. ELIGIBILITY REQUIREMENTS. (a) To be eligible to receive a certificate of registration as a professional sanitarian, a person must:

(1) hold at least a bachelor's degree from an accredited college or university that includes at least 30 semester hours in basic or applied science;

(2) complete any additional training in the basic sciences or public health the *executive commissioner* [~~board~~] determines necessary to effectively serve as a professional sanitarian; and

(3) have at least two years of full-time experience in sanitation.

(b) The *executive commissioner* [~~board~~] by rule may establish other qualifications for registration.

Sec. 1953.103. RECIPROCAL REGISTRATION. The *department* [~~board~~] under rules adopted by the *executive commissioner* [~~board~~] may enter into an agreement with another state to provide for reciprocal registration if the other state provides by statute for the registration of sanitarians.

Sec. 1953.104. ISSUANCE OF CERTIFICATE: PROFESSIONAL SANITARIAN; *TERM. (a)* The *department* [~~board~~] shall issue a certificate of registration as a professional sanitarian to a person who:

(1) applies on the form prescribed by the *department* [~~board~~];

(2) pays the registration fee set by the *executive commissioner by rule* [~~board~~];

(3) meets the eligibility requirements prescribed by Section 1953.102; and

(4) passes an examination under Subchapter D.

(b) A certificate of registration is valid for two years.

SECTION 5.244. Section 1953.105(a), Occupations Code, is amended to read as follows:

(a) *The department* [~~On approval by the board, the board~~] shall issue a certificate of registration as a sanitarian in training to a person who:

(1) is employed in sanitation;

(2) meets the eligibility requirements prescribed by Section 1953.102, other than the requirements relating to experience;

(3) pays a registration fee prescribed by the *executive commissioner by rule* [~~board~~] for a sanitarian in training; and

(4) passes an examination under Subchapter D.

SECTION 5.245. Section 1953.106, Occupations Code, is amended to read as follows:

Sec. 1953.106. RENEWAL OR REINSTATEMENT OF CERTIFICATE. (a) To renew a certificate of registration under this chapter, a professional sanitarian must:

(1) pay to the *department* [~~board~~] a renewal fee prescribed by the *executive commissioner by rule* [~~board~~]; and

(2) provide proof of completion of continuing education contact hours as prescribed by the *executive commissioner* [~~board~~].

(b) The *department* [~~board~~] may reinstate a certificate of registration as provided by *department* [~~board~~] rules that was revoked for failure to pay the renewal fee.

SECTION 5.246. Subchapters D and E, Chapter 1953, Occupations Code, are amended to read as follows:

SUBCHAPTER D. EXAMINATION

Sec. 1953.151. EXAMINATION. (a) To obtain a certificate of registration under this chapter, an applicant must pass a written examination prescribed by the *department* [~~board~~] that provides evidence satisfactory to the *department* [~~board~~] that the applicant is qualified for registration under this chapter.

(b) An applicant for a certificate of registration may not take the examination unless the applicant pays the examination fee prescribed by the *executive commissioner by rule* [~~board~~].

(c) In evaluating an applicant's performance on the examination, the *department* [~~board~~] shall carefully consider the applicant's knowledge and understanding of the principles of sanitation and the physical, biological, and social sciences.

Sec. 1953.152. EXAMINATION RESULTS. (a) Not later than the 30th day after the examination date, the *department* [~~board~~] shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the *department* [~~board~~] shall notify each examinee of the results of the examination not later than the 14th day after the date the *department* [~~board~~] receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a national testing service will not be given before the 91st day after the examination date, the *department* [~~board~~] shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination, the *department* [~~board~~] shall provide to the person an analysis of the person's performance on the examination.

SUBCHAPTER E. CERTIFICATE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1953.201. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. (a) The *department* [~~board~~] may deny a person's application for a certificate of registration if:

(1) the person's certificate or license to engage in a profession in this state or elsewhere has been revoked for unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of the profession; or

(2) satisfactory proof is presented to the *department* [~~board~~] establishing that the person has been found guilty of unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of a profession.

(b) The *department* [~~board~~] may suspend or revoke a certificate of registration if the certificate holder:

(1) practiced fraud or deceit in obtaining the certificate; or

(2) acted in a manner constituting gross negligence, incompetency, or misconduct in the practice of sanitation.

Sec. 1953.202. HEARING. The *department* [~~board~~] may not deny an application for a certificate of registration or suspend or revoke a person's certificate until a hearing is held and the person is given the opportunity to answer any charges filed with the *department* [~~board~~].

SECTION 5.247. Section 1953.301, Occupations Code, is amended to read as follows:

Sec. 1953.301. IMPOSITION OF ADMINISTRATIVE PENALTY. The *department* [~~board~~] may impose an administrative penalty on a person registered under this chapter who violates this chapter or a rule or order adopted under this chapter.

SECTION 5.248. Sections 1953.303 and 1953.304, Occupations Code, are amended to read as follows:

Sec. 1953.303. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY. [~~(a)~~] If the *department* [~~commissioner of public health or the commissioner's designee~~] determines that a violation occurred, the *department* [~~commissioner or the designee may issue to the board a report stating:~~

[~~(1) the facts on which the determination is based; and~~

[~~(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.~~

[~~(b) Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee~~] shall give written notice of the *violation* [~~report~~] to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the [~~recommended~~] administrative penalty *recommended by the department*; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 1953.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty [~~of the commissioner of public health or the commissioner's designee~~]; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty [~~of the commissioner of public health or the commissioner's designee~~], the *department* [~~board~~] by order shall approve the determination and impose the recommended penalty.

SECTION 5.249. Sections 1953.305(a) and (c), Occupations Code, are amended to read as follows:

(a) If the person requests a hearing or fails to respond in a timely manner to the notice, the *department* [~~commissioner of public health or the commissioner's designee~~] shall set a hearing and give written notice of the hearing to the person.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the *department* [~~board~~] a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

SECTION 5.250. Section 1953.306, Occupations Code, is amended to read as follows:

Sec. 1953.306. DECISION BY *DEPARTMENT* [~~BOARD~~]. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the *department* [~~board~~] by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the *department's* [~~board's~~] order given to the person must include a statement of the right of the person to judicial review of the order.

SECTION 5.251. Sections 1953.307(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) Within 30 days after the date the *department's* [~~board's~~] order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30–day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the *department's* [~~board's~~] order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the *department* [~~commissioner of public health or the commissioner's designee~~] by certified mail.

(c) If the *department* [~~commissioner of public health or the commissioner's designee~~] receives a copy of an affidavit under Subsection (b)(2), the *department* [~~commissioner or the designee~~] may file with the court, within five days after the date the copy is received, a contest to the affidavit.

SECTION 5.252. Section 1954.002, Occupations Code, is amended by amending Subdivisions (7) and (8) and adding Subdivision (10–a) to read as follows:

(7) "Commissioner" means the commissioner of *state* [~~public~~] health *services*.

(8) "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(10–a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 5.253. The heading to Subchapter B, Chapter 1954, Occupations Code, is amended to read as follows:

SUBCHAPTER B. POWERS AND DUTIES OF *EXECUTIVE COMMISSIONER* [~~BOARD~~] AND DEPARTMENT

SECTION 5.254. Section 1954.051, Occupations Code, is amended to read as follows:

Sec. 1954.051. GENERAL RULEMAKING AUTHORITY. The *executive commissioner* [~~board~~] shall adopt substantive and procedural rules as necessary or desirable for the *executive commissioner* [~~board~~], the department, and the commissioner to discharge their powers and duties under this chapter.

SECTION 5.255. Section 1954.052, Occupations Code, is amended to read as follows:

Sec. 1954.052. RULES REGARDING ASBESTOS CONCENTRATION LEVELS. (a) The *executive commissioner* [~~board~~] may adopt rules defining the maximum airborne asbestos concentrations that are:

(1) permissible outside of a regulated containment area during an abatement activity; and

(2) acceptable for final clearance.

(b) The *executive commissioner* [~~board~~] may not *by rule* identify any level of asbestos concentration as a safe exposure level because any exposure to airborne asbestos is considered to involve some risk.

SECTION 5.256. Section 1954.053, Occupations Code, is amended to read as follows:

Sec. 1954.053. RULES REGARDING PERFORMANCE STANDARDS AND WORK PRACTICES. The *executive commissioner* [~~board~~] may adopt rules specifying:

(1) performance standards at least as stringent as applicable federal standards; and

(2) work practices that affect asbestos removal or encapsulation in a public building.

SECTION 5.257. Section 1954.054, Occupations Code, is amended to read as follows:

Sec. 1954.054. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The *executive commissioner* [~~board~~] may not adopt a rule restricting advertising or competitive bidding by a person licensed or registered under this chapter except to prohibit a false, misleading, or deceptive practice.

(b) In *adopting* [~~its~~] rules to prohibit a false, misleading, or deceptive practice, the *executive commissioner* [~~board~~] may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of the personal appearance or voice of the person in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

SECTION 5.258. Section 1954.055, Occupations Code, is amended to read as follows:

Sec. 1954.055. RECIPROCITY AGREEMENT. The *executive commissioner* [~~department~~] may adopt rules under this chapter to effect reciprocity agreements with other states.

SECTION 5.259. Section 1954.056(a), Occupations Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall *set* [~~adopt a schedule of the~~] fees *under* [~~that are provided by~~] this chapter *in amounts that are* [~~and any other fee that is~~] reasonable and necessary. *The executive commissioner shall set fees for issuing or renewing a license in amounts designed to allow the department to recover from the license holders all of the department's direct and indirect costs in administering and enforcing this chapter.*

SECTION 5.260. Section 1954.059(a), Occupations Code, is amended to read as follows:

(a) The department shall inspect:

(1) an asbestos abatement contractor during an abatement project at least annually; and

(2) other licensed organizations in accordance with *department* [~~board~~] rules.

SECTION 5.261. Sections 1954.060(a) and (c), Occupations Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] may adopt and the department may enforce rules regarding demolition and renovation activities to protect the public from asbestos emissions. At a minimum, the rules must be sufficient to permit the department to obtain authority from the United States Environmental Protection Agency to implement and enforce in this state the provisions of 40 C.F.R. Part 61, Subpart M, that establish the requirements applicable to the demolition and renovation of a facility, including the disposal of asbestos-containing waste materials.

(c) The *department* [~~board~~] may exempt a demolition or renovation project from the rules relating to demolition and renovation activities adopted under Subsection (a) if:

(1) the project has received an exemption from the United States Environmental Protection Agency exempting the project from federal regulations; or

(2) the *department* [~~board~~] determines that:

(A) the project will use methods for the abatement or removal of asbestos that provide protection for the public health and safety at least equivalent to the protection provided by the procedures required under *department* [~~board~~] rule for the abatement or removal of asbestos; and

(B) the project does not violate federal law.

SECTION 5.262. Section 1954.061, Occupations Code, is amended to read as follows:

Sec. 1954.061. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN SOLID WASTE FACILITIES. The *executive commissioner* [~~board~~] and the Texas [~~Natural Resource Conservation~~] Commission *on Environmental Quality* by rule shall adopt a joint memorandum of understanding regarding the inspection of solid waste facilities that receive asbestos.

SECTION 5.263. Section 1954.101(b), Occupations Code, is amended to read as follows:

(b) In accordance with a schedule established by *department* [~~board~~] rules, a person may not sponsor or certify an asbestos training course required for licensing or registration under this chapter unless the person is licensed as a training sponsor.

SECTION 5.264. Sections 1954.102(a) and (c), Occupations Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall determine and specify the scope, purpose,

eligibility, qualifications, and compliance requirements for each class of license and any other license necessary for the *executive commissioner and department* [~~board~~] to carry out *their* [~~its~~] duties under this chapter.

(c) A laboratory may be licensed as an asbestos laboratory only if the laboratory:

(1) is accredited by the National Voluntary Laboratory and Analytical Proficiency Accreditation or is enrolled in the EPA Proficiency Analytical Testing rounds, as appropriate; or

(2) has similar qualifications as required by the *executive commissioner* [~~board~~].

SECTION 5.265. Section 1954.105(a), Occupations Code, is amended to read as follows:

(a) An applicant for a license to engage in asbestos abatement or in another asbestos-related activity for which a license is required under this chapter must:

(1) submit an application to the department on a form prescribed by the department; and

(2) pay to the department a nonrefundable application fee in the amount set by the *executive commissioner by rule* [~~board~~].

SECTION 5.266. Section 1954.106(a), Occupations Code, is amended to read as follows:

(a) To qualify for a license under this chapter, an applicant must meet the requirements of this section and any other requirements established by the *executive commissioner* [~~board~~], including asbestos-related education or experience requirements.

SECTION 5.267. Section 1954.107(a), Occupations Code, is amended to read as follows:

(a) An individual may apply for a restricted license as an asbestos abatement supervisor without the experience the *executive commissioner* [~~board~~] by rule may require to be licensed as an asbestos abatement supervisor if the individual:

(1) is an employee of a building owner or manager; and

(2) meets all other qualifications or requirements for a license.

SECTION 5.268. Sections 1954.108(a) and (b), Occupations Code, are amended to read as follows:

(a) An application for registration or the renewal of registration as an asbestos abatement worker must be made on a form provided by the department. An application for registration must be accompanied by a nonrefundable fee set by the *executive commissioner by rule* [~~board in an amount not to exceed $50~~].

(b) The *executive commissioner* [~~board~~] shall determine the criteria for registration or the renewal of registration as an asbestos abatement worker.

SECTION 5.269. Section 1954.109, Occupations Code, is amended to read as follows:

Sec. 1954.109. EXAMINATIONS. The *executive commissioner* [~~board~~] may:

(1) require or authorize the use of standardized examinations for licensing or registration under this chapter; and

(2) set fees [~~in amounts not to exceed $200~~] for the administration of the examinations.

SECTION 5.270. Section 1954.151(a), Occupations Code, is amended to read as follows:

(a) The department may grant a provisional license or registration to an applicant for a license or registration in this state who:

(1) has been licensed or registered in good standing to perform the relevant asbestos-related activity for at least two years in another jurisdiction, including a foreign country, that has licensing or registration requirements substantially equivalent to the requirements of this chapter;

(2) is currently licensed or registered in that jurisdiction;

(3) has passed a national or other examination recognized by the *executive commissioner* [~~board~~] relating to the relevant asbestos-related activity, if the *executive commissioner* [~~board~~] requires an examination under Section 1954.109 to obtain the license or registration required to perform that activity; and

(4) is sponsored by a person licensed under this chapter with whom the provisional license or registration holder will practice during the time the person holds the provisional license or registration.

SECTION 5.271. Section 1954.153, Occupations Code, is amended to read as follows:

Sec. 1954.153. ELIGIBILITY FOR LICENSE OR REGISTRATION. The department shall issue a license or registration under Subchapter C to a provisional license or registration holder who is eligible to be licensed or registered under rules adopted under Section 1954.055 or who:

(1) passes the part of the examination under Section 1954.109 that relates to the applicant's knowledge and understanding of the laws and rules relating to the performance of the relevant asbestos-related activity in this state, if the *executive commissioner* [~~board~~] requires an examination under Section 1954.109 to obtain the license or registration required to perform that activity;

(2) meets the relevant academic and experience requirements for the license or registration, as verified by the department; and

(3) satisfies any other applicable license or registration requirement under this chapter.

SECTION 5.272. Section 1954.201, Occupations Code, is amended to read as follows:

Sec. 1954.201. [~~ANNUAL~~] LICENSE *EXPIRATION AND* RENEWAL [~~REQUIRED~~]. (a) A license issued under this chapter expires on the *second* [~~first~~] anniversary of its effective date *and may be* [~~, unless the license is~~] renewed [~~for a one-year term~~] as provided by this subchapter. A person whose license has expired may not engage in an activity for which a license is required until the license is renewed.

(b) The *executive commissioner* [~~board~~] by rule may adopt a system under which licenses expire on various dates during the year. For a year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee is payable.

SECTION 5.273. Section 1954.203(a), Occupations Code, is amended to read as follows:

(a) A person may renew an unexpired license for an additional *two-year* [~~one-year~~] term if the person:

(1) is otherwise entitled to be licensed;

(2) submits to the department a renewal application on the form required by the department;

(3) pays to the department a nonrefundable renewal fee [~~in an amount not to exceed the amount of the application fee required under Section 1954.105(a)~~];

(4) has successfully completed:

(A) the requirements for renewal; and

(B) a current physical examination; and

(5) has complied with any final order resulting from a violation of this chapter.

SECTION 5.274. Section 1954.205(a), Occupations Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall set the term of registration of an asbestos abatement worker.

SECTION 5.275. Sections 1954.256(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt an asbestos training approval plan to approve the training required for a person to be licensed or registered under this chapter. In adopting the plan, the *executive commissioner* [~~board~~] shall adopt by reference the Model Accreditation Plan developed by the United States Environmental Protection Agency.

(b) The *executive commissioner* [~~board~~] may establish other requirements or change the number, design, or content of the plan adopted under Subsection (a) as the *executive commissioner* [~~board~~] determines desirable, provided that the plan is at least as comprehensive and stringent as the Model Accreditation Plan.

(d) A licensed training sponsor shall provide to the department in accordance with *department* [~~board~~] rules a record of the persons who attend an asbestos training course for licensing or registration under this chapter.

SECTION 5.276. Section 1954.258, Occupations Code, is amended to read as follows:

Sec. 1954.258. COMPLIANCE WITH [~~BOARD~~] STANDARDS NOT A DEFENSE TO CIVIL LIABILITY. Compliance with any minimum standards adopted by the *executive commissioner* [~~board~~] under this chapter does not constitute a defense to a civil action for damages arising from a work activity affecting asbestos.

SECTION 5.277. Section 1954.301(d), Occupations Code, is amended to read as follows:

(d) The department may place on probation a person whose license or registration is suspended. If a suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the *department* [~~board~~]; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the *department* [~~board~~] in those areas that are the basis of the probation.

SECTION 5.278. Section 1954.302, Occupations Code, is amended to read as follows:

Sec. 1954.302. GROUNDS FOR DISCIPLINE OF LICENSE HOLDER. The *executive commissioner* [~~board~~] by rule shall adopt the criteria for the department to take disciplinary action against a license holder under Section 1954.301. At a minimum, the criteria must require disciplinary action against a license holder who:

(1) commits fraud or deception in obtaining or attempting to obtain a license or a contract to perform an asbestos-related activity;

(2) fails at any time to meet the qualifications for a license;

(3) violates a rule adopted under this chapter;

(4) violates an applicable federal or state standard for asbestos-related activities; or

(5) falsifies or fails to maintain a record of an asbestos-related activity required by a federal agency or by the department.

SECTION 5.279. Section 1954.303, Occupations Code, is amended to read as follows:

Sec. 1954.303. GROUNDS FOR DISCIPLINE OF REGISTERED PERSON. The department shall take disciplinary action under Section 1954.301 against a person registered under this chapter who:

(1) fraudulently or deceptively assigns, obtains, or attempts to assign or obtain a registration or the renewal of a registration; or

(2) violates:

(A) a federal, state, or local asbestos law or rule; or

(B) an order issued by the *executive commissioner* [~~board~~] or department.

SECTION 5.280. Section 1954.306, Occupations Code, is amended to read as follows:

Sec. 1954.306. ADMINISTRATIVE PROCEDURE. A notice and hearing required under this subchapter and judicial review of a final administrative decision issued under this subchapter are governed by Chapter 2001, Government Code, and the *department* [~~board~~] rules for contested case hearings.

SECTION 5.281. Section 1954.307, Occupations Code, is amended to read as follows:

Sec. 1954.307. REAPPLICATION FOLLOWING LICENSE REVOCATION OR SUSPENSION. A person whose license is revoked or suspended may not reapply for a license until after the period stated in a schedule established by *department* [~~board~~] rule.

SECTION 5.282. Subchapter H, Chapter 1954, Occupations Code, is amended to read as follows:

SUBCHAPTER H. ADMINISTRATIVE PENALTY

Sec. 1954.351. IMPOSITION OF ADMINISTRATIVE PENALTY. The *department* [~~commissioner~~] may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

Sec. 1954.352. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of imposing a penalty.

(b) In determining the amount of the penalty, the *department* [~~commissioner~~] shall consider:

(1) the seriousness of the violation;

(2) any hazard created to the health and safety of the public;

(3) the person's history of previous violations; and

(4) any other matter that justice may require.

Sec. 1954.353. OPPORTUNITY FOR HEARING; ORDER. (a) The *department* [~~commissioner~~] may impose an administrative penalty under this subchapter only after the person charged with a violation is given the opportunity for a hearing.

(b) If a hearing is held, the *department* [~~commissioner~~] shall make findings of fact and issue a written decision as to:

(1) the occurrence of the violation; and

(2) the amount of any penalty that is warranted.

(c) If the person charged with a violation fails to exercise the opportunity for a hearing, the *department* [~~commissioner~~], after determining that a violation occurred and the amount of the penalty that is warranted, may impose a penalty and shall issue an order requiring the person to pay any penalty imposed.

(d) Not later than the 30th day after the date an order is issued after determining that a violation occurred, the *department* [~~commissioner~~] shall inform the person charged with the violation of the amount of any penalty imposed.

(e) The *department* [~~commissioner~~] may consolidate a hearing under this section with another proceeding.

Sec. 1954.354. OPTIONS FOLLOWING DECISION[~~: PAY OR APPEAL~~]. (a) Not later than the 30th day after the date the *department's* [~~commissioner's~~] decision or order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(2) may:

(1) stay enforcement of the penalty by:

(A) [~~(1)~~] paying the penalty to the *court* [~~commissioner~~] for placement in an escrow account; or

(B) posting with the court [~~(2) giving the commissioner~~] a *supersedeas* bond in a form approved by the *court* [~~commissioner~~] that[~~:~~

[~~(A)~~] is for the amount of the penalty[~~;~~] and

[~~(B)~~] is effective until judicial review of the *department's* [~~commissioner's~~] decision or order is final*; or*

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Sec. 1954.355. COLLECTION OF PENALTY. At the request of the *department* [~~commissioner~~], the attorney general may bring a civil action to recover an administrative penalty imposed under this subchapter.

Sec. 1954.356. JUDICIAL REVIEW. Judicial review of a decision or order of the *department* [~~commissioner~~] imposing a penalty under this subchapter is instituted by filing a petition with a district court in Travis County and is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code.

Sec. 1954.357. REMITTANCE OF PENALTY AND INTEREST OR RELEASE OF BOND. If after judicial review the administrative penalty is reduced or is not upheld by the court, the *department* [~~commissioner~~] shall:

(1) remit the appropriate amount, plus accrued interest, to the person not later than the 30th day after the date of the determination, if the person paid the penalty; or

(2) execute a release of the bond, if the person gave a bond.

SECTION 5.283. Sections 1955.001(1), (2), and (3), Occupations Code, are amended to read as follows:

(1) [~~"Board" means the Texas Board of Health.~~

[~~(2)~~] "Child-occupied facility" means a building or part of a building constructed before 1978, including a day-care center, preschool, or kindergarten classroom, that is visited regularly by the same child, six years of age or younger, at least two days in any calendar week if the visits are for at least:

(A) three hours each day; and

(B) 60 hours each year.

(2) [~~(3)~~] "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 5.284. Section 1955.002, Occupations Code, is amended to read as follows:

Sec. 1955.002. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The *executive commissioner* [~~board~~] may not adopt rules restricting advertising or competitive bidding by a certified or accredited person except to prohibit false, misleading, or deceptive practices.

(b) The *executive commissioner* [~~board~~] may not include in *the* [~~its~~] rules to prohibit false, misleading, or deceptive practices a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the use of a certified or accredited person's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the certified or accredited person; or

(4) restricts the certified or accredited person's advertisement under a trade name.

SECTION 5.285. Section 1955.051(d), Occupations Code, is amended to read as follows:

(d) Rules adopted *by the executive commissioner* under this section must:

(1) set minimum training requirements for use by accredited training providers;

(2) set standards for the reliability, effectiveness, and safety of lead-based paint activities in target housing;

(3) set standards for accrediting training providers;

(4) require the use of certified and accredited personnel in a lead-based paint activity in target housing or in a child-occupied facility;

(5) be revised as necessary to:

(A) comply with federal law and rules; and

(B) maintain eligibility for federal funding;

(6) facilitate reciprocity and communication with other states having a certification and accreditation program;

(7) provide for the revocation of the certification or accreditation of a person certified or accredited by the department; and

(8) provide for financial assurance for a person certified or accredited by the department.

SECTION 5.286. Section 1955.052(a), Occupations Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] by rule may require a person involved in a lead-based paint activity in target housing or a public area that the department determines creates a public health hazard to be certified. The department shall delay implementation of the certification requirement for six months after the date the rule is adopted.

SECTION 5.287. Section 1955.053, Occupations Code, is amended to read as follows:

Sec. 1955.053. FEES. The *executive commissioner by rule* [~~department~~] may impose a fee to cover the cost of administering the program. *The executive commissioner shall set fees for issuing or renewing a certification or accreditation in amounts designed to allow the department to recover from the certification and accreditation holders all of the department's direct and indirect costs in administering and enforcing this chapter.*

SECTION 5.288. Section 1955.055, Occupations Code, is amended to read as follows:

Sec. 1955.055. *TERM OF* CERTIFICATION OR ACCREDITATION; EXPIRATION. (a) *A certification or accreditation is valid for two years.*

(b) The *executive commissioner* [~~board~~] by rule may adopt a system under which certifications or accreditations expire on various dates during the year. For the year in which the expiration date is changed, the department shall prorate certification or accreditation fees on a monthly basis so that each certified or accredited person pays only that portion of the certification or accreditation fee that is allocable to the number of months during which the certification or accreditation is valid. On renewal of the certification or accreditation on the new expiration date, the total certification or accreditation renewal fee is payable.

(c) [~~(b)~~] A person whose certification or accreditation has expired may not engage in activities that require certification or accreditation until the certification or accreditation has been renewed.

SECTION 5.289. Section 1955.101, Occupations Code, is amended to read as follows:

Sec. 1955.101. DISCIPLINARY ACTION BY DEPARTMENT. The department shall revoke, suspend, or refuse to renew a certification or accreditation or shall reprimand a certified or accredited person for a violation of this chapter or a *department* [~~board~~] rule.

SECTION 5.290. Section 1955.102, Occupations Code, is amended to read as follows:

Sec. 1955.102. PROBATION. (a) The *department* [~~board~~] may place on probation a person whose certification or accreditation is suspended.

(b) The *department* [~~board~~] may require a person whose certification or accreditation suspension is probated to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the *department* [~~board~~]; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the *department* [~~board~~] in those areas that are the basis of the probation.

SECTION 5.291. Section 1955.103(b), Occupations Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules relating to the imposition and collection of an administrative penalty.

SECTION 5.292. Section 1958.001, Occupations Code, is amended to read as follows:

Sec. 1958.001. DEFINITIONS. In this chapter:

(1) [~~"Board" means the Texas Board of Health.~~

[~~(2) "Commissioner" means the commissioner of public health.~~

[~~(3)~~] "Department" means the [~~Texas~~] Department of *State* Health *Services*.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) [~~(4)~~] "License" means a license issued under this chapter.

(4) [~~(5)~~] "Mold" means any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

(5) [~~(6)~~] "Mold assessment" means:

(A) an inspection, investigation, or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold;

(B) the development of a mold management plan or remediation protocol; or

(C) the collection or analysis of a mold sample.

(6) [~~(7)~~] "Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at that location.

SECTION 5.293. Section 1958.053, Occupations Code, is amended to read as follows:

Sec. 1958.053. GENERAL RULEMAKING AUTHORITY. The *executive commissioner* [~~board~~] shall adopt substantive and procedural rules as necessary or desirable for the [~~board,~~] department[~~, and commissioner~~] to discharge *its* [~~their~~] powers and duties under this chapter.

SECTION 5.294. Section 1958.054, Occupations Code, is amended to read as follows:

Sec. 1958.054. RULES REGARDING PERFORMANCE STANDARDS AND WORK PRACTICES. The *executive commissioner* [~~board~~] by rule shall establish minimum performance standards and work practices for conducting a mold assessment or mold remediation in this state.

SECTION 5.295. Section 1958.055(a), Occupations Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall establish reasonable and necessary fees to administer this chapter, including fees for licenses, registrations, and examinations, [~~. The board shall set the fees~~] in *amounts* [~~an amount~~] sufficient to recover the costs of administering this chapter [~~, not to exceed the caps established under Subsection (b)~~]. *The executive commissioner shall set fees for issuing or renewing a license in amounts designed to allow the department to recover from the license holders all of the department's direct and indirect costs in administering and enforcing this chapter.*

SECTION 5.296. Section 1958.056(b), Occupations Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules regarding compliance investigations.

SECTION 5.297. Section 1958.058, Occupations Code, is amended to read as follows:

Sec. 1958.058. SAFETY STANDARDS. The *executive commissioner by rule* [~~board~~] may develop and establish mold safety standards for license holders if appropriate scientific information exists regarding the effect of mold.

SECTION 5.298. Section 1958.059, Occupations Code, is amended to read as follows:

Sec. 1958.059. CODE OF ETHICS. The *executive commissioner* [~~board~~] by rule shall adopt a code of ethics for license holders that promotes the education of mold assessors and mold remediators concerning the ethical, legal, and business principles that should govern their conduct.

SECTION 5.299. Section 1958.101(b), Occupations Code, is amended to read as follows:

(b) The *executive commissioner* [~~board~~] shall adopt rules regarding:

(1) the scope of mold-related work for which a license is required, including the supervision of employees or other persons by license holders; and

(2) renewal requirements for a license issued under this chapter.

SECTION 5.300. Subchapter C, Chapter 1958, Occupations Code, is amended by adding Section 1958.1011 to read as follows:

Sec. 1958.1011. TERM OF LICENSE. A license issued under this chapter is valid for two years.

SECTION 5.301. Section 1958.103, Occupations Code, is amended to read as follows:

Sec. 1958.103. REGISTRATION REQUIREMENTS FOR EMPLOYEES. The *executive commissioner* [~~board~~] may adopt rules to require the registration of employees supervised by license holders.

SECTION 5.302. Section 1958.104, Occupations Code, is amended to read as follows:

Sec. 1958.104. RULES REGARDING LICENSE APPLICATION. The *executive commissioner* [~~board~~] shall adopt rules regarding a license application. The *executive commissioner* [~~board~~] shall adopt rules that establish minimum requirements for a license, including:

(1) the type of license;

(2) [~~the term of the license;~~

[~~(3)~~] the qualifications for the license, including any previous training required under Section 1958.106;

(3) [~~(4)~~] renewal requirements for the license, including ongoing continuing education required under Section 1958.106; and

(4) [~~(5)~~] liability insurance requirements for the license.

SECTION 5.303. Section 1958.106(a), Occupations Code, is amended to read as follows:

(a) The *executive commissioner* [~~board~~] shall adopt rules regarding training required under this chapter and continuing education required for a license holder under this chapter.

SECTION 5.304. Section 1958.107, Occupations Code, is amended to read as follows:

Sec. 1958.107. RECIPROCITY. The *executive commissioner* [~~board~~] may adopt rules that facilitate reciprocity and communication with other states that have a similar licensing program.

SECTION 5.305. Section 1958.153(c), Occupations Code, is amended to read as follows:

(c) The *executive commissioner* [~~board~~] shall adopt rules to implement this section, including rules:

(1) describing the information that must be provided in the notice; and

(2) authorizing verbal notification to the department in an emergency.

SECTION 5.306. Section 1958.154(c), Occupations Code, is amended to read as follows:

(c) The *executive commissioner* [~~board~~] shall adopt rules to implement this section, other than rules described by Subsection (d).

SECTION 5.307. Section 1958.155(c), Occupations Code, is amended to read as follows:

(c) A license holder who is not an individual shall disclose to the department the name, address, and occupation of each person that has an ownership interest in the license holder. The license holder shall report any changes in ownership to the department. The *executive commissioner* [~~board~~] shall adopt rules to implement this section, including rules regarding the form of the disclosure and the time required to make disclosures or to report a change in ownership.

SECTION 5.308. Section 1958.251, Occupations Code, is amended to read as follows:

Sec. 1958.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The *department* [~~commissioner~~] may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

SECTION 5.309. Section 1958.252(b), Occupations Code, is amended to read as follows:

(b) In determining the amount of the penalty, the *department* [~~commissioner~~] shall consider:

(1) whether the violation was committed knowingly, intentionally, or fraudulently;

(2) the seriousness of the violation;

(3) any hazard created to the health and safety of the public;

(4) the person's history of previous violations; and

(5) any other matter that justice may require.

SECTION 5.310. Section 1958.253(a), Occupations Code, is amended to read as follows:

(a) The *department* [~~commissioner~~] may choose not to impose an administrative penalty under this subchapter if, not later than the 10th day after the date of written notice of the violation under Section 1958.254, the person provides conclusive evidence that the circumstances giving rise to the violation have been corrected and all actual damages are paid.

SECTION 5.311. Sections 1958.254(a), (c), (d), (e), and (f), Occupations Code, are amended to read as follows:

(a) The *department* [~~commissioner~~] may impose an administrative penalty under this subchapter only after the person charged with a violation is given a written notice and the opportunity for a hearing.

(c) If a hearing is held, the *department* [~~commissioner~~] shall make findings of fact and issue a written decision as to:

(1) the occurrence of the violation; and

(2) the amount of any penalty that is warranted.

(d) If the person charged with a violation fails to exercise the opportunity for a hearing, the *department* [~~commissioner~~], after determining that a violation occurred and the amount of the penalty that is warranted, may impose a penalty and shall issue an order requiring the person to pay any penalty imposed.

(e) Not later than the 30th day after the date the *department* [~~commissioner~~] issues an order after determining that a violation occurred, the *department* [~~commissioner~~] shall inform the person charged with the violation of the amount of any penalty imposed.

(f) The *department* [~~commissioner~~] may consolidate a hearing under this section with another proceeding.

SECTION 5.312. Section 1958.255, Occupations Code, is amended to read as follows:

Sec. 1958.255. OPTIONS FOLLOWING DECISION[~~: PAY OR APPEAL~~]. (a) Not later than the 30th day after the date the *department's* [~~commissioner's~~] decision or order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(2) may:

(1) stay enforcement of the penalty by:

(A) [~~(1)~~] paying the penalty to the *court* [~~commissioner~~] for placement in an escrow account; or

(B) posting with the court [~~(2) giving the commissioner~~] a *supersedeas* bond in a form approved by the *court* [~~commissioner~~] that[~~:~~

[~~(A)~~] is for the amount of the penalty[~~;~~] and

[~~(B)~~] is effective until judicial review of the *department's* [~~commissioner's~~] decision or order is final*; or*

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

SECTION 5.313. Section 1958.256, Occupations Code, is amended to read as follows:

Sec. 1958.256. COLLECTION OF PENALTY. At the request of the *department* [~~commissioner~~], the attorney general may bring a civil action to recover an administrative penalty imposed under this subchapter.

SECTION 5.314. Section 1958.257, Occupations Code, is amended to read as follows:

Sec. 1958.257. JUDICIAL REVIEW. Judicial review of a decision or order of the *department* [~~commissioner~~] imposing a penalty under this subchapter is instituted by filing a petition with a district court in Travis County and is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code.

SECTION 5.315. Section 1958.258, Occupations Code, is amended to read as follows:

Sec. 1958.258. REMITTANCE OF PENALTY AND INTEREST OR RELEASE OF BOND. If after judicial review the administrative penalty is reduced or is not upheld by the court, the *department* [~~commissioner~~] shall:

(1) remit the appropriate amount, plus accrued interest, to the person not later than the 30th day after the date of the determination, if the person paid the penalty; or

(2) execute a release of the bond, if the person gave a bond.

SECTION 5.316. Section 1958.301(b), Occupations Code, is amended to read as follows:

(b) The *department* [~~commissioner~~] may request the attorney general or the district, county, or city attorney having jurisdiction to bring an action to collect a civil penalty under this section.

SECTION 5.317. Section 1958.302, Occupations Code, is amended to read as follows:

Sec. 1958.302. INJUNCTIVE RELIEF. The *department* [~~commissioner~~] may request the attorney general or the district, county, or city attorney having jurisdiction to bring an action for a restraining order, injunction, or other relief the court determines is appropriate if it appears to the department that a person is violating or has violated this chapter or a rule adopted under this chapter.

SECTION 5.318. The following provisions of the Occupations Code are repealed:

(1) Section 110.001(1);

(2) Section 352.002(1);

(3) Section 353.002(1);

(4) Section 402.001(1);

(5) Section 403.001(1);

(6) Section 503.002(1–a);

(7) Section 503.206;

(8) Section 505.002(2–a);

(9) Section 603.2041(e);

(10) Section 605.002(2);

(11) Section 1954.002(6);

(12) Sections 1954.056(b), (c), and (d);

(13) Section 1958.055(b); and

(14) Chapter 2152.

ARTICLE 6. CHANGES AFFECTING OTHER CODES

SECTION 6.001. Section 15.001, Agriculture Code, is amended to read as follows:

Sec. 15.001. DEFINITIONS. In this *chapter* [~~subchapter~~]:

(1) "Farmers market" means a location at which a group of two or more farmers that are certified under the department's farmers market certification program offer produce for retail sale.

(2) "Food coupon" means any redemptive coupon issued by the [~~Texas~~] Department of *State* Health *Services* under this *chapter* [~~subchapter~~] that is exchangeable only for produce at a farmers market.

(3) "Produce" means fresh fruits or vegetables.

(4) "W.I.C. program" means the federal special supplemental food program for women, infants, and children administered by the [~~Texas~~] Department of *State* Health *Services*.

SECTION 6.002. Section 15.002, Agriculture Code, is amended to read as follows:

Sec. 15.002. ESTABLISHMENT OF SPECIAL NUTRITION PROGRAM. The [~~Texas~~] Department of *State* Health *Services* may establish a special nutrition program to distribute to certain participants of the W.I.C. program food coupons that are redeemable only at farmers markets located in areas in which the program is implemented.

SECTION 6.003. Section 15.003, Agriculture Code, is amended to read as follows:

Sec. 15.003. ELIGIBILITY; AMOUNT OF ALLOTMENT. (a) A person is eligible to participate in the special nutrition program if the person is enrolled in the W.I.C. program and resides in an area in which the special nutrition program is implemented. The [~~Texas~~] Department of *State* Health *Services* shall determine the eligibility of potential participants.

(b) Only the [~~Texas~~] Department of *State* Health *Services* may determine the dollar amount of each participant's monthly allotment of food coupons.

SECTION 6.004. Section 15.005, Agriculture Code, is amended to read as follows:

Sec. 15.005. RULES. The *executive commissioner of the Health and Human Services Commission* [~~Texas Board of Health~~] shall adopt rules under this *chapter* [~~subchapter~~] that provide for:

(1) the design, printing, and denominations of the food coupons;

(2) the procedure for the delivery of the food coupons to participants;

(3) the procedure for the redemption of food coupons by the sellers of the produce; and

(4) other rules necessary for carrying out the purposes of this *chapter* [~~subchapter~~].

SECTION 6.005. Section 15.007, Agriculture Code, is amended to read as follows:

Sec. 15.007. PROGRAM FUNDS. The [~~Texas~~] Department of *State* Health *Services* may accept gifts and grants from the federal government, the state, and private sources as well as legislative appropriations for the program authorized by this *chapter* [~~subchapter~~]. The use of gifts and grants other than legislative appropriations is subject, after their appropriation, only to limitations contained in the gift or grant.

SECTION 6.006. Article 46B.001, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.001. DEFINITIONS. In this chapter:

(1) [~~"Department" means the Department of State Health Services.~~

[~~(2)~~] "Inpatient mental health facility" has the meaning assigned by Section 571.003, Health and Safety Code.

(2) "Intellectual disability" has the meaning assigned by Section 591.003, Health and Safety Code.

(3) "Local mental health authority" has the meaning assigned by Section 571.003, Health and Safety Code.

(4) "Local *intellectual and developmental disability* [~~mental retardation~~] authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(5) "Mental health facility" has the meaning assigned by Section 571.003, Health and Safety Code.

(6) "Mental illness" has the meaning assigned by Section 571.003, Health and Safety Code.

(7) [~~"Mental retardation" has the meaning assigned by Section 591.003, Health and Safety Code.~~

[~~(8)~~] "Residential care facility" has the meaning assigned by Section 591.003, Health and Safety Code.

(8) [~~(9)~~] "Electronic broadcast system" means a two-way electronic communication of image and sound between the defendant and the court and includes secure Internet videoconferencing.

SECTION 6.007. Article 46B.021(e), Code of Criminal Procedure, is amended to read as follows:

(e) The court may appoint as experts under this chapter qualified psychiatrists or

psychologists employed by the local mental health authority or local *intellectual and developmental disability* [~~mental retardation~~] authority. The local mental health authority or local *intellectual and developmental disability* [~~mental retardation~~] authority is entitled to compensation and reimbursement as provided by Article 46B.027.

SECTION 6.008. Article 46B.024, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.024. FACTORS CONSIDERED IN EXAMINATION. During an examination under this subchapter and in any report based on that examination, an expert shall consider, in addition to other issues determined relevant by the expert, the following:

(1) the capacity of the defendant during criminal proceedings to:

(A) rationally understand the charges against the defendant and the potential consequences of the pending criminal proceedings;

(B) disclose to counsel pertinent facts, events, and states of mind;

(C) engage in a reasoned choice of legal strategies and options;

(D) understand the adversarial nature of criminal proceedings;

(E) exhibit appropriate courtroom behavior; and

(F) testify;

(2) as supported by current indications and the defendant's personal history, whether the defendant:

(A) *is a person with* [~~has a~~] mental illness; or

(B) is a person with *an intellectual disability* [~~mental retardation~~];

(3) whether the identified condition has lasted or is expected to last continuously for at least one year;

(4) the degree of impairment resulting from the mental illness or *intellectual disability* [~~mental retardation~~], if existent, and the specific impact on the defendant's capacity to engage with counsel in a reasonable and rational manner; and

(5) if the defendant is taking psychoactive or other medication:

(A) whether the medication is necessary to maintain the defendant's competency; and

(B) the effect, if any, of the medication on the defendant's appearance, demeanor, or ability to participate in the proceedings.

SECTION 6.009. Article 46B.025(b), Code of Criminal Procedure, is amended to read as follows:

(b) If in the opinion of an expert appointed under Article 46B.021 the defendant is incompetent to proceed, the expert shall state in the report:

(1) the symptoms, exact nature, severity, and expected duration of the deficits resulting from the defendant's mental illness or *intellectual disability* [~~mental retardation~~], if any, and the impact of the identified condition on the factors listed in Article 46B.024;

(2) an estimate of the period needed to restore the defendant's competency, including whether the defendant is likely to be restored to competency in the foreseeable future; and

(3) prospective treatment options, if any, appropriate for the defendant.

SECTION 6.010. Article 46B.027, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.027. COMPENSATION OF EXPERTS; REIMBURSEMENT OF FACILITIES. (a) For any appointment under this chapter, the county in which the indictment was returned or information was filed shall pay for services described by Articles 46B.021(a)(1) and (2). If those services are provided by an expert who is an employee of the local mental health authority or local *intellectual and developmental disability* [~~mental retardation~~] authority, the county shall pay the authority for the services.

(b) The county in which the indictment was returned or information was filed shall reimburse a facility that accepts a defendant for examination under this chapter for expenses incurred that are [~~determined by the department to be~~] reasonably necessary and incidental to the proper examination of the defendant.

SECTION 6.011. Articles 46B.073(c), (d), and (e), Code of Criminal Procedure, are amended to read as follows:

(c) If the defendant is charged with an offense listed in Article 17.032(a), other than an offense listed in Article 17.032(a)(6), or the indictment alleges an affirmative finding under Section 3g(a)(2), Article 42.12, the court shall enter an order committing the defendant to the maximum security unit of any facility designated by the *Department of State Health Services* [~~department~~], to an agency of the United States operating a mental hospital, or to a Department of Veterans Affairs hospital.

(d) If the defendant is not charged with an offense described by Subsection (c) and the indictment does not allege an affirmative finding under Section 3g(a)(2), Article 42.12, the court shall enter an order committing the defendant to a mental health facility or residential care facility determined to be appropriate by the local mental health authority or local *intellectual and developmental disability* [~~mental retardation~~] authority.

(e) Notwithstanding Subsections (b), (c), and (d) and notwithstanding the contents of the applicable order of commitment, in a county in which the *Department of State Health Services* [~~department~~] operates a jail-based restoration of competency pilot program under Article 46B.090, a defendant for whom an order is issued under this article committing the defendant to a mental health facility or residential care facility shall be provided competency restoration services at the jail under the pilot program if the service provider at the jail determines the defendant will immediately begin to receive services. If the service provider at the jail determines the defendant will not immediately begin to receive competency restoration services, the defendant shall be transferred to the appropriate mental health facility or residential care facility as provided by the court order. This subsection expires September 1, 2017.

SECTION 6.012. Article 46B.076(a), Code of Criminal Procedure, is amended to read as follows:

(a) If the defendant is found incompetent to stand trial, not later than the date of the order of commitment or of release on bail, as applicable, the court shall send a copy of the order to the facility [~~of the department~~] to which the defendant is committed or the outpatient treatment program to which the defendant is released. The court shall also provide to the facility or outpatient treatment program copies of the following made available to the court during the incompetency trial:

(1) reports of each expert;

(2) psychiatric, psychological, or social work reports that relate to the mental condition of the defendant;

(3) documents provided by the attorney representing the state or the attorney representing the defendant that relate to the defendant's current or past mental condition;

(4) copies of the indictment or information and any supporting documents used to establish probable cause in the case;

(5) the defendant's criminal history record; and

(6) the addresses of the attorney representing the state and the attorney representing the defendant.

SECTION 6.013. Article 46B.077(a), Code of Criminal Procedure, is amended to read as follows:

(a) The facility to which the defendant is committed or the outpatient treatment program to which the defendant is released on bail shall:

(1) develop an individual program of treatment;

(2) assess and evaluate whether the defendant is likely to be restored to competency in the foreseeable future; and

(3) report to the court and to the local mental health authority or to the local *intellectual and developmental disability* [~~mental retardation~~] authority on the defendant's progress toward achieving competency.

SECTION 6.014. Article 46B.082(b), Code of Criminal Procedure, is amended to read as follows:

(b) If before the 15th day after the date on which the court received notification under Article 46B.079 a defendant committed to a facility [~~of the department~~] or ordered to participate in an outpatient treatment program has not been transported to the court that issued the order under Article 46B.072 or 46B.073, as applicable, the head of the facility to which the defendant is committed or the provider of the outpatient treatment program in which the defendant is participating shall cause the defendant to be promptly transported to the court and placed in the custody of the sheriff of the county in which the court is located. The county in which the court is located shall reimburse the *Department of State Health Services or the Department of Aging and Disability Services, as appropriate,* [~~department~~] for the mileage and per diem expenses of the personnel required to transport the defendant, calculated in accordance with rates provided in the General Appropriations Act for state employees.

SECTION 6.015. Article 46B.083(b), Code of Criminal Procedure, is amended to read as follows:

(b) If the head of the facility or the outpatient treatment program provider believes that the defendant is a person with *an intellectual disability* [~~mental retardation~~], the head of the facility or the outpatient treatment program provider shall have submitted to the court an affidavit stating the conclusions reached as a result of the examination.

SECTION 6.016. Article 46B.090, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (a–1) to read as follows:

(a) *In this article, "department" means the Department of State Health Services.*

(a–1) If the legislature appropriates to the department the funding necessary for the department to operate a jail-based restoration of competency pilot program as described by this article, the department shall develop and implement the pilot program in one or two counties in this state that choose to participate in the pilot program. In developing the pilot program, the department shall coordinate and allow for input from each participating county.

SECTION 6.017. The heading to Article 46B.103, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.103. CIVIL COMMITMENT HEARING: *INTELLECTUAL DISABILITY* [~~MENTAL RETARDATION~~].

SECTION 6.018. Articles 46B.103(a) and (d), Code of Criminal Procedure, are amended to read as follows:

(a) If it appears to the court that the defendant may be a person with *an intellectual disability* [~~mental retardation~~], the court shall hold a hearing to determine whether the defendant is a person with *an intellectual disability* [~~mental retardation~~].

(d) In the proceedings conducted under this subchapter for a defendant described by Subsection (a):

(1) an application to have the defendant declared a person with *an intellectual disability* [~~mental retardation~~] may not be required;

(2) the provisions of Subtitle D, Title 7, Health and Safety Code, relating to notice of hearing do not apply; and

(3) appeals from the criminal court proceedings are to the court of appeals as in the proceedings for commitment to a residential care facility under Subtitle D, Title 7, Health and Safety Code.

SECTION 6.019. Article 46B.104, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF VIOLENCE. A

defendant committed to a facility as a result of proceedings initiated under this chapter shall be committed to the maximum security unit of any facility designated by the *Department of State Health Services* [~~department~~] if:

(1) the defendant is charged with an offense listed in Article 17.032(a), other than an offense listed in Article 17.032(a)(6); or

(2) the indictment charging the offense alleges an affirmative finding under Section 3g(a)(2), Article 42.12.

SECTION 6.020. Articles 46B.105(a), (b), and (e), Code of Criminal Procedure, are amended to read as follows:

(a) Unless a defendant is determined to be manifestly dangerous by a [~~department~~] review board *established under Subsection (b)*, not later than the 60th day after the date the defendant arrives at the maximum security unit, the defendant shall be transferred to:

(1) a unit of an inpatient mental health facility other than a maximum security unit;

(2) a residential care facility; or

(3) a program designated by a local mental health authority or a local *intellectual and developmental disability* [~~mental retardation~~] authority.

(b) The commissioner of *state health services* [~~mental health and mental retardation~~] shall appoint a review board of five members, including one psychiatrist licensed to practice medicine in this state and two persons who work directly with persons with mental illness or *an intellectual disability* [~~mental retardation~~], to determine whether the defendant is manifestly dangerous and, as a result of the danger the defendant presents, requires continued placement in a maximum security unit.

(e) If the superintendent of the facility at which the maximum security unit is located disagrees with the determination, the matter shall be referred to the commissioner of *state health services* [~~mental health and mental retardation~~]. The commissioner shall decide whether the defendant is manifestly dangerous.

SECTION 6.021. Article 46B.106(a), Code of Criminal Procedure, is amended to read as follows:

(a) A defendant committed to a facility as a result of the proceedings initiated under this chapter, other than a defendant described by Article 46B.104, shall be committed to:

(1) a facility designated by the *Department of State Health Services or the Department of Aging and Disability Services, as appropriate* [~~department~~]; or

(2) an outpatient treatment program.

SECTION 6.022. Article 46B.107(a), Code of Criminal Procedure, is amended to read as follows:

(a) The release *of a defendant committed under this chapter* from the *Department of State Health Services, the Department of Aging and Disability Services* [~~department~~], an outpatient treatment program, or *another* [~~a~~] facility [~~of a defendant committed under this chapter~~] is subject to disapproval by the committing court if the court or the attorney representing the state has notified the head of the facility or outpatient treatment provider, as applicable, to which the defendant has been committed that a criminal charge remains pending against the defendant.

SECTION 6.023. Articles 46B.151(a), (b), and (c), Code of Criminal Procedure, are amended to read as follows:

(a) If a court is required by Article 46B.084(f) or by its appropriate determination under Article 46B.071 to proceed under this subchapter, or if the court is permitted by Article 46B.004(e) to proceed under this subchapter, the court shall determine whether there is evidence to support a finding that the defendant is either a person with mental illness or a person with *an intellectual disability* [~~mental retardation~~].

(b) If it appears to the court that there is evidence to support a finding of mental illness or *an intellectual disability* [~~mental retardation~~], the court shall enter an order

transferring the defendant to the appropriate court for civil commitment proceedings and stating that all charges pending against the defendant in that court have been dismissed. The court may order the defendant:

(1) detained in jail or any other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant will be committed to a mental health facility or residential care facility; or

(2) placed in the care of a responsible person on satisfactory security being given for the defendant's proper care and protection.

(c) Notwithstanding Subsection (b), a defendant placed in a facility of the *Department of State Health Services or the Department of Aging and Disability Services* [~~department~~] pending civil hearing under this article may be detained in that facility only with the consent of the head of the facility and pursuant to an order of protective custody issued under Subtitle C, Title 7, Health and Safety Code.

SECTION 6.024. Sections 51.933(b), (c), and (e), Education Code, are amended to read as follows:

(b) The *executive commissioner of the Health and Human Services Commission* [~~Texas Board of Health~~] may require immunizations against the diseases listed in Subsection (a) and additional diseases for students at any institution of higher education who are pursuing a course of study in a human or animal health profession, and the *executive commissioner* [~~board~~] may require those immunizations for any students in times of an emergency or epidemic in a county where the commissioner of *state* [~~public~~] health *services* has declared such an emergency or epidemic.

(c) An institution of higher education, in conjunction with the [~~Texas~~] Department of *State* Health *Services*, should provide individual notice to each student applying for admission regarding:

(1) the consequences of not being current on immunization for certain diseases;

(2) the age groups most vulnerable to these vaccine preventable diseases; and

(3) local providers of immunization services.

(e) The exception provided by Subsection (d)(1)(B) does not apply in a time of emergency or epidemic declared by the commissioner of *state* [~~public~~] health *services*.

SECTION 6.025. Sections 1104.406(a) and (c), Estates Code, are amended to read as follows:

(a) The department shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to each individual who is or will be providing guardianship services to a ward of or referred by the department, including:

(1) an employee of or an applicant selected for an employment position with the department;

(2) a volunteer or an applicant selected to volunteer with the department;

(3) an employee of or an applicant selected for an employment position with a business entity or other person who contracts with the department to provide guardianship services to a ward referred by the department; [~~and~~]

(4) a volunteer or an applicant selected to volunteer with a business entity or other person described by Subdivision (3)*; and*

(5) a contractor or an employee of a contractor who provides services to a ward of the Department of Aging and Disability Services under a contract with the estate of the ward.

(c) The department must annually obtain the information in Subsection (a) regarding employees*, contractors,* or volunteers providing guardianship services.

SECTION 6.026. The following provisions are repealed:

(1) the heading to Subchapter A, Chapter 15, Agriculture Code; and

(2) Section 1, Chapter 112 (H.B. 434), Acts of the 55th Legislature, Regular Session, 1957 (Article 1269l–2, Vernon's Texas Civil Statutes).

ARTICLE 7. EFFECTIVE DATE

SECTION 7.001. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

Passed the Senate on March 19, 2015: Yeas 31, Nays 0; passed the House on March 26, 2015: Yeas 143, Nays 0, one present not voting.

Approved April 2, 2015.

Effective April 2, 2015.

CLARIFICATION OF THE LAW GOVERNING ELIGIBILITY OF CERTAIN EVENTS FOR FUNDING UNDER THE MAJOR EVENTS TRUST FUND

CHAPTER 2

S.B. No. 293

AN ACT

relating to a clarification of the law governing eligibility of certain events for funding under the Major Events trust fund.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 5A(a)(5), Chapter 1507 (S.B. 456), Acts of the 76th Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) "Site selection organization" means:

(A) the National Football League, the National Collegiate Athletic Association, the National Basketball Association, *ESPN or an affiliate,* the National Hockey League, Major League Baseball, the Federation Internationale de Football Association (FIFA), the International World Games Association, *the National Association for Stock Car Auto Racing (NASCAR),* or the United States Olympic Committee;

(B) the national governing body of a sport that is recognized by the United States Olympic Committee, the National Thoroughbred Racing Association, Formula One Management Limited, or the Federation Internationale de l'Automobile;

(C) the Academy of Country Music;

(D) the National Cutting Horse Association; [~~or~~]

(E) the Republican National Committee or the Democratic National Committee*; or*

(F) the Ultimate Fighting Championship.

SECTION 2. The amendment made by this Act to Section 5A(a), Chapter 1507 (S.B. 456), Acts of the 76th Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes), is intended only to clarify existing law, as amended by Chapter 1371 (S.B. 1678), Acts of the 83rd Legislature, Regular Session, 2013, on the eligibility of certain events to receive funding from the Major Events trust fund. Each event held on or after the effective date of S.B. 1678, 83rd Legislature, Regular Session, 2013, and the event's eligibility to receive funding from the Major Events trust fund, are governed by the law as clarified by this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all