

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; providing penalties.

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

ARTICLE 1. ORGANIZATION OF THE HEALTH AND HUMAN SERVICES

COMMISSION AND HEALTH AND HUMAN SERVICES AGENCIES

SECTION 1.01. (a) Section 531.001(3), Government Code, is amended to read as follows:

(3) "Executive commissioner" [~~"Commissioner"~~] means the executive commissioner of the Health and Human Services Commission [~~health and human services~~].

(b) Section 531.001(4), Government Code, as amended by Chapters 53, 957, and 1420, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(4) "Health and human services agencies" includes the:

- (A) Interagency Council on Early Childhood Intervention;
- (B) Texas Department on Aging;
- (C) Texas Commission on Alcohol and Drug Abuse;
- (D) Texas Commission for the Blind;
- (E) Texas Commission for the Deaf and Hard of Hearing;
- (F) Texas Department of Health;

- 1 (G) Texas Department of Human Services;
- 2 (H) Texas Department of Mental Health and Mental
3 Retardation;
- 4 (I) Texas Rehabilitation Commission;
- 5 (J) Department of Family and Protective [~~and~~
6 ~~Regulatory~~] Services; [~~and~~]
- 7 (K) Texas Health Care Information Council;
- 8 (L) Department of Aging and Disability Services;
- 9 (M) Department of State Health Services; and
- 10 (N) Department of Assistive and Rehabilitative
11 Services.

12 (c) Effective on the date the agencies listed in Section
13 1.26 of this article are abolished as provided by that section,
14 Section 531.001(4), Government Code, as amended by Chapters 53,
15 957, and 1420, Acts of the 77th Legislature, Regular Session, 2001,
16 is reenacted and amended to read as follows:

- 17 (4) "Health and human services agencies" includes the:
- 18 (A) Department of Aging and Disability Services
19 [~~Interagency Council on Early Childhood Intervention~~];
- 20 (B) Department of State Health Services [~~Texas~~
21 ~~Department on Aging~~];
- 22 (C) Department of Assistive and Rehabilitative
23 Services [~~Texas Commission on Alcohol and Drug Abuse~~]; and
- 24 (D) [~~Texas Commission for the Blind,~~
25 [~~(E) Texas Commission for the Deaf and Hard of~~
26 ~~Hearing,~~
- 27 [~~(F) Texas Department of Health,~~

1 [~~(G)~~ Texas Department of Human Services,
 2 [~~(H)~~ Texas Department of Mental Health and Mental
 3 Retardation,
 4 [~~(I)~~ Texas Rehabilitation Commission,
 5 [~~(J)~~] Department of Family and Protective [~~and~~
 6 Regulatory] Services [~~, and~~
 7 [~~(K)~~ Texas Health Care Information Council].

8 (d) A reference in law to the commissioner of health and
 9 human services means the executive commissioner of the Health and
 10 Human Services Commission.

11 SECTION 1.02. Section 531.004, Government Code, is amended
 12 to read as follows:

13 Sec. 531.004. SUNSET PROVISION. The Health and Human
 14 Services Commission is subject to Chapter 325 (Texas Sunset Act).
 15 Unless continued in existence as provided by that chapter, the
 16 commission is abolished and this chapter expires September 1, 2009
 17 [~~2007~~].

18 SECTION 1.02A. Section 531.005, Government Code, is amended
 19 to read as follows:

20 Sec. 531.005. EXECUTIVE COMMISSIONER. (a) The commission
 21 is governed by an executive commissioner [~~a commissioner of health~~
 22 ~~and human services~~] appointed by the governor with the advice and
 23 consent of the senate.

24 (b) The executive commissioner shall be appointed without
 25 regard to race, color, disability, sex, religion, age, or national
 26 origin.

27 SECTION 1.03. Section 531.0055, Government Code, is amended

1 to read as follows:

2 Sec. 531.0055. EXECUTIVE COMMISSIONER: GENERAL
3 RESPONSIBILITY FOR [~~RELATING TO CERTAIN FUNCTIONS OF~~] HEALTH AND
4 HUMAN SERVICES AGENCIES. (a) In this section and in Section
5 531.0056, "agency director" [+

6 [~~(1) "Agency director"~~] means the [~~director,~~
7 ~~executive director, or~~] commissioner of a health and human services
8 agency.

9 [~~(2) "Policymaking body" means the board or commission~~
10 ~~with policymaking authority over a health and human services~~
11 ~~agency.~~]

12 (b) The commission shall:

13 (1) supervise the administration and operation of the
14 Medicaid program, including the administration and operation of the
15 Medicaid managed care system in accordance with Section 531.021;

16 (2) perform [~~supervise~~] information systems planning
17 and management for health and human services agencies under Section
18 531.0273, with:

19 (A) the provision of information technology
20 services at health and human services agencies considered to be a
21 centralized administrative support service either performed by
22 commission personnel or performed under a contract with the
23 commission; and

24 (B) an emphasis on research and implementation on
25 a demonstration or pilot basis of appropriate and efficient uses of
26 new and existing technology to improve the operation of health and
27 human services agencies and delivery of health and human services;

1 (3) monitor and ensure the effective use of all
2 federal funds received by a health and human services agency in
3 accordance with Section 531.028 and the General Appropriations Act;
4 ~~[and]~~

5 (4) implement Texas Integrated Enrollment Services as
6 required by Subchapter F, except that notwithstanding Subchapter F,
7 determining eligibility for benefits under the following programs
8 is the responsibility of and must be centralized by the commission:

9 (A) the child health plan program;

10 (B) the financial assistance program under
11 Chapter 31, Human Resources Code;

12 (C) the medical assistance program under Chapter
13 32, Human Resources Code;

14 (D) the nutritional assistance programs under
15 Chapter 33, Human Resources Code;

16 (E) long-term care services, as defined by
17 Section 22.0011, Human Resources Code;

18 (F) community-based support services identified
19 or provided in accordance with Section 531.02481; and

20 (G) other health and human services programs, as
21 appropriate; and

22 (5) implement programs intended to prevent family
23 violence and provide services to victims of family violence.

24 (c) ~~The [After implementation of the commission's duties~~
25 ~~under Subsection (b), the]~~ commission shall implement the powers
26 and duties given to the commission under Sections 531.0246,
27 531.0247, 2155.144, ~~[as added by Chapter 1045, Acts of the 75th~~

1 ~~Legislature, Regular Session, 1997,~~] and 2167.004.

2 (d) After implementation of the commission's duties under
3 Subsections (b) and (c), the commission shall implement the powers
4 and duties given to the commission under Section 531.0248. Nothing
5 in the priorities established by this section is intended to limit
6 the authority of the commission to work simultaneously to achieve
7 the multiple tasks assigned to the commission in this section, when
8 such an approach is beneficial in the judgment of the commission.
9 The commission shall plan and implement an efficient and effective
10 centralized system of administrative support services for health
11 and human services agencies. The performance of administrative
12 support services for health and human services agencies is the
13 responsibility of the commission. The term "administrative support
14 services" includes, but is not limited to, strategic planning and
15 evaluation, audit, legal, human resources, information resources,
16 purchasing, contract management, financial management, and
17 accounting services.

18 (e) Notwithstanding any other law, the executive
19 commissioner shall adopt rules and policies for the operation of
20 and provision of health and human services by the health and human
21 services agencies. In addition, the executive commissioner, as
22 necessary to perform the functions described by Subsections (b),
23 (c), and (d) in implementation of applicable [~~the~~] policies
24 established for an agency by the executive commissioner [~~each~~
25 ~~agency's policymaking body~~], shall:

26 (1) manage and direct the operations of each health
27 and human services agency; [~~and~~]

1 (2) supervise and direct the activities of each agency
2 director; and

3 (3) be responsible for the administrative supervision
4 of the internal audit program for all health and human services
5 agencies, including:

6 (A) selecting the director of internal audit;

7 (B) ensuring that the director of internal audit
8 reports directly to the executive commissioner; and

9 (C) ensuring the independence of the internal
10 audit function.

11 (f) The operational authority and responsibility of the
12 executive commissioner for purposes of Subsection (e) at each
13 health and human services agency includes authority over and
14 responsibility for the:

15 (1) management of the daily operations of the agency,
16 including the organization and management of the agency and agency
17 operating procedures;

18 (2) allocation of resources within the agency,
19 including use of federal funds received by the agency;

20 (3) personnel and employment policies;

21 (4) contracting, purchasing, and related policies,
22 subject to this chapter and other laws relating to contracting and
23 purchasing by a state agency;

24 (5) information resources systems used by the agency;

25 (6) location of agency facilities; and

26 (7) coordination of agency activities with activities
27 of other state agencies, including other health and human services

1 agencies.

2 (g) Notwithstanding any other law, the operational
3 authority and responsibility of the executive commissioner for
4 purposes of Subsection (e) at each health and human services agency
5 includes the authority and responsibility to adopt or approve,
6 subject to applicable limitations, any rate of payment or similar
7 provision required by law to be adopted or approved by the agency.

8 (h) For each health and human services agency, the executive
9 commissioner shall implement a program to evaluate and supervise
10 the daily operations of the agency. The program must include
11 measurable performance objectives for each agency director and
12 adequate reporting requirements to permit the executive
13 commissioner to perform the duties assigned to the executive
14 commissioner under this section.

15 (i) To facilitate the operations of a health and human
16 services agency in accordance with this section, the executive
17 commissioner may delegate a specific power or duty given under
18 Subsection (f) or (g) to an agency director. The agency director
19 shall, at the request of the executive commissioner, assist in the
20 development of rules and policies for the operation and provision
21 of health and human services by the agency. The agency director
22 acts on behalf of the executive commissioner in performing the
23 delegated function and reports to the executive commissioner
24 regarding the delegated function and any matter affecting agency
25 programs and operations.

26 (j) The executive commissioner shall [~~may~~] adopt rules to
27 implement the executive commissioner's authority under this

1 section.

2 (k) The executive commissioner and each agency director
3 shall enter into a memorandum of understanding in the manner
4 prescribed by Section 531.0163 that:

5 (1) clearly defines the responsibilities of the agency
6 director and the executive commissioner, including:

7 (A) the responsibility of the agency director to
8 report to the governor and to report to and implement policies of
9 the executive commissioner; and

10 (B) the extent to which the agency director acts
11 as a liaison between the agency and the commission;

12 (2) establishes the program of evaluation and
13 supervision of daily operations required by Subsection (h); and

14 (3) describes each delegation of a power or duty made
15 under Subsection (i) or other law.

16 (l) Notwithstanding any other law, the executive
17 commissioner [~~provision of this section, a policymaking body~~] has
18 the authority [~~provided by law~~] to adopt policies and rules
19 governing the delivery of services to persons who are served by each
20 health and human services [~~the~~] agency and the rights and duties of
21 persons who are served or regulated by each [~~the~~] agency. [~~The~~
22 ~~commissioner and each policymaking body shall enter into a~~
23 ~~memorandum of understanding that clearly defines:~~

24 [~~(1) the policymaking authority of the policymaking~~
25 ~~body; and~~

26 [~~(2) the operational authority of the commissioner.~~]

27 SECTION 1.04. Section 531.0056, Government Code, is amended

1 to read as follows:

2 Sec. 531.0056. APPOINTMENT [~~EMPLOYMENT~~] OF AGENCY DIRECTOR
3 BY EXECUTIVE COMMISSIONER. (a) The executive commissioner shall
4 appoint an agency director for each health and human services
5 agency with the approval of the governor. [~~This section applies~~
6 ~~only to an agency director employed by the commissioner.~~]

7 (b) An agency director appointed by the executive
8 commissioner serves at the pleasure of the executive commissioner.
9 [~~An agency director employed by the commissioner may be employed~~
10 ~~only with the concurrence of the agency's policymaking body and the~~
11 ~~approval of the governor.~~]

12 (c) In addition to the requirements of [~~As established in~~]
13 Section 531.0055(k)(1), the memorandum of understanding required
14 by that section must [~~the commissioner and agency director shall~~
15 ~~enter into a memorandum of understanding that~~] clearly define
16 [~~defines~~] the responsibilities of the agency director [~~and may~~
17 ~~establish terms and conditions of employment in the memorandum of~~
18 ~~understanding~~].

19 (d) The terms of the memorandum of understanding shall
20 outline specific performance objectives, as defined [~~jointly~~] by
21 the executive commissioner [~~and the policymaking body~~], to be
22 fulfilled by the agency director, including the performance
23 objectives outlined in Section 531.0055(h).

24 (e) Based upon the performance objectives outlined in the
25 memorandum of understanding, the executive commissioner shall
26 perform an employment evaluation of the agency director.

27 (f) The executive commissioner shall submit the

1 evaluation[~~7 along with any recommendation regarding the~~
 2 ~~employment of the agency director,~~] to the [~~agency's policymaking~~
 3 ~~body and the~~] governor not later than January 1 of each
 4 even-numbered year.

5 [~~(g) The policymaking body shall consider the evaluation in~~
 6 ~~a meeting of the policymaking body and take necessary action, if~~
 7 ~~any, not later than 90 days after the date of the receipt of the~~
 8 ~~evaluation.~~

9 [~~(h) An agency director employed by the commissioner serves~~
 10 ~~at the pleasure of the commissioner but may be discharged only with~~
 11 ~~the concurrence of the agency's policymaking body.]~~

12 SECTION 1.05. Section 531.008, Government Code, is amended
 13 to read as follows:

14 Sec. 531.008. DIVISIONS OF COMMISSION. (a) Subject to
 15 Subsection (c), the executive [The] commissioner may establish
 16 divisions within the commission as necessary for effective
 17 administration and for the discharge of the commission's functions.

18 (b) Subject to Subsection (c), the executive [The]
 19 commissioner may allocate and reallocate functions among the
 20 commission's divisions.

21 (c) The executive commissioner shall establish the
 22 following divisions and offices within the commission:

23 (1) the eligibility services division to make
 24 eligibility determinations for services provided through the
 25 commission or a health and human services agency related to:

26 (A) the child health plan program;

27 (B) the financial assistance program under

1 Chapter 31, Human Resources Code;

2 (C) the medical assistance program under Chapter
3 32, Human Resources Code;

4 (D) the nutritional assistance programs under
5 Chapter 33, Human Resources Code;

6 (E) long-term care services, as defined by
7 Section 22.0011, Human Resources Code;

8 (F) community-based support services identified
9 or provided in accordance with Section 531.02481; and

10 (G) other health and human services programs, as
11 appropriate;

12 (2) the office of inspector general to perform fraud
13 and abuse investigation and enforcement functions as provided by
14 Subchapter C and other law;

15 (3) the office of the ombudsman to:

16 (A) provide dispute resolution services for the
17 commission and the health and human services agencies; and

18 (B) perform consumer protection functions
19 related to health and human services;

20 (4) a purchasing division as provided by Section
21 531.017; and

22 (5) an internal audit division to conduct a program of
23 internal auditing in accordance with Government Code, Chapter 2102.

24 SECTION 1.06. Subchapter A, Chapter 531, Government Code,
25 is amended by adding Sections 531.0161, 531.0162, and 531.0163 to
26 read as follows:

27 Sec. 531.0161. NEGOTIATED RULEMAKING AND ALTERNATIVE

1 DISPUTE PROCEDURES. (a) The commission shall develop and
2 implement a policy, for the commission and each health and human
3 services agency, to encourage the use of:

4 (1) negotiated rulemaking procedures under Chapter
5 2008 for the adoption of rules for the commission and each agency;
6 and

7 (2) appropriate alternative dispute resolution
8 procedures under Chapter 2009 to assist in the resolution of
9 internal and external disputes under the commission's or agency's
10 jurisdiction.

11 (b) The procedures relating to alternative dispute
12 resolution must conform, to the extent possible, to any model
13 guidelines issued by the State Office of Administrative Hearings
14 for the use of alternative dispute resolution by state agencies.

15 Sec. 531.0162. USE OF TECHNOLOGY. (a) The commission shall
16 develop and implement a policy requiring the agency commissioner
17 and employees of each health and human services agency to research
18 and propose appropriate technological solutions to improve the
19 agency's ability to perform its functions. The technological
20 solutions must:

21 (1) ensure that the public is able to easily find
22 information about a health and human services agency on the
23 Internet;

24 (2) ensure that persons who want to use a health and
25 human services agency's services are able to:

26 (A) interact with the agency through the
27 Internet; and

1 (B) access any service that can be provided
2 effectively through the Internet;

3 (3) be cost-effective and developed through the
4 commission's planning process; and

5 (4) meet federal accessibility standards for persons
6 with disabilities.

7 (b) The commission shall develop and implement a policy
8 described by Subsection (a) in relation to the commission's
9 functions.

10 Sec. 531.0163. MEMORANDUM OF UNDERSTANDING. (a) The
11 memorandum of understanding under Section 531.0055(k) must be
12 adopted by the executive commissioner by rule in accordance with
13 the procedures prescribed by Subchapter B, Chapter 2001, for
14 adopting rules, except that the requirements of Section
15 2001.033(a)(1)(A) or (C) do not apply with respect to any part of
16 the memorandum of understanding that:

17 (1) concerns only internal management or organization
18 within or among health and human services agencies and does not
19 affect private rights or procedures; or

20 (2) relates solely to the internal personnel practices
21 of health and human services agencies.

22 (b) The memorandum of understanding may be amended only by
23 following the procedures prescribed under Subsection (a).

24 SECTION 1.07. Subchapter B, Chapter 531, Government Code,
25 is amended by adding Section 531.0224 to read as follows:

26 Sec. 531.0224. PLANNING AND POLICY DIRECTION OF TEMPORARY
27 ASSISTANCE FOR NEEDY FAMILIES PROGRAM. The commission shall:

1 (1) plan and direct the financial assistance program
2 under Chapter 31, Human Resources Code, including the procurement,
3 management, and monitoring of contracts necessary to implement the
4 program;

5 (2) adopt rules and standards governing the financial
6 assistance program under Chapter 31, Human Resources Code; and

7 (3) establish requirements for and define the scope of
8 the ongoing evaluation of the financial assistance program under
9 Chapter 31, Human Resources Code.

10 SECTION 1.08. Chapter 531, Government Code, is amended by
11 adding Subchapter K to read as follows:

12 SUBCHAPTER K. HEALTH AND HUMAN SERVICES COUNCIL

13 Sec. 531.401. DEFINITION. In this subchapter, "council"
14 means the Health and Human Services Council.

15 Sec. 531.402. HEALTH AND HUMAN SERVICES COUNCIL. (a) The
16 Health and Human Services Council is created to assist the
17 executive commissioner in developing rules and policies for the
18 commission.

19 (b) The council is composed of nine members of the public
20 appointed by the governor with the advice and consent of the senate.
21 To be eligible for appointment to the council, a person must have
22 demonstrated an interest in and knowledge of problems and available
23 services related to the child health plan program, the financial
24 assistance program under Chapter 31, Human Resources Code, the
25 medical assistance program under Chapter 32, Human Resources Code,
26 or the nutritional assistance programs under Chapter 33, Human
27 Resources Code.

1 (c) The council shall study and make recommendations to the
2 executive commissioner regarding the management and operation of
3 the commission, including policies and rules governing the delivery
4 of services to persons who are served by the commission and the
5 rights and duties of persons who are served or regulated by the
6 commission.

7 (d) Chapter 551 applies to the council.

8 (e) Chapter 2110 does not apply to the council.

9 (f) A majority of the members of the council constitute a
10 quorum for the transaction of business.

11 Sec. 531.403. APPOINTMENTS. (a) Appointments to the
12 council shall be made without regard to the race, color,
13 disability, sex, religion, age, or national origin of the
14 appointees.

15 (b) Appointments to the council shall be made so that each
16 geographic area of the state is represented on the council.
17 Notwithstanding Subsection (a), appointments to the council must
18 reflect the ethnic diversity of this state.

19 Sec. 531.404. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
20 person who is appointed as a member of the council may not vote,
21 deliberate, or be counted as a member in attendance at a meeting of
22 the council until the person completes a training program that
23 complies with this section.

24 (b) The training program must provide the person with
25 information regarding:

26 (1) the legislation that created the commission and
27 the council;

- 1 (2) the programs operated by the commission;
- 2 (3) the role and functions of the commission and the
3 council, including detailed information regarding the advisory
4 responsibilities of the council;
- 5 (4) the rules of the executive commissioner applicable
6 to the commission, with an emphasis on the rules that relate to
7 disciplinary and investigatory authority;
- 8 (5) the current budget for the commission;
- 9 (6) the results of the most recent formal audit of the
10 commission;
- 11 (7) the requirements of:
 - 12 (A) the open meetings law, Chapter 551;
 - 13 (B) the public information law, Chapter 552;
 - 14 (C) the administrative procedure law, Chapter
15 2001; and
 - 16 (D) other laws relating to public officials,
17 including conflict-of-interest laws; and
- 18 (8) any applicable ethics policies adopted by the
19 executive commissioner or the Texas Ethics Commission.

20 Sec. 531.405. TERMS. (a) Council members serve for
21 staggered six-year terms with the terms of three members expiring
22 February 1 of each odd-numbered year.

23 (b) A member of the council may not serve more than two
24 consecutive full terms as a council member.

25 Sec. 531.406. VACANCY. The governor by appointment shall
26 fill the unexpired term of a vacancy on the council.

27 Sec. 531.407. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.

1 (a) The governor shall designate a member of the council as the
2 presiding officer to serve in that capacity at the pleasure of the
3 governor.

4 (b) The members of the council shall elect any other
5 necessary officers.

6 (c) The council shall meet quarterly and at other times at
7 the call of the presiding officer. The council may hold meetings in
8 different areas of the state.

9 Sec. 531.408. REIMBURSEMENT FOR EXPENSES. A council member
10 may not receive compensation for service as a member of the council
11 but is entitled to reimbursement for travel expenses incurred by
12 the member while conducting the business of the council as provided
13 by the General Appropriations Act.

14 Sec. 531.409. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

15 (a) The executive commissioner, with the advice of the council,
16 shall prepare information of public interest describing the
17 functions of the commission and the procedures by which complaints
18 are filed with and resolved by the commission. The commission shall
19 make the information available to the public and appropriate state
20 governmental entities.

21 (b) The executive commissioner by rule shall establish
22 methods by which consumers and service recipients are notified of
23 the name, mailing address, and telephone number of the commission
24 for directing complaints to the commission.

25 Sec. 531.410. PUBLIC ACCESS AND TESTIMONY. The executive
26 commissioner shall develop and implement policies that provide the
27 public with a reasonable opportunity to appear before the council

1 or executive commissioner and to speak on any issue under the
2 jurisdiction of the commission.

3 Sec. 531.411. POLICYMAKING AND MANAGEMENT
4 RESPONSIBILITIES. The executive commissioner, with the advice of
5 the council, shall develop and the commission shall implement
6 policies that clearly delineate the policymaking responsibilities
7 of the executive commissioner from the management responsibilities
8 of the commission and the staff of the commission.

9 SECTION 1.09. The Health and Safety Code is amended by
10 adding Title 12 to read as follows:

11 TITLE 12. HEALTH AND MENTAL HEALTH

12 CHAPTER 1001. DEPARTMENT OF STATE HEALTH SERVICES

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 1001.001. DEFINITIONS. In this chapter:

15 (1) "Commission" means the Health and Human Services
16 Commission.

17 (2) "Commissioner" means the commissioner of state
18 health services.

19 (3) "Council" means the State Health Services Council.

20 (4) "Department" means the Department of State Health
21 Services.

22 (5) "Executive commissioner" means the executive
23 commissioner of the Health and Human Services Commission.

24 Sec. 1001.002. AGENCY. The department is an agency of the
25 state.

26 Sec. 1001.003. SUNSET PROVISION. The department is subject
27 to Chapter 325, Government Code (Texas Sunset Act). Unless

1 continued in existence as provided by that chapter, the department
2 is abolished and this chapter expires September 1, 2009.

3 [Sections 1001.004-1001.020 reserved for expansion]

4 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

5 Sec. 1001.021. STATE HEALTH SERVICES COUNCIL. (a) The
6 State Health Services Council is created to assist the commissioner
7 in developing rules and policies for the department.

8 (b) The council is composed of nine members of the public
9 appointed by the governor with the advice and consent of the senate.
10 To be eligible for appointment to the council, a person must have
11 demonstrated an interest in and knowledge of problems and available
12 services related to public health, mental health, or substance
13 abuse.

14 (c) The council shall study and make recommendations to the
15 executive commissioner and the commissioner regarding the
16 management and operation of the department, including policies and
17 rules governing the delivery of services to persons who are served
18 by the department and the rights and duties of persons who are
19 served or regulated by the department.

20 (d) Chapter 551, Government Code, applies to the council.

21 (e) Chapter 2110, Government Code, does not apply to the
22 council.

23 (f) A majority of the members of the council constitute a
24 quorum for the transaction of business.

25 Sec. 1001.022. APPOINTMENTS. (a) Appointments to the
26 council shall be made without regard to the race, color,
27 disability, sex, religion, age, or national origin of the

1 appointees.

2 (b) Appointments to the council shall be made so that each
3 geographic area of the state is represented on the council.
4 Notwithstanding Subsection (a), appointments to the council must
5 reflect the ethnic diversity of this state.

6 Sec. 1001.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
7 person who is appointed as a member of the council may not vote,
8 deliberate, or be counted as a member in attendance at a meeting of
9 the council until the person completes a training program that
10 complies with this section.

11 (b) The training program must provide the person with
12 information regarding:

13 (1) the legislation that created the department and
14 the council;

15 (2) the programs operated by the department;

16 (3) the role and functions of the department and the
17 council, including detailed information regarding:

18 (A) the division of authority and of
19 responsibility between the commissioner and the executive
20 commissioner; and

21 (B) the advisory responsibilities of the
22 council;

23 (4) the rules of the executive commissioner applicable
24 to the department, with an emphasis on the rules that relate to
25 disciplinary and investigatory authority;

26 (5) the current budget for the department;

27 (6) the results of the most recent formal audit of the

1 department;

2 (7) the requirements of:

3 (A) the open meetings law, Chapter 551,
4 Government Code;

5 (B) the public information law, Chapter 552,
6 Government Code;

7 (C) the administrative procedure law, Chapter
8 2001, Government Code; and

9 (D) other laws relating to public officials,
10 including conflict-of-interest laws; and

11 (8) any applicable ethics policies adopted by the
12 executive commissioner or the Texas Ethics Commission.

13 Sec. 1001.024. TERMS. (a) Council members serve for
14 staggered six-year terms with the terms of three members expiring
15 February 1 of each odd-numbered year.

16 (b) A member of the council may not serve more than two
17 consecutive full terms as a council member.

18 Sec. 1001.025. VACANCY. The governor by appointment shall
19 fill the unexpired term of a vacancy on the council.

20 Sec. 1001.026. PRESIDING OFFICER; OTHER OFFICERS;
21 MEETINGS. (a) The governor shall designate a member of the council
22 as the presiding officer to serve in that capacity at the pleasure
23 of the governor.

24 (b) The members of the council shall elect any other
25 necessary officers.

26 (c) The council shall meet quarterly and at other times at
27 the call of the presiding officer. The council may hold meetings in

1 different areas of the state.

2 Sec. 1001.027. REIMBURSEMENT FOR EXPENSES. A council
3 member may not receive compensation for service as a member of the
4 council but is entitled to reimbursement for travel expenses
5 incurred by the member while conducting the business of the council
6 as provided by the General Appropriations Act.

7 Sec. 1001.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

8 (a) The commissioner, with the advice of the council, shall prepare
9 information of public interest describing the functions of the
10 department and the procedures by which complaints are filed with
11 and resolved by the department. The commission shall make the
12 information available to the public and appropriate state
13 governmental entities.

14 (b) The executive commissioner by rule shall establish
15 methods by which consumers and service recipients are notified of
16 the name, mailing address, and telephone number of the department
17 for directing complaints to the department.

18 Sec. 1001.029. PUBLIC ACCESS AND TESTIMONY. (a) The
19 commissioner shall develop and implement policies that provide the
20 public with a reasonable opportunity to appear before the
21 commissioner and to speak on any issue under the jurisdiction of the
22 department.

23 (b) The commissioner shall grant an opportunity for a public
24 hearing before the council makes recommendations to the
25 commissioner regarding a substantive rule if a public hearing is
26 requested by:

27 (1) at least 25 persons;

1 (2) a governmental entity; or

2 (3) an association with at least 25 members.

3 (c) The executive commissioner shall consider fully all
4 written and oral submissions about a proposed rule.

5 Sec. 1001.030. POLICYMAKING AND MANAGEMENT
6 RESPONSIBILITIES. The commissioner, with the advice of the council
7 and subject to the approval of the executive commissioner, shall
8 develop and the department shall implement policies that clearly
9 delineate the policymaking responsibilities of the executive
10 commissioner from the management responsibilities of the
11 commission, the commissioner, and the staff of the department.

12 Sec. 1001.031. ANNUAL REPORT. (a) The commissioner shall
13 file annually with the governor, the presiding officer of each
14 house of the legislature, and the executive commissioner a complete
15 and detailed written report accounting for all funds received and
16 disbursed by the department during the preceding fiscal year.

17 (b) The annual report must be in the form and be reported in
18 the time provided by the General Appropriations Act.

19 Sec. 1001.032. OFFICES. The department shall maintain its
20 central office in Austin. The department may maintain offices in
21 other areas of the state as necessary.

22 [Sections 1001.033-1001.050 reserved for expansion]

23 SUBCHAPTER C. PERSONNEL

24 Sec. 1001.051. COMMISSIONER. (a) The executive
25 commissioner shall appoint a commissioner of the department with
26 the approval of the governor. The commissioner is to be selected
27 according to education, training, experience, and demonstrated

1 ability.

2 (b) The commissioner serves at the pleasure of the executive
3 commissioner.

4 (c) Subject to the control of the executive commissioner,
5 the commissioner shall act as the department's chief administrative
6 officer and as a liaison between the department and commission.

7 (d) The commissioner shall administer this chapter under
8 operational policies established by the executive commissioner and
9 in accordance with the memorandum of understanding under Section
10 531.0055(k), Government Code, between the commissioner and the
11 executive commissioner, as adopted by rule.

12 Sec. 1001.052. PERSONNEL. (a) The department may employ,
13 compensate, and prescribe the duties of personnel necessary and
14 suitable to administer this chapter.

15 (b) The executive commissioner shall prepare and by rule
16 adopt personnel standards.

17 (c) A personnel position may be filled only by an individual
18 selected and appointed on a nonpartisan merit basis.

19 (d) The commissioner, with the advice of the council, shall
20 develop and the department shall implement policies that clearly
21 define the responsibilities of the staff of the department.

22 Sec. 1001.053. INFORMATION ABOUT QUALIFICATIONS AND
23 STANDARDS OF CONDUCT. The commissioner or the commissioner's
24 designee shall provide to department employees, as often as
25 necessary, information regarding the requirements for employment
26 under this chapter or rules adopted by the executive commissioner,
27 including information regarding a person's responsibilities under

1 applicable laws relating to standards of conduct for state
2 employees.

3 Sec. 1001.054. MERIT PAY. Subject to rules adopted by the
4 executive commissioner, the commissioner or the commissioner's
5 designee shall develop a system of annual performance evaluations.
6 All merit pay for department employees must be given under the
7 system established under this section or under rules adopted by the
8 executive commissioner.

9 Sec. 1001.055. CAREER LADDER. The commissioner or the
10 commissioner's designee shall develop an intra-agency career
11 ladder program. The program must require intra-agency postings of
12 all nonentry-level positions concurrently with any public posting.

13 Sec. 1001.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
14 Subject to rules adopted by the executive commissioner, the
15 commissioner or the commissioner's designee shall prepare and
16 maintain a written policy statement that implements a program of
17 equal employment opportunity to ensure that all personnel decisions
18 are made without regard to race, color, disability, sex, religion,
19 age, or national origin.

20 (b) Unless the following are included in a policy statement
21 adopted by the executive commissioner that is applicable to the
22 department, the policy statement must include:

23 (1) personnel policies, including policies relating
24 to recruitment, evaluation, selection, training, and promotion of
25 personnel, that show the intent of the department to avoid the
26 unlawful employment practices described by Chapter 21, Labor Code;
27 and

1 (2) an analysis of the extent to which the composition
2 of the department's personnel is in accordance with state and
3 federal law and a description of reasonable methods to achieve
4 compliance with state and federal law.

5 (c) The policy statement must be:

6 (1) updated annually;

7 (2) reviewed by the state Commission on Human Rights
8 for compliance with Subsection (b)(1); and

9 (3) filed with the governor's office.

10 Sec. 1001.057. STATE EMPLOYEE INCENTIVE PROGRAM. The
11 commissioner or the commissioner's designee shall provide to
12 department employees information and training on the benefits and
13 methods of participation in the state employee incentive program.

14 [Sections 1001.058-1001.070 reserved for expansion]

15 SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

16 Sec. 1001.071. GENERAL POWERS AND DUTIES OF DEPARTMENT
17 RELATED TO HEALTH CARE. The department is responsible for
18 administering human services programs regarding the public health,
19 including:

20 (1) implementing the state's public health care
21 delivery programs under the authority of the department;

22 (2) administering state health facilities, hospitals,
23 and health care systems;

24 (3) developing and providing health care services, as
25 directed by law;

26 (4) providing for the prevention and control of
27 communicable diseases;

1 (5) providing public education on health-related
2 matters, as directed by law;

3 (6) compiling and reporting health-related
4 information, as directed by law;

5 (7) acting as the lead agency for implementation of
6 state policies regarding the human immunodeficiency virus and
7 acquired immunodeficiency syndrome and administering programs
8 related to the human immunodeficiency virus and acquired
9 immunodeficiency syndrome;

10 (8) investigating the causes of injuries and methods
11 of prevention;

12 (9) administering a grant program to provide
13 appropriated money to counties, municipalities, public health
14 districts, and other political subdivisions for their use to
15 provide or pay for essential public health services;

16 (10) administering the registration of vital
17 statistics;

18 (11) licensing, inspecting, and enforcing regulations
19 regarding health facilities, other than long-term care facilities
20 regulated by the Department of Aging and Disability Services;

21 (12) implementing established standards and
22 procedures for the management and control of sanitation and for
23 health protection measures;

24 (13) enforcing regulations regarding radioactive
25 materials;

26 (14) enforcing regulations regarding food, bottled
27 and vended drinking water, drugs, cosmetics, and health devices;

1 (15) enforcing regulations regarding food service
2 establishments, retail food stores, mobile food units, and roadside
3 food vendors; and

4 (16) enforcing regulations controlling hazardous
5 substances in households and workplaces.

6 Sec. 1001.072. GENERAL POWERS AND DUTIES OF DEPARTMENT
7 RELATED TO MENTAL HEALTH. The department is responsible for
8 administering human services programs regarding mental health,
9 including:

10 (1) administering and coordinating mental health
11 services at the local and state level;

12 (2) operating the state's mental health facilities;
13 and

14 (3) inspecting, licensing, and enforcing regulations
15 regarding mental health facilities, other than long-term care
16 facilities regulated by the Department of Aging and Disability
17 Services.

18 Sec. 1001.073. GENERAL POWERS AND DUTIES OF DEPARTMENT
19 RELATED TO SUBSTANCE ABUSE. The department is responsible for
20 administering human services programs regarding substance abuse,
21 including:

22 (1) administering, coordinating, and contracting for
23 the delivery of substance abuse prevention and treatment programs
24 at the state and local level;

25 (2) inspecting, licensing, and enforcing regulations
26 regarding substance abuse treatment facilities; and

27 (3) providing public education on substance abuse

1 issues, as directed by law.

2 Sec. 1001.074. INFORMATION REGARDING COMPLAINTS. (a) The
3 department shall maintain a file on each written complaint filed
4 with the department. The file must include:

5 (1) the name of the person who filed the complaint;

6 (2) the date the complaint is received by the
7 department;

8 (3) the subject matter of the complaint;

9 (4) the name of each person contacted in relation to
10 the complaint;

11 (5) a summary of the results of the review or
12 investigation of the complaint; and

13 (6) an explanation of the reason the file was closed,
14 if the department closed the file without taking action other than
15 to investigate the complaint.

16 (b) The department shall provide to the person filing the
17 complaint and to each person who is a subject of the complaint a
18 copy of the executive commissioner's and the department's policies
19 and procedures relating to complaint investigation and resolution.

20 (c) The department, at least quarterly until final
21 disposition of the complaint, shall notify the person filing the
22 complaint and each person who is a subject of the complaint of the
23 status of the investigation unless the notice would jeopardize an
24 undercover investigation.

25 Sec. 1001.075. RULES. The executive commissioner may adopt
26 rules reasonably necessary for the department to administer this
27 chapter, consistent with the memorandum of understanding under

1 Section 531.0055(k), Government Code, between the commissioner and
 2 the executive commissioner, as adopted by rule.

3 SECTION 1.10. Section 40.001, Human Resources Code, is
 4 amended by adding Subdivisions (2-a) and (4-a) and amending
 5 Subdivision (4) to read as follows:

6 (2-a) "Council" means the Family and Protective
 7 Services Council.

8 (4) "Commissioner" ["Executive director"] means the
 9 commissioner [executive director] of the Department of Family and
 10 Protective [and Regulatory] Services.

11 (4-a) "Executive commissioner" means the executive
 12 commissioner of the Health and Human Services Commission.

13 SECTION 1.11. Section 40.002, Human Resources Code, is
 14 amended to read as follows:

15 Sec. 40.002. DEPARTMENT OF FAMILY AND PROTECTIVE [AND
 16 REGULATORY] SERVICES; GENERAL DUTIES OF DEPARTMENT
 17 [RESPONSIBILITY]. (a) The Department of Family and Protective
 18 [and Regulatory] Services is composed of the council [board], the
 19 commissioner [executive director], an administrative staff, and
 20 other officers and employees necessary to efficiently carry out the
 21 purposes of this chapter.

22 (b) Notwithstanding any other law, the [The] department
 23 shall [is the state agency with primary responsibility for]:

24 (1) provide [providing] protective services for
 25 children and elderly and disabled persons, including
 26 investigations of alleged abuse, neglect, or exploitation in
 27 facilities of the Texas Department of Mental Health and Mental

1 Retardation or its successor agency;

2 (2) provide [~~providing~~] family support and family
3 preservation services that [~~which~~] respect the fundamental right of
4 parents to control the education and upbringing of their children;

5 (3) license, register, and enforce regulations
6 applicable to [~~regulating~~] child-care facilities and child-care
7 administrators; and

8 (4) implement [~~implementing~~] and manage [~~managing~~]
9 programs intended to provide early intervention or prevent at-risk
10 behaviors that lead to child abuse, delinquency, running away,
11 truancy, and dropping out of school.

12 (c) The department is the state agency designated to
13 cooperate with the federal government in the administration of
14 programs under:

15 (1) Parts B and E, Title IV, federal Social Security
16 Act (42 U.S.C. Sections 620 et seq. and 670 et seq.); and

17 (2) other federal law for which the department has
18 administrative responsibility.

19 (d) The department shall cooperate with the United States
20 Department of Health and Human Services and other federal and state
21 agencies in a reasonable manner and in conformity with the
22 provisions of federal law and this subtitle to the extent necessary
23 to qualify for federal assistance in the delivery of services.

24 (e) If the department determines that a provision of state
25 law governing the department conflicts with a provision of federal
26 law, the executive commissioner [~~department~~] may adopt policies and
27 rules necessary to allow the state to receive and spend federal

1 matching funds to the fullest extent possible in accordance with
 2 the federal statutes, this subtitle, and the state constitution and
 3 within the limits of appropriated funds.

4 SECTION 1.12. Sections 40.004, 40.021, 40.022, 40.0226,
 5 40.024, 40.025, 40.026, and 40.027, Human Resources Code, are
 6 amended to read as follows:

7 Sec. 40.004. PUBLIC INTEREST INFORMATION AND PUBLIC ACCESS.

8 (a) The commissioner [~~board~~] shall develop and implement policies
 9 that provide the public with a reasonable opportunity to appear
 10 before the commissioner [~~board~~] and to speak on any issue under the
 11 jurisdiction of the department.

12 (b) The commissioner, with the advice of the council,
 13 [~~department~~] shall prepare information of public interest
 14 describing the functions of the department. The commission
 15 [~~department~~] shall make the information available to the public and
 16 appropriate state agencies.

17 (c) The commissioner shall grant an opportunity for a public
 18 hearing before the council makes recommendations to the
 19 commissioner regarding a substantive rule if a public hearing is
 20 requested by:

21 (1) at least 25 persons;

22 (2) a governmental entity; or

23 (3) an association with at least 25 members.

24 (d) The executive commissioner shall consider fully all
 25 written and oral submissions about a proposed rule.

26 Sec. 40.021. FAMILY AND [~~BOARD OF~~] PROTECTIVE [~~AND~~
 27 ~~REGULATORY~~] SERVICES COUNCIL. (a) The Family and Protective

1 Services Council is created to assist the commissioner in
2 developing rules and policies for the department [~~board is composed~~
3 ~~of six members appointed by the governor with the advice and consent~~
4 ~~of the senate. The governor shall designate one member to be the~~
5 ~~presiding officer of the board to serve in that capacity at the~~
6 ~~pleasure of the governor~~].

7 (b) The council is composed of nine members of the public
8 appointed by the governor with the advice and consent of the senate.
9 To be eligible for appointment to the council, a person must have
10 demonstrated an interest in and knowledge of problems and available
11 services related to the functions of the department. [~~Four members~~
12 ~~of the board must have a demonstrated interest in the services~~
13 ~~provided by the department, and two members must represent the~~
14 ~~public.~~]

15 (c) The council shall study and make recommendations to the
16 executive commissioner and the commissioner regarding the
17 management and operation of the department, including policies and
18 rules governing the delivery of services to persons who are served
19 by the department and the rights and duties of persons who are
20 served or regulated by the department.

21 (d) Chapter 551, Government Code, applies to the council.

22 (e) Chapter 2110, Government Code, does not apply to the
23 council [~~board shall be appointed without regard to race, color,~~
24 ~~disability, sex, religion, age, or national origin~~].

25 (f) A majority of the members of the council constitute a
26 quorum for the transaction of business.

27 Sec. 40.022. APPOINTMENTS [RESTRICIONS ON BOARD

1 ~~APPOINTMENT OR MEMBERSHIP~~]. (a) Appointments to the council shall
2 be made without regard to the race, color, disability, sex,
3 religion, age, or national origin of the appointees. [~~A person is~~
4 ~~not eligible for appointment as a member of the board if the person~~
5 ~~or the person's spouse.~~

6 [~~(1) is a person who is employed by or participates in~~
7 ~~the management of a business entity or other organization regulated~~
8 ~~by the department or receiving funds from the department,~~

9 [~~(2) owns or controls, directly or indirectly, more~~
10 ~~than a 10 percent interest in a business entity or other~~
11 ~~organization that is regulated by the department or that receives~~
12 ~~funds from the department,~~

13 [~~(3) uses or receives a substantial amount of tangible~~
14 ~~goods, services, or money from the department, other than~~
15 ~~compensation or reimbursement authorized by law for board~~
16 ~~membership, attendance, or expenses, or as a client or a parent or~~
17 ~~guardian of a client receiving services from the department, or~~

18 [~~(4) is an employee, officer, or paid consultant of a~~
19 ~~trade association in a field under the jurisdiction of the~~
20 ~~department.]~~

21 (b) Appointments to the council shall be made so that each
22 geographic area of the state is represented on the council.
23 Notwithstanding Subsection (a), appointments to the council must
24 reflect the ethnic diversity of this state. [~~In addition to the~~
25 ~~requirements of Subsection (a), a person is not eligible for~~
26 ~~appointment as a public member of the board if the person or the~~
27 ~~person's spouse is registered, certified, or licensed by an~~

1 ~~occupational regulatory agency in a field under the jurisdiction of~~
 2 ~~the department.]~~

3 Sec. 40.0226. [~~BOARD MEMBER~~] TRAINING PROGRAM FOR COUNCIL
 4 MEMBERS. (a) A person who is appointed as a member of the council
 5 may not vote, deliberate, or be counted as a member in attendance at
 6 a meeting of the council until the person completes a training
 7 program that complies with [~~Before a member of the board may assume~~
 8 ~~the member's duties and before the member may be confirmed by the~~
 9 ~~senate, the member must complete at least one course of the training~~
 10 ~~program established under]~~ this section.

11 (b) The [A] training program must [~~established under this~~
 12 ~~section shall]~~ provide information to the member regarding:

13 (1) the [~~enabling~~] legislation that created the
 14 department and the council [~~board~~];

15 (2) the programs operated by the department;

16 (3) the role and functions of the department and the
 17 council, including detailed information regarding:

18 (A) the division of authority and of
 19 responsibility between the commissioner and the executive
 20 commissioner; and

21 (B) the advisory responsibilities of the
 22 council;

23 (4) the rules of the executive commissioner applicable
 24 to the department, with an emphasis on the rules that relate to
 25 disciplinary and investigatory authority;

26 (5) the current budget for the department;

27 (6) the results of the most recent formal audit of the

1 department;

2 (7) the requirements of the:

3 (A) open meetings law, Chapter 551, Government
4 Code;

5 (B) public information [~~open records~~] law,
6 Chapter 552, Government Code; and

7 (C) administrative procedure law, Chapter 2001,
8 Government Code;

9 (8) the requirements of the conflict-of-interest laws
10 and other laws relating to public officials; and

11 (9) any applicable ethics policies adopted by the
12 executive commissioner [~~board~~] or the Texas Ethics Commission.

13 Sec. 40.024. [BOARD] TERMS; VACANCY. (a) Members of the
14 council [~~board~~] serve for staggered six-year terms, with the terms
15 of three [~~two~~] members expiring February 1 of each odd-numbered
16 year.

17 (b) A member of the council may not serve more than two
18 consecutive full terms as a council member.

19 (c) The governor by appointment shall fill the unexpired
20 term of a vacancy on the council.

21 Sec. 40.025. REIMBURSEMENT FOR EXPENSES [~~BOARD PER DIEM~~].
22 A council member may not receive compensation for service as a
23 member of the council but is entitled to reimbursement for travel
24 expenses incurred by the member while conducting the business of
25 the council as provided [~~While performing their duties, board~~
26 ~~members are entitled to a per diem as prescribed~~] by the General
27 Appropriations Act.

1 Sec. 40.026. PRESIDING OFFICER; OTHER OFFICERS; [BOARD]
2 MEETINGS [~~QUORUM~~]. (a) The governor shall designate a member of
3 the council as the presiding officer to serve in that capacity at
4 the pleasure of the governor [~~board shall meet at least quarterly~~
5 and at the call of the presiding officer].

6 (b) The members of the council shall elect any other
7 necessary officers [~~Four members of the board constitute a quorum~~].

8 (c) The council shall meet quarterly and at other times at
9 the call of the presiding officer. The council may hold meetings in
10 different areas of the state.

11 Sec. 40.027. COMMISSIONER [~~EXECUTIVE DIRECTOR~~]. (a) The
12 executive commissioner [~~of health and human services~~] shall appoint
13 a commissioner [~~employ the executive director~~] in accordance with
14 Section 531.0056, Government Code. The commissioner is to be
15 selected according to education, training, experience, and
16 demonstrated ability.

17 (b) The commissioner serves at the pleasure of the executive
18 commissioner.

19 (c) Subject to the control of the executive commissioner,
20 the commissioner shall act as the department's chief administrative
21 officer and as a liaison between the department and commission.

22 (d) The commissioner shall administer this chapter and
23 other laws relating to the department under operational policies
24 established [~~executive director is the executive head of the~~
25 department. ~~The executive director shall perform the duties~~
26 assigned] by the executive commissioner and in accordance with the
27 memorandum of understanding under Section 531.0055(k), Government

1 Code, between the commissioner and the executive commissioner, as
2 adopted by rule [~~of health and human services and state law~~].

3 SECTION 1.13. Title 7, Human Resources Code, is amended by
4 adding Chapter 117 to read as follows:

5 CHAPTER 117. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 117.001. DEFINITIONS. In this chapter:

8 (1) "Commission" means the Health and Human Services
9 Commission.

10 (2) "Commissioner" means the commissioner of
11 assistive and rehabilitative services.

12 (3) "Council" means the Assistive and Rehabilitative
13 Services Council.

14 (4) "Department" means the Department of Assistive and
15 Rehabilitative Services.

16 (5) "Executive commissioner" means the executive
17 commissioner of the Health and Human Services Commission.

18 Sec. 117.002. AGENCY. The department is an agency of the
19 state.

20 Sec. 117.003. SUNSET PROVISION. The department is subject
21 to Chapter 325, Government Code (Texas Sunset Act). Unless
22 continued in existence as provided by that chapter, the department
23 is abolished and this chapter expires September 1, 2009.

24 [Sections 117.004-117.020 reserved for expansion]

25 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

26 Sec. 117.021. ASSISTIVE AND REHABILITATIVE SERVICES
27 COUNCIL. (a) The Assistive and Rehabilitative Services Council is

1 created to assist the commissioner in developing rules and policies
2 for the department.

3 (b) The council is composed of nine members of the public
4 appointed by the governor with the advice and consent of the senate.
5 To be eligible for appointment to the council, a person must have
6 demonstrated an interest in and knowledge of problems and available
7 services related to early childhood intervention services or to
8 persons with disabilities other than developmental delay and mental
9 retardation and persons who are blind, deaf, or hard of hearing.

10 (c) The council shall study and make recommendations to the
11 executive commissioner and the commissioner regarding the
12 management and operation of the department, including policies and
13 rules governing the delivery of services to persons who are served
14 by the department and the rights and duties of persons who are
15 served or regulated by the department.

16 (d) Chapter 551, Government Code, applies to the council.

17 (e) Chapter 2110, Government Code, does not apply to the
18 council.

19 (f) A majority of the members of the council constitute a
20 quorum for the transaction of business.

21 Sec. 117.022. APPOINTMENTS. (a) Appointments to the
22 council shall be made without regard to the race, color,
23 disability, sex, religion, age, or national origin of the
24 appointees.

25 (b) Appointments to the council shall be made so that each
26 geographic area of the state is represented on the council.
27 Notwithstanding Subsection (a), appointments to the council must

1 reflect the ethnic diversity of this state.

2 Sec. 117.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
3 person who is appointed as a member of the council may not vote,
4 deliberate, or be counted as a member in attendance at a meeting of
5 the council until the person completes a training program that
6 complies with this section.

7 (b) The training program must provide the person with
8 information regarding:

9 (1) the legislation that created the department and
10 the council;

11 (2) the programs operated by the department;

12 (3) the role and functions of the department and the
13 council, including detailed information regarding:

14 (A) the division of authority and of
15 responsibility between the commissioner and the executive
16 commissioner; and

17 (B) the advisory responsibilities of the
18 council;

19 (4) the rules of the executive commissioner applicable
20 to the department, with an emphasis on the rules that relate to
21 disciplinary and investigatory authority;

22 (5) the current budget for the department;

23 (6) the results of the most recent formal audit of the
24 department;

25 (7) the requirements of:

26 (A) the open meetings law, Chapter 551,
27 Government Code;

1 (B) the public information law, Chapter 552,
2 Government Code;

3 (C) the administrative procedure law, Chapter
4 2001, Government Code; and

5 (D) other laws relating to public officials,
6 including conflict-of-interest laws; and

7 (8) any applicable ethics policies adopted by the
8 executive commissioner or the Texas Ethics Commission.

9 Sec. 117.024. TERMS. (a) Council members serve for
10 staggered six-year terms with the terms of three members expiring
11 February 1 of each odd-numbered year.

12 (b) A member of the council may not serve more than two
13 consecutive full terms as a council member.

14 Sec. 117.025. VACANCY. The governor by appointment shall
15 fill the unexpired term of a vacancy on the council.

16 Sec. 117.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.

17 (a) The governor shall designate a member of the council as the
18 presiding officer to serve in that capacity at the pleasure of the
19 governor.

20 (b) The members of the council shall elect any other
21 necessary officers.

22 (c) The council shall meet quarterly and at other times at
23 the call of the presiding officer. The council may hold meetings in
24 different areas of the state.

25 Sec. 117.027. REIMBURSEMENT FOR EXPENSES. A council member
26 may not receive compensation for service as a member of the council
27 but is entitled to reimbursement for travel expenses incurred by

1 the member while conducting the business of the council as provided
2 by the General Appropriations Act.

3 Sec. 117.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

4 (a) The commissioner, with the advice of the council, shall prepare
5 information of public interest describing the functions of the
6 department and the procedures by which complaints are filed with
7 and resolved by the department. The commission shall make the
8 information available to the public and appropriate state
9 governmental entities.

10 (b) The executive commissioner by rule shall establish
11 methods by which consumers and service recipients are notified of
12 the name, mailing address, and telephone number of the department
13 for directing complaints to the department.

14 Sec. 117.029. PUBLIC ACCESS AND TESTIMONY. (a) The
15 commissioner shall develop and implement policies that provide the
16 public with a reasonable opportunity to appear before the
17 commissioner and to speak on any issue under the jurisdiction of the
18 department.

19 (b) The commissioner shall grant an opportunity for a public
20 hearing before the council makes recommendations to the
21 commissioner regarding a substantive rule if a public hearing is
22 requested by:

- 23 (1) at least 25 persons;
24 (2) a governmental entity; or
25 (3) an association with at least 25 members.

26 (c) The executive commissioner shall consider fully all
27 written and oral submissions about a proposed rule.

1 Sec. 117.030. POLICYMAKING AND MANAGEMENT
2 RESPONSIBILITIES. The commissioner, with the advice of the council
3 and subject to the approval of the executive commissioner, shall
4 develop and the department shall implement policies that clearly
5 delineate the policymaking responsibilities of the executive
6 commissioner from the management responsibilities of the
7 commission, the commissioner, and the staff of the department.

8 Sec. 117.031. ANNUAL REPORT. (a) The commissioner shall
9 file annually with the governor, the presiding officer of each
10 house of the legislature, and the executive commissioner a complete
11 and detailed written report accounting for all funds received and
12 disbursed by the department during the preceding fiscal year.

13 (b) The annual report must be in the form and be reported in
14 the time provided by the General Appropriations Act.

15 Sec. 117.032. OFFICES. The department shall maintain its
16 central office in Austin. The department may maintain offices in
17 other areas of the state as necessary.

18 [Sections 117.033-117.050 reserved for expansion]

19 SUBCHAPTER C. PERSONNEL

20 Sec. 117.051. COMMISSIONER. (a) The executive
21 commissioner shall appoint a commissioner of the department with
22 the approval of the governor. The commissioner is to be selected
23 according to education, training, experience, and demonstrated
24 ability.

25 (b) The commissioner serves at the pleasure of the executive
26 commissioner.

27 (c) Subject to the control of the executive commissioner,

1 the commissioner shall act as the department's chief administrative
2 officer and as a liaison between the department and commission.

3 (d) The commissioner shall administer this chapter under
4 operational policies established by the executive commissioner and
5 in accordance with the memorandum of understanding under Section
6 531.0055(k), Government Code, between the commissioner and the
7 executive commissioner, as adopted by rule.

8 Sec. 117.052. PERSONNEL. (a) The department may employ,
9 compensate, and prescribe the duties of personnel necessary and
10 suitable to administer this chapter.

11 (b) The executive commissioner shall prepare and by rule
12 adopt personnel standards.

13 (c) A personnel position may be filled only by an individual
14 selected and appointed on a nonpartisan, merit basis.

15 (d) The commissioner, with the advice of the council, shall
16 develop and the department shall implement policies that clearly
17 define the responsibilities of the staff of the department.

18 Sec. 117.053. INFORMATION ABOUT QUALIFICATIONS AND
19 STANDARDS OF CONDUCT. The commissioner or the commissioner's
20 designee shall provide to department employees, as often as
21 necessary, information regarding the requirements for employment
22 under this chapter or rules adopted by the executive commissioner,
23 including information regarding a person's responsibilities under
24 applicable laws relating to standards of conduct for state
25 employees.

26 Sec. 117.054. MERIT PAY. Subject to rules adopted by the
27 executive commissioner, the commissioner or the commissioner's

1 designee shall develop a system of annual performance evaluations.
2 All merit pay for department employees must be given under the
3 system established under this section or under rules adopted by the
4 executive commissioner.

5 Sec. 117.055. CAREER LADDER. The commissioner or the
6 commissioner's designee shall develop an intra-agency career
7 ladder program. The program must require intra-agency postings of
8 all nonentry-level positions concurrently with any public posting.

9 Sec. 117.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
10 Subject to rules adopted by the executive commissioner, the
11 commissioner or the commissioner's designee shall prepare and
12 maintain a written policy statement that implements a program of
13 equal employment opportunity to ensure that all personnel decisions
14 are made without regard to race, color, disability, sex, religion,
15 age, or national origin.

16 (b) Unless the following are included in a policy statement
17 adopted by the executive commissioner that is applicable to the
18 department, the policy statement must include:

19 (1) personnel policies, including policies relating
20 to recruitment, evaluation, selection, training, and promotion of
21 personnel, that show the intent of the department to avoid the
22 unlawful employment practices described by Chapter 21, Labor Code;
23 and

24 (2) an analysis of the extent to which the composition
25 of the department's personnel is in accordance with state and
26 federal law and a description of reasonable methods to achieve
27 compliance with state and federal law.

1 (c) The policy statement must be:

2 (1) updated annually;

3 (2) reviewed by the state Commission on Human Rights
4 for compliance with Subsection (b)(1); and

5 (3) filed with the governor's office.

6 Sec. 117.057. STATE EMPLOYEE INCENTIVE PROGRAM. The
7 commissioner or the commissioner's designee shall provide to
8 department employees information and training on the benefits and
9 methods of participation in the state employee incentive program.

10 [Sections 117.058-117.070 reserved for expansion]

11 SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

12 Sec. 117.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The
13 department is responsible for administering human services
14 programs to provide early childhood intervention services and
15 rehabilitation and related services to persons who are blind, deaf,
16 or hard of hearing. The department is also responsible for
17 providing and coordinating programs for the rehabilitation of
18 persons with disabilities so that those persons may prepare for and
19 engage in a gainful occupation or achieve maximum personal
20 independence.

21 Sec. 117.072. INFORMATION REGARDING COMPLAINTS. (a) The
22 department shall maintain a file on each written complaint filed
23 with the department. The file must include:

24 (1) the name of the person who filed the complaint;

25 (2) the date the complaint is received by the
26 department;

27 (3) the subject matter of the complaint;

1 (4) the name of each person contacted in relation to
2 the complaint;

3 (5) a summary of the results of the review or
4 investigation of the complaint; and

5 (6) an explanation of the reason the file was closed,
6 if the department closed the file without taking action other than
7 to investigate the complaint.

8 (b) The department shall provide to the person filing the
9 complaint and to each person who is a subject of the complaint a
10 copy of the executive commissioner's and the department's policies
11 and procedures relating to complaint investigation and resolution.

12 (c) The department, at least quarterly until final
13 disposition of the complaint, shall notify the person filing the
14 complaint and each person who is a subject of the complaint of the
15 status of the investigation unless the notice would jeopardize an
16 undercover investigation.

17 Sec. 117.073. RULES. The executive commissioner may adopt
18 rules reasonably necessary for the department to administer this
19 chapter, consistent with the memorandum of understanding under
20 Section 531.0055(k), Government Code, between the commissioner and
21 the executive commissioner, as adopted by rule.

22 SECTION 1.13A. The Human Resources Code is amended by
23 adding Title 11 to read as follows:

24 TITLE 11. AGING, COMMUNITY-BASED, AND LONG-TERM CARE SERVICES

25 CHAPTER 161. DEPARTMENT OF AGING AND DISABILITY SERVICES

26 SUBCHAPTER A. GENERAL PROVISIONS

27 Sec. 161.001. DEFINITIONS. In this chapter:

1 (1) "Commission" means the Health and Human Services
2 Commission.

3 (2) "Commissioner" means the commissioner of aging and
4 disability services.

5 (3) "Council" means the Aging and Disability Services
6 Council.

7 (4) "Department" means the Department of Aging and
8 Disability Services.

9 (5) "Executive commissioner" means the executive
10 commissioner of the Health and Human Services Commission.

11 Sec. 161.002. AGENCY. The department is an agency of the
12 state.

13 Sec. 161.003. SUNSET PROVISION. The department is subject
14 to Chapter 325, Government Code (Texas Sunset Act). Unless
15 continued in existence as provided by that chapter, the department
16 is abolished and this chapter expires September 1, 2009.

17 [Sections 161.004-161.020 reserved for expansion]

18 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

19 Sec. 161.021. AGING AND DISABILITY SERVICES COUNCIL. (a)
20 The Aging and Disability Services Council is created to assist the
21 commissioner in developing rules and policies for the department.

22 (b) The council is composed of nine members of the public
23 appointed by the governor with the advice and consent of the senate.
24 To be eligible for appointment to the council, a person must have
25 demonstrated an interest in and knowledge of issues and available
26 services related to the aging and persons with developmental
27 disabilities or mental retardation.

1 (c) The council shall study and make recommendations to the
2 executive commissioner and the commissioner regarding the
3 management and operation of the department, including policies and
4 rules governing the delivery of services to persons who are served
5 by the department and the rights and duties of persons who are
6 served or regulated by the department.

7 (d) Chapter 551, Government Code, applies to the council.

8 (e) Chapter 2110, Government Code, does not apply to the
9 council.

10 (f) A majority of the members of the council constitute a
11 quorum for the transaction of business.

12 Sec. 161.022. APPOINTMENTS. (a) Appointments to the
13 council shall be made without regard to the race, color,
14 disability, sex, religion, age, or national origin of the
15 appointees.

16 (b) Appointments to the council shall be made so that each
17 geographic area of the state is represented on the council.
18 Notwithstanding Subsection (a), appointments to the council must
19 reflect the ethnic diversity of this state.

20 Sec. 161.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
21 person who is appointed as a member of the council may not vote,
22 deliberate, or be counted as a member in attendance at a meeting of
23 the council until the person completes a training program that
24 complies with this section.

25 (b) The training program must provide the person with
26 information regarding:

27 (1) the legislation that created the department and

1 the council;

2 (2) the programs operated by the department;

3 (3) the role and functions of the department and the
4 council, including detailed information regarding:

5 (A) the division of authority and of
6 responsibility between the commissioner and the executive
7 commissioner; and

8 (B) the advisory responsibilities of the
9 council;

10 (4) the rules of the executive commissioner applicable
11 to the department, with an emphasis on the rules that relate to
12 disciplinary and investigatory authority;

13 (5) the current budget for the department;

14 (6) the results of the most recent formal audit of the
15 department;

16 (7) the requirements of:

17 (A) the open meetings law, Chapter 551,
18 Government Code;

19 (B) the public information law, Chapter 552,
20 Government Code;

21 (C) the administrative procedure law, Chapter
22 2001, Government Code; and

23 (D) other laws relating to public officials,
24 including conflict-of-interest laws; and

25 (8) any applicable ethics policies adopted by the
26 executive commissioner or the Texas Ethics Commission.

27 Sec. 161.024. TERMS. (a) Council members serve for

1 staggered six-year terms with the terms of three members expiring
2 February 1 of each odd-numbered year.

3 (b) A member of the council may not serve more than two
4 consecutive full terms as a council member.

5 Sec. 161.025. VACANCY. The governor by appointment shall
6 fill the unexpired term of a vacancy on the council.

7 Sec. 161.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.

8 (a) The governor shall designate a member of the council as the
9 presiding officer to serve in that capacity at the pleasure of the
10 governor.

11 (b) The members of the council shall elect any other
12 necessary officers.

13 (c) The council shall meet quarterly and at other times at
14 the call of the presiding officer. The council may hold meetings in
15 different areas of the state.

16 Sec. 161.027. REIMBURSEMENT FOR EXPENSES. A council member
17 may not receive compensation for service as a member of the council
18 but is entitled to reimbursement for travel expenses incurred by
19 the member while conducting the business of the council as provided
20 by the General Appropriations Act.

21 Sec. 161.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

22 (a) The commissioner, with the advice of the council, shall prepare
23 information of public interest describing the functions of the
24 department and the procedures by which complaints are filed with
25 and resolved by the department. The commission shall make the
26 information available to the public and appropriate state
27 governmental entities.

1 (b) The executive commissioner by rule shall establish
2 methods by which consumers and service recipients are notified of
3 the name, mailing address, and telephone number of the department
4 for directing complaints to the department.

5 Sec. 161.029. PUBLIC ACCESS AND TESTIMONY. (a) The
6 commissioner shall develop and implement policies that provide the
7 public with a reasonable opportunity to appear before the
8 commissioner and to speak on any issue under the jurisdiction of the
9 department.

10 (b) The commissioner shall grant an opportunity for a public
11 hearing before the council makes recommendations to the
12 commissioner regarding a substantive rule if a public hearing is
13 requested by:

14 (1) at least 25 persons;

15 (2) a governmental entity; or

16 (3) an association with at least 25 members.

17 (c) The executive commissioner shall consider fully all
18 written and oral submissions about a proposed rule.

19 Sec. 161.030. POLICYMAKING AND MANAGEMENT
20 RESPONSIBILITIES. The executive commissioner, with the advice of
21 the council and subject to the approval of the executive
22 commissioner, shall develop and the department shall implement
23 policies that clearly delineate the policymaking responsibilities
24 of the executive commissioner from the management responsibilities
25 of the commission, the commissioner, and the staff of the
26 department.

27 Sec. 161.031. ANNUAL REPORT. (a) The commissioner shall

1 file annually with the governor, the presiding officer of each
2 house of the legislature, and the executive commissioner a complete
3 and detailed written report accounting for all funds received and
4 disbursed by the department during the preceding fiscal year.

5 (b) The annual report must be in the form and be reported in
6 the time provided by the General Appropriations Act.

7 Sec. 161.032. OFFICES. The department shall maintain its
8 central office in Austin. The department may maintain offices in
9 other areas of the state as necessary.

10 [Sections 161.033-161.050 reserved for expansion]

11 SUBCHAPTER C. PERSONNEL

12 Sec. 161.051. COMMISSIONER. (a) The executive
13 commissioner shall appoint a commissioner of the department with
14 the approval of the governor. The commissioner is to be selected
15 according to education, training, experience, and demonstrated
16 ability.

17 (b) The commissioner serves at the pleasure of the executive
18 commissioner.

19 (c) Subject to the control of the executive commissioner,
20 the commissioner shall act as the department's chief administrative
21 officer and as a liaison between the department and commission.

22 (d) The commissioner shall administer this chapter under
23 operational policies established by the executive commissioner and
24 in accordance with the memorandum of understanding under Section
25 531.0055(k), Government Code, between the commissioner and the
26 executive commissioner, as adopted by rule.

27 Sec. 161.052. PERSONNEL. (a) The department may employ,

1 compensate, and prescribe the duties of personnel necessary and
2 suitable to administer this chapter.

3 (b) The executive commissioner shall prepare and by rule
4 adopt personnel standards.

5 (c) A personnel position may be filled only by an individual
6 selected and appointed on a nonpartisan merit basis.

7 (d) The commissioner, with the advice of the council, shall
8 develop and the department shall implement policies that clearly
9 define the responsibilities of the staff of the department.

10 Sec. 161.053. INFORMATION ABOUT QUALIFICATIONS AND
11 STANDARDS OF CONDUCT. The commissioner or the commissioner's
12 designee shall provide to department employees, as often as
13 necessary, information regarding the requirements for employment
14 under this chapter or rules adopted by the executive commissioner,
15 including information regarding a person's responsibilities under
16 applicable laws relating to standards of conduct for state
17 employees.

18 Sec. 161.054. MERIT PAY. Subject to rules adopted by the
19 executive commissioner, the commissioner or the commissioner's
20 designee shall develop a system of annual performance evaluations.
21 All merit pay for department employees must be given under the
22 system established under this section or under rules adopted by the
23 executive commissioner.

24 Sec. 161.055. CAREER LADDER. The commissioner or the
25 commissioner's designee shall develop an intra-agency career
26 ladder program. The program must require intra-agency postings of
27 all nonentry-level positions concurrently with any public posting.

1 Sec. 161.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)

2 Subject to rules adopted by the executive commissioner, the
3 commissioner or the commissioner's designee shall prepare and
4 maintain a written policy statement that implements a program of
5 equal employment opportunity to ensure that all personnel decisions
6 are made without regard to race, color, disability, sex, religion,
7 age, or national origin.

8 (b) Unless the following are included in a policy statement
9 adopted by the executive commissioner that is applicable to the
10 department, the policy statement must include:

11 (1) personnel policies, including policies relating
12 to recruitment, evaluation, selection, training, and promotion of
13 personnel, that show the intent of the department to avoid the
14 unlawful employment practices described by Chapter 21, Labor Code;
15 and

16 (2) an analysis of the extent to which the composition
17 of the department's personnel is in accordance with state and
18 federal law and a description of reasonable methods to achieve
19 compliance with state and federal law.

20 (c) The policy statement must be:

21 (1) updated annually;

22 (2) reviewed by the state Commission on Human Rights
23 for compliance with Subsection (b)(1); and

24 (3) filed with the governor's office.

25 Sec. 161.057. STATE EMPLOYEE INCENTIVE PROGRAM. The
26 commissioner or the commissioner's designee shall provide to
27 department employees information and training on the benefits and

1 methods of participation in the state employee incentive program.

2 [Sections 161.058-161.070 reserved for expansion]

3 SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

4 Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The
5 department is responsible for administering human services
6 programs for the aging and disabled, including:

7 (1) administering and coordinating programs to
8 provide community-based care and support services to promote
9 independent living for populations that would otherwise be
10 institutionalized;

11 (2) providing institutional care services, including
12 services through convalescent and nursing homes and related
13 institutions under Chapter 242, Health and Safety Code;

14 (3) providing and coordinating programs and services
15 for persons with disabilities, including programs for the
16 treatment, rehabilitation, or benefit of persons with
17 developmental disabilities or mental retardation;

18 (4) operating state facilities for the housing,
19 treatment, rehabilitation, or benefit of persons with
20 disabilities, including state schools for persons with mental
21 retardation;

22 (5) serving as the state unit on aging required by the
23 federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.)
24 and its subsequent amendments, including performing the general
25 functions under Section 101.022 to ensure:

26 (A) implementation of the federal Older
27 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its

1 subsequent amendments, including implementation of services and
2 volunteer opportunities under that Act for older residents of this
3 state through area agencies on aging;

4 (B) advocacy for residents of nursing facilities
5 through the office of the state long-term care ombudsman;

6 (C) fostering of the state and community
7 infrastructure and capacity to serve older residents of this state;
8 and

9 (D) availability of a comprehensive resource for
10 state government and the public on trends related to and services
11 and programs for an aging population;

12 (6) performing all licensing and enforcement
13 activities and functions related to long-term care facilities,
14 including licensing and enforcement activities related to
15 convalescent and nursing homes and related institutions under
16 Chapter 242, Health and Safety Code;

17 (7) performing all licensing and enforcement
18 activities related to assisted living facilities under Chapter 247,
19 Health and Safety Code;

20 (8) performing all licensing and enforcement
21 activities related to intermediate care facilities for persons with
22 mental retardation under Chapter 252, Health and Safety Code; and

23 (9) performing all licensing and enforcement
24 activities and functions related to home and community support
25 services agencies under Chapter 142, Health and Safety Code.

26 Sec. 161.072. INFORMATION REGARDING COMPLAINTS. (a) The
27 department shall maintain a file on each written complaint filed

1 with the department. The file must include:

2 (1) the name of the person who filed the complaint;

3 (2) the date the complaint is received by the
4 department;

5 (3) the subject matter of the complaint;

6 (4) the name of each person contacted in relation to
7 the complaint;

8 (5) a summary of the results of the review or
9 investigation of the complaint; and

10 (6) an explanation of the reason the file was closed,
11 if the department closed the file without taking action other than
12 to investigate the complaint.

13 (b) The department shall provide to the person filing the
14 complaint and to each person who is a subject of the complaint a
15 copy of the executive commissioner's and the department's policies
16 and procedures relating to complaint investigation and resolution.

17 (c) The department, at least quarterly until final
18 disposition of the complaint, shall notify the person filing the
19 complaint and each person who is a subject of the complaint of the
20 status of the investigation unless the notice would jeopardize an
21 undercover investigation.

22 Sec. 161.073. RULES. The executive commissioner may adopt
23 rules reasonably necessary for the department to administer this
24 chapter, consistent with the memorandum of understanding under
25 Section 531.0055(k), Government Code, between the commissioner and
26 the executive commissioner, as adopted by rule.

27 SECTION 1.14. APPOINTMENT OF COMMISSIONERS. (a) As soon as

1 possible, the executive commissioner of the Health and Human
2 Services Commission shall appoint the commissioners of:

3 (1) the Department of State Health Services in
4 accordance with Chapter 1001, Health and Safety Code, as added by
5 this article;

6 (2) the Department of Family and Protective Services
7 in accordance with Chapter 40, Human Resources Code, as amended by
8 this article;

9 (3) the Department of Assistive and Rehabilitative
10 Services in accordance with Chapter 117, Human Resources Code, as
11 added by this article; and

12 (4) the Department of Aging and Disability Services in
13 accordance with Chapter 161, Human Resources Code, as added by this
14 article.

15 (b) The executive commissioner of the Health and Human
16 Services Commission shall make the appointments of the
17 commissioners required by this section so that the ethnic diversity
18 of this state is reflected in those appointments.

19 SECTION 1.15. APPOINTMENTS OF COUNCIL MEMBERS. (a) As soon
20 as possible, the governor shall appoint the members of the State
21 Health Services Council in accordance with Chapter 1001, Health and
22 Safety Code, as added by this article. In making the initial
23 appointments, the governor shall designate three members for terms
24 expiring February 1, 2005, three members for terms expiring
25 February 1, 2007, and three members for terms expiring February 1,
26 2009.

27 (b) As soon as possible, the governor shall appoint the

1 members of the Family and Protective Services Council in accordance
2 with Chapter 40, Human Resources Code, as amended by this article.
3 In making the initial appointments, the governor shall designate
4 three members for terms expiring February 1, 2005, three members
5 for terms expiring February 1, 2007, and three members for terms
6 expiring February 1, 2009.

7 (c) As soon as possible, the governor shall appoint the
8 members of the Assistive and Rehabilitative Services Council in
9 accordance with Chapter 117, Human Resources Code, as added by this
10 article. In making the initial appointments, the governor shall
11 designate three members for terms expiring February 1, 2005, three
12 members for terms expiring February 1, 2007, and three members for
13 terms expiring February 1, 2009.

14 (d) As soon as possible, the governor shall appoint the
15 members of the Aging and Disability Services Council in accordance
16 with Chapter 161, Human Resources Code, as added by this article.
17 In making the initial appointments, the governor shall designate
18 three members for terms expiring February 1, 2005, three members
19 for terms expiring February 1, 2007, and three members for terms
20 expiring February 1, 2009.

21 (e) As soon as possible, the governor shall appoint the
22 members of the Health and Human Services Council in accordance with
23 Chapter 531, Government Code, as amended by this article. In making
24 the initial appointments, the governor shall designate three
25 members for terms expiring February 1, 2005, three members for
26 terms expiring February 1, 2007, and three members for terms
27 expiring February 1, 2009.

1 SECTION 1.16. LIMITATION ON ACTIVITIES. A state agency
2 created under this article may, before the date specified in the
3 transition plan required under Section 1.23 of this article,
4 perform only those powers, duties, functions, programs, and
5 activities that relate to preparing for the transfer of powers,
6 duties, functions, programs, and activities to that agency in
7 accordance with this article. A state agency created under this
8 article may not operate all or any part of a health and human
9 services program before the date specified in the transition plan
10 required under Section 1.23 of this article.

11 SECTION 1.17. INITIAL COUNCIL AND COMMITTEE MEETINGS. The
12 presiding officers of the councils for each state agency created
13 under this article, the Family and Protective Services Council and
14 the Health and Human Services Council, and the presiding officer of
15 the Health and Human Services Transition Legislative Oversight
16 Committee shall call the initial meeting of the applicable council
17 or committee as soon as possible after the council or committee
18 members are appointed.

19 SECTION 1.18. TRANSFERS TO THE HEALTH AND HUMAN SERVICES
20 COMMISSION. (a) On the date specified in the transition plan
21 required under Section 1.23 of this article, the following powers,
22 duties, functions, programs, and activities are transferred to the
23 Health and Human Services Commission:

24 (1) all powers, duties, functions, programs, and
25 activities related to administrative support services, such as
26 strategic planning and evaluation, audit, legal, human resources,
27 information resources, accounting, purchasing, financial

1 management, and contract management services, of a state agency or
2 entity abolished by Section 1.26 of this article;

3 (2) all powers, duties, functions, programs, and
4 activities of the Texas Department of Human Services related to:

5 (A) determining eligibility for long-term care
6 services and community-based support services;

7 (B) the financial assistance program under
8 Chapter 31, Human Resources Code;

9 (C) the nutritional assistance programs under
10 Chapter 33, Human Resources Code;

11 (D) preventing family violence and providing
12 services to victims of family violence; and

13 (E) the Texas Department of Human Services office
14 of inspector general;

15 (3) all powers, duties, functions, programs, and
16 activities related to the following programs administered by a
17 state agency or entity abolished by Section 1.26 of this article:

18 (A) the state child health plan program under
19 Chapters 62 and 63, Health and Safety Code; and

20 (B) the medical assistance program under Chapter
21 32, Human Resources Code; and

22 (4) all rulemaking and policymaking authority for the
23 provision of health and human services in this state.

24 (b) On the date specified by Subsection (a) of this section:

25 (1) all obligations and contracts of a state agency or
26 entity abolished by Section 1.26 of this article that are related to
27 a power, duty, function, program, or activity transferred under

1 Subsection (a) of this section are transferred to the Health and
2 Human Services Commission;

3 (2) all property and records in the custody of a state
4 agency or entity abolished by Section 1.26 of this article that are
5 related to a power, duty, function, program, or activity
6 transferred under Subsection (a) of this section and all funds
7 appropriated by the legislature for the power, duty, function,
8 program, or activity shall be transferred to the Health and Human
9 Services Commission; and

10 (3) all complaints, investigations, or contested
11 cases that are pending before a state agency or entity abolished by
12 Section 1.26 of this article or the governing body of the agency or
13 entity and that are related to a power, duty, function, program, or
14 activity transferred under Subsection (a) of this section are
15 transferred without change in status to the Health and Human
16 Services Commission.

17 (c) A rule or form adopted by a state agency or entity
18 abolished by Section 1.26 of this article that relates to a power,
19 duty, function, program, or activity transferred under Subsection
20 (a) of this section is a rule or form of the Health and Human
21 Services Commission and remains in effect until altered by the
22 commission.

23 (d) A reference in law to a state agency or entity abolished
24 by Section 1.26 of this article, or to the governing body of the
25 agency or entity, that relates to a power, duty, function, program,
26 or activity transferred under Subsection (a) of this section means
27 the Health and Human Services Commission.

1 (e) A license, permit, or certification in effect that was
2 issued by a state agency or entity abolished by Section 1.26 of this
3 article and that relates to a power, duty, function, program, or
4 activity transferred under Subsection (a) of this section is
5 continued in effect as a license, permit, or certification of the
6 Health and Human Services Commission.

7 (f) All powers, duties, functions, programs, and activities
8 relating to the Texas Department of Human Services office of
9 inspector general transferred to the Health and Human Services
10 Commission under Subsection (a)(2)(E) of this section, shall be
11 assumed by the commission's office of inspector general.
12 Notwithstanding any other provision of law, a reference in law to
13 the Texas Department of Human Services office of inspector general
14 means the commission's office of inspector general.

15 SECTION 1.19. TRANSFERS TO THE DEPARTMENT OF STATE HEALTH
16 SERVICES. (a) On the date specified in the transition plan
17 required under Section 1.23 of this article, the following powers,
18 duties, functions, programs, and activities, other than those
19 related to rulemaking or policymaking or administrative support
20 services such as strategic planning and evaluation, audit, legal,
21 human resources, information resources, accounting, purchasing,
22 financial management, and contract management services, are
23 transferred to the Department of State Health Services:

24 (1) except as provided by Section 1.18 of this
25 article, all powers, duties, functions, programs, and activities of
26 the Texas Department of Health;

27 (2) all powers, duties, functions, programs, and

1 activities of the Texas Department of Mental Health and Mental
2 Retardation relating to providing mental health services;

3 (3) all powers, duties, functions, programs, and
4 activities of the Texas Commission on Alcohol and Drug Abuse; and

5 (4) all powers, duties, functions, programs, and
6 activities of the Texas Health Care Information Council.

7 (b) On the date specified by Subsection (a) of this section:

8 (1) all obligations and contracts of an entity listed
9 in Subsection (a) of this section that are related to a power, duty,
10 function, program, or activity transferred under that subsection
11 are transferred to the Department of State Health Services;

12 (2) all property and records in the custody of an
13 entity listed in Subsection (a) of this section that are related to
14 a power, duty, function, program, or activity transferred under
15 that subsection and all funds appropriated by the legislature for
16 the power, duty, function, program, or activity shall be
17 transferred to the Department of State Health Services; and

18 (3) all complaints, investigations, or contested
19 cases that are pending before an entity or the governing body of an
20 entity listed in Subsection (a) of this section and that are related
21 to a power, duty, function, program, or activity transferred under
22 that subsection are transferred without change in status to the
23 Department of State Health Services.

24 (c) A rule or form adopted by an entity listed in Subsection
25 (a) of this section that relates to a power, duty, function,
26 program, or activity transferred under that subsection is a rule or
27 form of the Department of State Health Services and remains in

1 effect until altered by the executive commissioner of the Health
2 and Human Services Commission.

3 (d) A reference in law to an entity listed in Subsection (a)
4 of this section that relates to a power, duty, function, program, or
5 activity transferred under that subsection means the Department of
6 State Health Services. A reference in law to the governing body of
7 an entity listed in Subsection (a) of this section means the Health
8 and Human Services Commission or the executive commissioner of the
9 Health and Human Services Commission.

10 (e) A license, permit, or certification in effect that was
11 issued by an entity listed in Subsection (a) of this section and
12 that relates to a power, duty, function, program, or activity
13 transferred under that subsection is continued in effect as a
14 license, permit, or certification of the Department of State Health
15 Services.

16 SECTION 1.20. TRANSFERS TO THE DEPARTMENT OF AGING AND
17 DISABILITY SERVICES. (a) On the date specified in the transition
18 plan required under Section 1.23 of this article, the following
19 powers, duties, functions, programs, and activities, other than
20 those related to rulemaking or policymaking or administrative
21 support services such as strategic planning and evaluation, audit,
22 legal, human resources, information resources, accounting,
23 purchasing, financial management, and contract management
24 services, are transferred to the Department of Aging and Disability
25 Services:

26 (1) all powers, duties, functions, programs, and
27 activities of the Texas Department on Aging;

1 (2) except as provided by Section 1.18 of this
2 article, from the Texas Department of Human Services, all powers,
3 duties, functions, programs, and activities related to providing
4 long-term care services and community-based support and services,
5 licensing and enforcing regulations applicable to long-term care
6 facilities, and licensing and enforcing regulations applicable to
7 home and community support services agencies; and

8 (3) all powers, duties, functions, programs, and
9 activities of the Texas Department of Mental Health and Mental
10 Retardation related to providing mental retardation services,
11 including state school administration and services and community
12 residential services.

13 (b) On the date specified by Subsection (a) of this section:

14 (1) all obligations and contracts of an entity listed
15 in Subsection (a) of this section that are related to a power, duty,
16 function, program, or activity transferred under that subsection
17 are transferred to the Department of Aging and Disability Services;

18 (2) all property and records in the custody of an
19 entity listed in Subsection (a) of this section that are related to
20 a power, duty, function, program, or activity transferred under
21 that subsection and all funds appropriated by the legislature for
22 the power, duty, function, program, or activity shall be
23 transferred to the Department of Aging and Disability Services; and

24 (3) all complaints, investigations, or contested
25 cases that are pending before an entity or the governing body of an
26 entity listed in Subsection (a) of this section and that are related
27 to a power, duty, function, program, or activity transferred under

1 that subsection are transferred without change in status to the
2 Department of Aging and Disability Services.

3 (c) A rule or form adopted by an entity listed in Subsection
4 (a) of this section that relates to a power, duty, function,
5 program, or activity transferred under that subsection is a rule or
6 form of the Department of Aging and Disability Services and remains
7 in effect until altered by the executive commissioner of the Health
8 and Human Services Commission.

9 (d) A reference in law to an entity listed in Subsection (a)
10 of this section that relates to a power, duty, function, program, or
11 activity transferred under that subsection means the Department of
12 Aging and Disability Services. A reference in law to the governing
13 body of an entity listed in Subsection (a) of this section means the
14 Health and Human Services Commission or the executive commissioner
15 of the Health and Human Services Commission.

16 (e) A license, permit, or certification in effect that was
17 issued by an entity listed in Subsection (a) of this section and
18 that relates to a power, duty, function, program, or activity
19 transferred under that subsection is continued in effect as a
20 license, permit, or certification of the Department of Aging and
21 Disability Services.

22 SECTION 1.21. TRANSFERS TO THE DEPARTMENT OF ASSISTIVE AND
23 REHABILITATIVE SERVICES. (a) On the date specified in the
24 transition plan required under Section 1.23 of this article, the
25 following powers, duties, functions, programs, and activities,
26 other than those related to rulemaking or policymaking or
27 administrative support services such as strategic planning and

1 evaluation, audit, legal, human resources, information resources,
2 accounting, purchasing, financial management, and contract
3 management services, are transferred to the Department of Assistive
4 and Rehabilitative Services:

5 (1) all powers, duties, functions, programs, and
6 activities of the Texas Rehabilitation Commission;

7 (2) all powers, duties, functions, programs, and
8 activities of the Interagency Council on Early Childhood
9 Intervention;

10 (3) all powers, duties, functions, programs, and
11 activities of the Texas Commission for the Blind; and

12 (4) all powers, duties, functions, programs, and
13 activities of the Texas Commission for the Deaf and Hard of Hearing.

14 (b) On the date specified by Subsection (a) of this section:

15 (1) all obligations and contracts of an entity listed
16 in Subsection (a) of this section that are related to a power, duty,
17 function, program, or activity transferred under that subsection
18 are transferred to the Department of Assistive and Rehabilitative
19 Services;

20 (2) all property and records in the custody of an
21 entity listed in Subsection (a) of this section that are related to
22 a power, duty, function, program, or activity transferred under
23 that subsection and all funds appropriated by the legislature for
24 the power, duty, function, program, or activity shall be
25 transferred to the Department of Assistive and Rehabilitative
26 Services; and

27 (3) all complaints, investigations, or contested

1 cases that are pending before an entity or the governing body of an
2 entity listed in Subsection (a) of this section and that are related
3 to a power, duty, function, program, or activity transferred under
4 that subsection are transferred without change in status to the
5 Department of Assistive and Rehabilitative Services.

6 (c) A rule or form adopted by an entity listed in Subsection
7 (a) of this section that relates to a power, duty, function,
8 program, or activity transferred under that subsection is a rule or
9 form of the Department of Assistive and Rehabilitative Services and
10 remains in effect until altered by the executive commissioner of
11 the Health and Human Services Commission.

12 (d) A reference in law to an entity listed in Subsection (a)
13 of this section that relates to a power, duty, function, program, or
14 activity transferred under that subsection means the Department of
15 Assistive and Rehabilitative Services. A reference in law to the
16 governing body of an entity listed in Subsection (a) of this section
17 means the Health and Human Services Commission or the executive
18 commissioner of the Health and Human Services Commission.

19 (e) A license, permit, or certification in effect that was
20 issued by an entity listed in Subsection (a) of this section and
21 that relates to a power, duty, function, program, or activity
22 transferred under that subsection is continued in effect as a
23 license, permit, or certification of the Department of Assistive
24 and Rehabilitative Services.

25 SECTION 1.22. HEALTH AND HUMAN SERVICES TRANSITION
26 LEGISLATIVE OVERSIGHT COMMITTEE. The Health and Human Services
27 Transition Legislative Oversight Committee is created to

1 facilitate the transfer of powers, duties, functions, programs, and
2 activities between the state's health and human services agencies
3 and the Health and Human Services Commission as provided by this
4 article with a minimal negative effect on the delivery of those
5 services in this state.

6 (b) The committee is composed of 7 members, as follows:

7 (1) two members of the senate, appointed by the
8 lieutenant governor not later than October 1, 2003;

9 (2) two members of the house of representatives,
10 appointed by the speaker of the house of representatives not later
11 than October 1, 2003;

12 (3) three members of the public, appointed by the
13 governor not later than October 1, 2003.

14 (c) The executive commissioner of the Health and Human
15 Services Commission serves as an ex officio member of the
16 committee.

17 (d) A member of the committee serves at the pleasure of the
18 appointing official.

19 (e) The lieutenant governor and the speaker of the house of
20 representatives shall alternate designating a presiding officer
21 from among their respective appointments. The speaker of the house
22 of representatives shall make the first appointment after the
23 effective date of this section.

24 (f) A member of the committee may not receive compensation
25 for serving on the committee but is entitled to reimbursement for
26 travel expenses incurred by the member while conducting the
27 business of the committee as provided by the General Appropriations

1 Act.

2 (g) The committee shall:

3 (1) facilitate the transfer of powers, duties,
4 functions, programs, and activities between the state's health and
5 human services agencies and the Health and Human Services
6 Commission as provided by this article with a minimal negative
7 effect on the delivery of those services in this state;

8 (2) with assistance from the Health and Human Services
9 Commission and the health and human services agencies, advise the
10 executive commissioner of the Health and Human Services Commission
11 concerning:

12 (A) the powers, duties, functions, programs, and
13 activities transferred under this article and the funds and
14 obligations that are related to the powers, duties, functions,
15 programs, or activities; and

16 (B) the transfer of the powers, duties,
17 functions, programs, activities, records, property, funds,
18 obligations, and employees by the entities as required by Sections
19 1.18, 1.19, 1.20, and 1.21 of this article;

20 (3) meet at the call of the presiding officer;

21 (4) research, take public testimony, and issue reports
22 on other appropriate issues or specific issues requested by the
23 lieutenant governor, speaker, or governor; and

24 (5) review specific recommendations for legislation
25 proposed by the Health and Human Services Commission or the health
26 and human services agencies.

27 (h) The committee shall monitor the effectiveness and

1 efficiency of the health and human services system of this state.

2 (i) The committee may request reports and other information
3 from the Health and Human Services Commission, health and human
4 services agencies, and the attorney general relating to health and
5 human services in this state and other appropriate issues.

6 (j) The committee shall use existing staff of the senate,
7 the house of representatives, and the Texas Legislative Council to
8 assist the committee in performing its duties under this section.

9 (k) Chapter 551, Government Code, applies to the committee.

10 (l) The committee shall report to the governor, lieutenant
11 governor, and speaker of the house of representatives not later
12 than November 15 of each even-numbered year. The report must
13 include:

14 (1) identification of significant issues within the
15 health and human services delivery system, with recommendations for
16 action;

17 (2) an analysis of the effectiveness and efficiency of
18 the health and human services delivery system, with recommendations
19 for any necessary research; and

20 (3) recommendations for legislative action.

21 SECTION 1.23. TRANSITION PLAN. (a) The transfer of powers,
22 duties, functions, programs, and activities under Sections 1.18,
23 1.19, 1.20, and 1.21 of this article to the Health and Human
24 Services Commission, the Department of State Health Services, the
25 Department of Aging and Disability Services, and the Department of
26 Assistive and Rehabilitative Services, respectively, must be
27 accomplished in accordance with a schedule included in a transition

1 plan developed by the executive commissioner of the Health and
2 Human Services Commission and submitted to the governor and the
3 Legislative Budget Board not later than December 1, 2003. The
4 executive commissioner shall provide to the governor and the
5 Legislative Budget Board transition plan status reports and updates
6 on at least a quarterly basis following submission of the initial
7 transition plan. The transition plan must be made available to the
8 public.

9 (b) Not later than November 1, 2003, the Health and Human
10 Services Commission shall hold a public hearing and accept public
11 comment regarding the transition plan required to be developed by
12 the executive commissioner of the Health and Human Services
13 Commission under Subsection (a) of this section.

14 (c) In developing the transition plan, the executive
15 commissioner of the Health and Human Services Commission shall hold
16 public hearings in various geographic areas in this state before
17 submitting the plan to the governor and the Legislative Budget
18 Board as required by this section.

19 SECTION 1.24. APPLICABILITY OF FORMER LAW. An action
20 brought or proceeding commenced before the date of a transfer
21 prescribed by this article in accordance with the transition plan
22 required under Section 1.23 of this article, including a contested
23 case or a remand of an action or proceeding by a reviewing court, is
24 governed by the laws and rules applicable to the action or
25 proceeding before the transfer.

26 SECTION 1.25. WORK PLAN FOR HEALTH AND HUMAN SERVICES
27 AGENCIES. (a) The Health and Human Services Commission, the

1 Department of Family and Protective Services, and each health and
2 human services agency created under this article shall implement
3 the powers, duties, functions, programs, and activities assigned to
4 the agency under this article in accordance with a work plan
5 designed by the commission to ensure that the transfer and
6 provision of health and human services in this state are
7 accomplished in a careful and deliberative manner.

8 (b) A work plan designed by the commission under this
9 section must include the following phases:

10 (1) a planning phase, during which the agency will
11 focus on and stabilize the organization of the agency's powers,
12 duties, functions, programs, and activities, and which must
13 include:

14 (A) initiation of recommendations made by the
15 Health and Human Services Transition Legislative Oversight
16 Committee;

17 (B) creation of interagency and intra-agency
18 steering committees;

19 (C) development of global visions, goals, and
20 organizational strategies; and

21 (D) development of communications and risk
22 management plans;

23 (2) an integration phase, during which the agency will
24 identify opportunities and problems and design customized
25 solutions for those problems, and which must include:

26 (A) identification of key issues for the agency
27 relating to the Texas Integrated Eligibility Redesign System,

1 waivers needed from federal agencies, costs, or legal requirements
2 for other agency activities;

3 (B) planning for daily operations;

4 (C) validation of fiscal and program synergies;

5 (D) definition and building of a program
6 management office; and

7 (E) development of performance measures, related
8 tracking measures and tools, and risk mitigation initiatives;

9 (3) an optimization phase, during which the agency
10 will complete and expand on the initial health and human services
11 transitions, and which must include:

12 (A) optimization of initial implementation
13 initiatives;

14 (B) use of enterprise teaming operations;

15 (C) building infrastructures to support and
16 facilitate changes in the delivery of health and human services;
17 and

18 (D) identification and use of beneficial assets
19 management and facilities approaches; and

20 (4) a transformation phase, during which the agency
21 will continue implementing initial and additional changes to the
22 delivery of health and human services, and which must include:

23 (A) implementation of changes in agency
24 management activities;

25 (B) continuation of risk assessments; and

26 (C) conducting a transformation review of the
27 changes to the delivery of health and human services.

1 SECTION 1.26. ABOLITION OF STATE AGENCIES AND ENTITIES.

2 (a) The following state agencies and entities are abolished on the
3 date on which their respective powers, duties, functions, programs,
4 and activities are transferred under this article:

5 (1) the Interagency Council on Early Childhood
6 Intervention;

7 (2) the Texas Commission for the Blind;

8 (3) the Texas Commission for the Deaf and Hard of
9 Hearing;

10 (4) the Texas Commission on Alcohol and Drug Abuse;

11 (5) the Texas Department of Health;

12 (6) the Texas Department of Human Services;

13 (7) the Texas Department of Mental Health and Mental
14 Retardation;

15 (8) the Texas Department on Aging;

16 (9) the Texas Health Care Information Council; and

17 (10) the Texas Rehabilitation Commission.

18 (b) The abolition of a state agency or entity listed in
19 Subsection (a) of this section and the transfer of its powers,
20 duties, functions, programs, activities, obligations, rights,
21 contracts, records, property, funds, and employees as provided by
22 this article do not affect or impair an act done, any obligation,
23 right, order, permit, certificate, rule, criterion, standard, or
24 requirement existing, or any penalty accrued under former law, and
25 that law remains in effect for any action concerning those matters.

26 SECTION 1.27. A reference in law to the Department of
27 Protective and Regulatory Services means the Department of Family

1 and Protective Services.

2 SECTION 1.28. REPEAL. The following are repealed:

3 (1) Sections 531.0057, 531.034, and 531.0345,
4 Government Code;

5 (2) Sections 40.0225 and 40.023, Human Resources Code;
6 and

7 (3) Article 2, Chapter 1505, Acts of the 76th
8 Legislature, Regular Session, 1999.

9 SECTION 1.29. EFFECTIVE DATE. (a) Except as provided by
10 Subsection (b) of this section, this article takes effect September
11 1, 2003.

12 (b) The Department of State Health Services, the Department
13 of Assistive and Rehabilitative Services, and the Department of
14 Aging and Disability Services are created on the date the executive
15 commissioner of the Health and Human Services Commission appoints
16 the commissioner of the respective agency.

17 ARTICLE 2. ADMINISTRATION, OPERATION, AND FINANCING OF
18 HEALTH AND HUMAN SERVICES PROGRAMS AND PROVISION OF
19 HEALTH AND HUMAN SERVICES

20 SECTION 2.01. Section 531.001, Government Code, is amended
21 by adding Subdivision (1-a) to read as follows:

22 (1-a) "Child health plan program" means the child
23 health plan program established under Chapters 62 and 63, Health
24 and Safety Code.

25 SECTION 2.02. (a) Subchapter A, Chapter 531, Government
26 Code, is amended by adding Section 531.017 to read as follows:

27 Sec. 531.017. PURCHASING DIVISION. (a) The commission

1 shall establish a purchasing division for the management of
2 administrative activities related to the purchasing functions of
3 the commission and the health and human services agencies.

4 (b) The purchasing division shall:

5 (1) seek to achieve targeted cost reductions, increase
6 process efficiencies, improve technological support and customer
7 services, and enhance purchasing support for each health and human
8 services agency; and

9 (2) if cost-effective, contract with private entities
10 to perform purchasing functions for the commission and the health
11 and human services agencies.

12 (b) Not later than January 1, 2004, the Health and Human
13 Services Commission shall develop and implement a plan to
14 consolidate the purchasing functions of the commission and health
15 and human services agencies in a purchasing division under Section
16 531.017, Government Code, as added by this section.

17 SECTION 2.03. Section 531.021, Government Code, is amended
18 by adding Subsections (c)-(e) to read as follows:

19 (c) The commission in its adoption of reasonable rules and
20 standards under Subsection (b)(2) shall include financial
21 performance standards that, in the event of a proposed rate
22 reduction, provide private ICF-MR facilities and home and
23 community-based services providers with flexibility in determining
24 how to use medical assistance payments to provide services in the
25 most cost-effective manner while continuing to meet the state and
26 federal requirements of the Medicaid program.

27 (d) In adopting rules and standards required by Subsection

1 (b)(2), the commission may provide for payment of fees, charges,
2 and rates in accordance with:

3 (1) formulas, procedures, or methodologies prescribed
4 by the commission's rules;

5 (2) applicable state or federal law, policies, rules,
6 regulations, or guidelines;

7 (3) economic conditions that substantially and
8 materially affect provider participation in the Medicaid program,
9 as determined by the commissioner; or

10 (4) available levels of appropriated state and federal
11 funds.

12 (e) Notwithstanding any other provision of Chapter 32,
13 Human Resources Code, Chapter 533, or this chapter, the commission
14 may adjust the fees, charges, and rates paid to Medicaid providers
15 as necessary to achieve the objectives of the Medicaid program in a
16 manner consistent with the considerations described by Subsection
17 (d).

18 SECTION 2.04. Subchapter B, Chapter 531, Government Code,
19 is amended by adding Section 531.0335 to read as follows:

20 Sec. 531.0335. PROHIBITION ON PUNITIVE ACTION FOR FAILURE
21 TO IMMUNIZE. (a) In this section:

22 (1) "Person responsible for a child's care, custody,
23 or welfare" has the meaning assigned by Section 261.001, Family
24 Code.

25 (2) "Punitive action" includes the initiation of an
26 investigation of a person responsible for a child's care, custody,
27 or welfare for alleged or suspected abuse or neglect of a child.

1 (b) The commissioner by rule shall prohibit a health and
2 human services agency from taking a punitive action against a
3 person responsible for a child's care, custody, or welfare for
4 failure of the person to ensure that the child receives the
5 immunization series prescribed by Section 161.004, Health and
6 Safety Code.

7 (c) This section does not affect a law, including Chapter
8 31, Human Resources Code, that specifically provides a punitive
9 action for failure to ensure that a child receives the immunization
10 series prescribed by Section 161.004, Health and Safety Code.

11 SECTION 2.05. Subchapter B, Chapter 531, Government Code,
12 is amended by adding Section 531.0392 to read as follows:

13 Sec. 531.0392. RECOVERY OF CERTAIN THIRD-PARTY
14 REIMBURSEMENTS UNDER MEDICAID. (a) In this section, "dually
15 eligible individual" means an individual who is eligible to receive
16 health care benefits under both the Medicaid and Medicare programs.

17 (b) The commission shall obtain Medicaid reimbursement from
18 each fiscal intermediary who makes a payment to a service provider
19 on behalf of the Medicare program, including a reimbursement for a
20 payment made to a home health services provider or nursing facility
21 for services rendered to a dually eligible individual.

22 SECTION 2.06. Subchapter B, Chapter 531, Government Code,
23 is amended by adding Section 531.063 to read as follows:

24 Sec. 531.063. CALL CENTERS. (a) The commission, by rule,
25 shall establish at least one but not more than four call centers for
26 purposes of determining and certifying or recertifying a person's
27 eligibility and need for services related to the programs listed

1 under Section 531.008(c), if cost-effective. The commission must
2 conduct a public hearing before establishing the initial call
3 center.

4 (b) The commission shall contract with at least one but not
5 more than four private entities for the operation of call centers
6 required by this section unless the commission determines that
7 contracting would not be cost-effective.

8 (c) Each call center required by this section must be
9 located in this state. This subsection does not prohibit a call
10 center located in this state from processing overflow calls through
11 a center located in another state.

12 (d) Each call center required by this section shall provide
13 translation services as required by federal law for clients unable
14 to speak, hear, or comprehend the English language.

15 (e) The commission shall develop consumer service and
16 performance standards for the operation of each call center
17 required by this section. The standards shall address a call
18 center's:

19 (1) ability to serve its consumers in a timely manner,
20 including consideration of the consumers' ability to access the
21 call center, whether the call center has toll-free telephone
22 access, the average amount of time a consumer spends on hold, the
23 frequency of call transfers, whether a consumer is able to
24 communicate with a live person at the call center, and whether the
25 call center makes mail correspondence available;

26 (2) staff, including employee courtesy, friendliness,
27 training, and knowledge about the programs listed under Section

1 531.008(c); and

2 (3) complaint handling procedures, including the
3 level of difficulty involved in filing a complaint and whether the
4 call center's complaint responses are timely.

5 (f) The commission shall make available to the public the
6 standards developed under Subsection (e).

7 (g) The commission shall develop:

8 (1) mechanisms for measuring consumer service
9 satisfaction; and

10 (2) performance measures to evaluate whether each call
11 center meets the standards developed under Subsection (e).

12 (h) The commission may inspect each call center and analyze
13 its consumer service performance through use of a consumer service
14 evaluator who poses as a consumer of the call center.

15 (i) Notwithstanding Subsection (a), the commissioner shall
16 develop and implement policies that provide an applicant for
17 services related to the programs listed under Section 531.008(c)
18 with an opportunity to appear in person to establish initial
19 eligibility or to comply with periodic eligibility recertification
20 requirements if the applicant requests a personal interview. In
21 implementing the policies, the commission shall maintain offices to
22 serve applicants who request a personal interview. This subsection
23 does not affect a law or rule that requires an applicant to appear
24 in person to establish initial eligibility or to comply with
25 periodic eligibility recertification requirements.

26 SECTION 2.07. (a) Subchapter B, Chapter 531, Government
27 Code, is amended by adding Section 531.065 to read as follows:

1 Sec. 531.065. CONSOLIDATION AND COORDINATION OF HEALTH
2 INSURANCE PREMIUM PAYMENT REIMBURSEMENT PROGRAMS. (a) The
3 commission shall develop and implement a plan to consolidate and
4 coordinate the administration of the health insurance premium
5 payment reimbursement programs prescribed by Section 62.059,
6 Health and Safety Code, and Section 32.0422, Human Resources Code.

7 (b) If cost-effective, the commission may contract with a
8 private entity to assist the commission in developing and
9 implementing a plan required by this section.

10 (b) Section 62.059(i), Health and Safety Code, and Section
11 32.0422(m), Human Resources Code, are repealed.

12 (c) Not later than January 1, 2004, the Health and Human
13 Services Commission shall develop and implement a plan to
14 consolidate and coordinate the administration of health insurance
15 premium payment reimbursement programs as required by Section
16 531.065, Government Code, as added by this section.

17 SECTION 2.08. Subchapter B, Chapter 531, Government Code,
18 is amended by adding Section 531.067 to read as follows:

19 Sec. 531.067. PUBLIC ASSISTANCE HEALTH BENEFIT REVIEW AND
20 DESIGN COMMITTEE. (a) The commission shall appoint a Public
21 Assistance Health Benefit Review and Design Committee. The
22 committee consists of nine representatives of health care providers
23 participating in the Medicaid program or the child health plan
24 program, or both. The committee membership must include at least
25 three representatives from each program.

26 (b) The commissioner shall designate one member to serve as
27 presiding officer for a term of two years.

1 (c) The committee shall meet at the call of the presiding
2 officer.

3 (d) The committee shall review and provide recommendations
4 to the commission regarding health benefits and coverages provided
5 under the state Medicaid program, the child health plan program,
6 and any other income-based health care program administered by the
7 commission or a health and human services agency. In performing its
8 duties under this subsection, the committee must:

9 (1) review benefits provided under each of the
10 programs; and

11 (2) review procedures for addressing high utilization
12 of benefits by recipients.

13 (e) The commission shall provide administrative support and
14 resources as necessary for the committee to perform its duties
15 under this section.

16 (f) Section 2110.008 does not apply to the committee.

17 (g) In performing the duties under this section, the
18 commission may design and implement a program to improve and
19 monitor clinical and functional outcomes of a recipient of services
20 under the state child health plan or medical assistance program.
21 The program may use financial, clinical, and other criteria based
22 on pharmacy, medical services, and other claims data related to the
23 child health plan or the state medical assistance program. The
24 commission must report to the committee on the fiscal impact,
25 including any savings associated with the strategies utilized under
26 this section.

27 SECTION 2.09. Subchapter B, Chapter 531, Government Code,

1 is amended by adding Section 531.068 to read as follows:

2 Sec. 531.068. MEDICAID OR OTHER HEALTH BENEFIT COVERAGE.

3 In adopting rules or standards governing the state Medicaid program
4 or rules or standards for the development or implementation of
5 health benefit coverage for a program administered by the
6 commission or a health and human services agency, the commission
7 and each health and human services agency, as appropriate, may take
8 into consideration any recommendation made with respect to health
9 benefits provided under their respective programs or the state
10 Medicaid program by the Public Assistance Health Benefit Review and
11 Design Committee established under Section 531.067.

12 SECTION 2.10. Subchapter B, Chapter 531, Government Code,
13 is amended by adding Section 531.069 to read as follows:

14 Sec. 531.069. PERIODIC REVIEW OF VENDOR DRUG PROGRAM. (a)

15 The commission shall periodically review all purchases made under
16 the vendor drug program to determine the cost-effectiveness of
17 including a component for prescription drug benefits in any
18 capitation rate paid by the state under a Medicaid managed care
19 program or the child health plan program.

20 (b) In making the determination required by Subsection (a),
21 the commission shall consider the value of any prescription drug
22 rebates received by the state.

23 SECTION 2.11. (a) Subchapter B, Chapter 531, Government
24 Code, is amended by adding Section 531.070 to read as follows:

25 Sec. 531.070. SUPPLEMENTAL REBATES. (a) In this section:

26 (1) "Labeler" means a person that:

27 (A) has a labeler code from the United States

1 Food and Drug Administration under 21 C.F.R. Section 207.20; and

2 (B) receives prescription drugs from a
3 manufacturer or wholesaler and repackages those drugs for later
4 retail sale.

5 (2) "Manufacturer" means a manufacturer of
6 prescription drugs as defined by 42 U.S.C. Section 1396r-8(k)(5)
7 and its subsequent amendments, including a subsidiary or affiliate
8 of a manufacturer.

9 (3) "Wholesaler" means a person licensed under
10 Subchapter I, Chapter 431, Health and Safety Code.

11 (b) For purposes of this section, the term "supplemental
12 rebates" means cash rebates paid by a manufacturer to the state on
13 the basis of appropriate quarterly health and human services
14 program utilization data relating to the manufacturer's products,
15 pursuant to a state supplemental rebate agreement negotiated with
16 the manufacturer and, if necessary, approved by the federal
17 government under Section 1927 of the federal Social Security Act.

18 (c) The commission may enter into a written agreement with a
19 manufacturer to accept certain program benefits in lieu of
20 supplemental rebates, as defined by this section, only if:

21 (1) the program benefit yields savings that are at
22 least equal to the amount the manufacturer would have provided
23 under a state supplemental rebate agreement during the current
24 biennium as determined by the written agreement;

25 (2) the manufacturer posts a performance bond
26 guaranteeing savings to the state, and agrees that if the savings
27 are not achieved in accordance with the written agreement, the

1 manufacturer will forfeit the bond to the state less any savings
2 that were achieved; and

3 (3) the program benefit is in addition to other
4 program benefits currently offered by the manufacturer to
5 recipients of medical assistance or related programs.

6 (d) For purposes of this section, a program benefit may mean
7 disease management programs authorized under this title, drug
8 product donation programs, drug utilization control programs,
9 prescriber and beneficiary counseling and education, fraud and
10 abuse initiatives, and other services or administrative
11 investments with guaranteed savings to a program operated by a
12 health and human services agency.

13 (e) Other than as required to satisfy the provisions of this
14 section, the program benefits shall be deemed an alternative to,
15 and not the equivalent of, supplemental rebates and shall be
16 treated in the state's submissions to the federal government
17 (including, as appropriate, waiver requests and quarterly Medicaid
18 claims) so as to maximize the availability of federal matching
19 payments.

20 (f) Agreements by the commission to accept program benefits
21 as defined by this section:

22 (1) may not prohibit the commission from entering into
23 similar agreements related to different drug classes with other
24 entities;

25 (2) shall be limited to a time period expressly
26 determined by the commission; and

27 (3) may only cover products that have received

1 approval by the Federal Drug Administration at the time of the
2 agreement, and new products approved after the agreement may be
3 incorporated only under an amendment to the agreement.

4 (g) For purposes of this section, the commission may
5 consider a monetary contribution or donation to the arrangements
6 described in Subsection (c) for the purpose of offsetting
7 expenditures to other state health care programs, but which funding
8 may not be used to offset expenditures for covered outpatient drugs
9 as defined by 42 U.S.C. Section 1396r-8(k)(2) under the vendor drug
10 program. An arrangement under this subsection may not yield less
11 than the amount the state would have benefited under a supplemental
12 rebate. The commission may consider an arrangement under this
13 section as satisfying the requirements related to Section
14 531.072(b).

15 (h) Subject to Subsection (i), the commission shall
16 negotiate with manufacturers and labelers, including generic
17 manufacturers and labelers, to obtain supplemental rebates for
18 prescription drugs provided under:

19 (1) the Medicaid vendor drug program in excess of the
20 Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its
21 subsequent amendments;

22 (2) the child health plan program; and

23 (3) any other state program administered by the
24 commission or a health and human services agency, including
25 community mental health centers and state mental health hospitals.

26 (i) The commission may by contract authorize a private
27 entity to negotiate with manufacturers and labelers on behalf of

1 the commission.

2 (j) A manufacturer or labeler that sells prescription drugs
3 in this state may voluntarily negotiate with the commission and
4 enter into an agreement to provide supplemental rebates for
5 prescription drugs provided under:

6 (1) the Medicaid vendor drug program in excess of the
7 Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its
8 subsequent amendments;

9 (2) the child health plan program; and

10 (3) any other state program administered by the
11 commission or a health and human services agency, including
12 community mental health centers and state mental health hospitals.

13 (k) In negotiating terms for a supplemental rebate amount,
14 the commission shall consider:

15 (1) rebates calculated under the Medicaid rebate
16 program in accordance with 42 U.S.C. Section 1396r-8 and its
17 subsequent amendments;

18 (2) any other available information on prescription
19 drug prices or rebates; and

20 (3) other program benefits as specified in Subsection

21 (c).

22 (1) Each year the commission shall provide a written report
23 to the legislature and the governor. The report shall cover:

24 (1) the cost of administering the preferred drug lists
25 adopted under Section 531.072;

26 (2) an analysis of the utilization trends for medical
27 services provided by the state and any correlation to the preferred

1 drug lists;

2 (3) an analysis of the effect on health outcomes and
3 results for recipients; and

4 (4) statistical information related to the number of
5 approvals granted or denied.

6 (m) In negotiating terms for a supplemental rebate, the
7 commission shall use the average manufacturer price (AMP), as
8 defined in Section 1396r-8(k)(1) of the Omnibus Budget
9 Reconciliation Act of 1990, as the cost basis for the product.

10 (b) Not later than January 1, 2004, the Health and Human
11 Services Commission shall implement Section 531.070, Government
12 Code, as added by this section.

13 SECTION 2.12. Subchapter B, Chapter 531, Government Code,
14 is amended by adding Section 531.071 to read as follows:

15 Sec. 531.071. CONFIDENTIALITY OF INFORMATION REGARDING
16 DRUG REBATES, PRICING, AND NEGOTIATIONS. (a) Notwithstanding any
17 other state law, information obtained or maintained by the
18 commission regarding prescription drug rebate negotiations or a
19 supplemental medical assistance or other rebate agreement,
20 including trade secrets, rebate amount, rebate percentage, and
21 manufacturer or labeler pricing, is confidential and not subject to
22 disclosure under Chapter 552.

23 (b) Information that is confidential under Subsection (a)
24 includes information described by Subsection (a) that is obtained
25 or maintained by the commission in connection with the Medicaid
26 vendor drug program, the child health plan program, the kidney
27 health care program, the children with special health care needs

1 program, or another state program administered by the commission or
2 a health and human services agency.

3 (c) General information about the aggregate costs of
4 different classes of drugs is not confidential under Subsection
5 (a).

6 SECTION 2.13. (a) Subchapter B, Chapter 531, Government
7 Code, is amended by adding Section 531.072 to read as follows:

8 Sec. 531.072. PREFERRED DRUG LISTS. (a) In a manner that
9 complies with applicable state and federal law, the commission
10 shall adopt preferred drug lists for the Medicaid vendor drug
11 program and for prescription drugs purchased through the child
12 health plan program. The commission may adopt preferred drug lists
13 for community mental health centers, state mental health hospitals,
14 and any other state program administered by the commission or a
15 state health and human services agency.

16 (b) The preferred drug lists may contain only drugs provided
17 by a manufacturer or labeler that reaches an agreement with the
18 commission on supplemental rebates under Section 531.070.

19 (c) In making a decision regarding the placement of a drug
20 on each of the preferred drug lists, the commission shall consider:

21 (1) the recommendations of the Pharmaceutical and
22 Therapeutics Committee established under Section 531.074;

23 (2) the clinical efficacy of the drug;

24 (3) the price of competing drugs after deducting any
25 federal and state rebate amounts; and

26 (4) program benefit offerings solely or in conjunction
27 with rebates and other pricing information.

1 (d) The commission shall provide for the distribution of
2 current copies of the preferred drug lists by posting the list on
3 the Internet. In addition, the commission shall mail copies of the
4 lists to any health care provider on request of that provider.

5 (e) In this subsection, "labeler" and "manufacturer" have
6 the meanings assigned by Section 531.070. The commission shall
7 ensure that:

8 (1) a manufacturer or labeler may submit written
9 evidence supporting the inclusion of a drug on the preferred drug
10 lists before a supplemental agreement is reached with the
11 commission; and

12 (2) any drug that has been approved or has had any of
13 its particular uses approved by the United States Food and Drug
14 Administration under a priority review classification will be
15 reviewed by the Pharmaceutical and Therapeutics Committee at the
16 next regularly scheduled meeting of the committee. On receiving
17 notice from a manufacturer or labeler of the availability of a new
18 product, the commission, to the extent possible, shall schedule a
19 review for the product at the next regularly scheduled meeting of
20 the committee.

21 (f) A recipient of drug benefits under the Medicaid vendor
22 drug program may appeal a denial of prior authorization under
23 Section 531.073 of a covered drug or covered dosage through the
24 Medicaid fair hearing process.

25 (b) Not later than March 1, 2004, the Health and Human
26 Services Commission shall adopt the preferred drug lists as
27 required by Section 531.072, Government Code, as added by this

1 section.

2 SECTION 2.14. Subchapter B, Chapter 531, Government Code,
3 is amended by adding Section 531.073 to read as follows:

4 Sec. 531.073. PRIOR AUTHORIZATION FOR CERTAIN PRESCRIPTION
5 DRUGS. (a) The commission, in its rules and standards governing
6 the Medicaid vendor drug program and the child health plan program,
7 shall require prior authorization for the reimbursement of a drug
8 that is not included in the appropriate preferred drug list adopted
9 under Section 531.072, except for any drug exempted from prior
10 authorization requirements by federal law. The commission may
11 require prior authorization for the reimbursement of a drug
12 provided through any other state program administered by the
13 commission or a state health and human services agency, including a
14 community mental health center and a state mental health hospital
15 if the commission adopts preferred drug lists under Section 531.072
16 that apply to those facilities and the drug is not included in the
17 appropriate list. The commission shall require that the prior
18 authorization be obtained by the prescribing physician or
19 prescribing practitioner.

20 (a-1) Until the commission has completed a study evaluating
21 the impact of a requirement of prior authorization on recipients of
22 certain drugs, the commission shall delay requiring prior
23 authorization for drugs that are used to treat patients with
24 illnesses that:

- 25 (1) are life-threatening;
26 (2) are chronic; and
27 (3) require complex medical management strategies.

1 (a-2) Not later than the 30th day before the date on which
2 prior authorization requirements are implemented, the commission
3 shall post on the Internet for consumers and providers:

- 4 (1) a notification of the implementation date; and
5 (2) a detailed description of the procedures to be
6 used in obtaining prior authorization.

7 (b) The commission shall establish procedures for the prior
8 authorization requirement under the Medicaid vendor drug program to
9 ensure that the requirements of 42 U.S.C. Section 1396r-8(d)(5) and
10 its subsequent amendments are met. Specifically, the procedures
11 must ensure that:

12 (1) a prior authorization requirement is not imposed
13 for a drug before the drug has been considered at a meeting of the
14 Pharmaceutical and Therapeutics Committee established under
15 Section 531.074;

16 (2) there will be a response to a request for prior
17 authorization by telephone or other telecommunications device
18 within 24 hours after receipt of a request for prior authorization;
19 and

20 (3) a 72-hour supply of the drug prescribed will be
21 provided in an emergency or if the commission does not provide a
22 response within the time required by Subdivision (2).

23 (c) The commission shall ensure that a prescription drug
24 prescribed before implementation of a prior authorization
25 requirement for that drug for a recipient under the child health
26 plan program, the Medicaid program, or another state program
27 administered by the commission or a health and human services

1 agency or for a person who becomes eligible under the child health
2 plan program, the Medicaid program, or another state program
3 administered by the commission or a health and human services
4 agency is not subject to any requirement for prior authorization
5 under this section unless the recipient has exhausted all the
6 prescription, including any authorized refills, or a period
7 prescribed by the commission has expired, whichever occurs first.

8 (d) The commission shall implement procedures to ensure
9 that a recipient under the child health plan program, the Medicaid
10 program, or another state program administered by the commission or
11 a person who becomes eligible under the child health plan program,
12 the Medicaid program, or another state program administered by the
13 commission or a health and human services agency receives
14 continuity of care in relation to certain prescriptions identified
15 by the commission.

16 (e) The commission may by contract authorize a private
17 entity to administer the prior authorization requirements imposed
18 by this section on behalf of the commission.

19 (f) The commission shall ensure that the prior
20 authorization requirements are implemented in a manner that
21 minimizes the cost to the state and any administrative burden
22 placed on providers.

23 SECTION 2.15. (a) Subchapter B, Chapter 531, Government
24 Code, is amended by adding Section 531.074 to read as follows:

25 Sec. 531.074. PHARMACEUTICAL AND THERAPEUTICS COMMITTEE.

26 (a) The Pharmaceutical and Therapeutics Committee is established
27 for the purposes of developing recommendations for preferred drug

1 lists adopted by the commission under Section 531.072.

2 (b) The committee consists of the following members
3 appointed by the governor:

4 (1) six physicians licensed under Subtitle B, Title 3,
5 Occupations Code, and participating in the Medicaid program, at
6 least one of whom is a licensed physician who is actively engaged in
7 mental health providing care and treatment to persons with severe
8 mental illness and who has practice experience in the state
9 Medicaid plan; and

10 (2) five pharmacists licensed under Subtitle J, Title
11 3, Occupations Code, and participating in the Medicaid vendor drug
12 program.

13 (c) In making appointments to the committee under
14 Subsection (b), the governor shall ensure that the committee
15 includes physicians and pharmacists who:

16 (1) represent different specialties and provide
17 services to all segments of the Medicaid program's diverse
18 population;

19 (2) have experience in either developing or practicing
20 under a preferred drug list; and

21 (3) do not have contractual relationships, ownership
22 interests, or other conflicts of interest with a pharmaceutical
23 manufacturer or labeler or with an entity engaged by the commission
24 to assist in the development of the preferred drug lists or the
25 administration of the prior authorization system.

26 (d) A member of the committee is appointed for a two-year
27 term and may serve more than one term.

1 (e) The governor shall appoint a physician to be the
2 presiding officer of the committee. The presiding officer serves
3 at the pleasure of the governor.

4 (f) The committee shall meet at least monthly during the
5 six-month period following establishment of the committee to enable
6 the committee to develop recommendations for the initial preferred
7 drug lists. After that period, the committee shall meet at least
8 quarterly and at other times at the call of the presiding officer or
9 a majority of the committee members.

10 (g) A member of the committee may not receive compensation
11 for serving on the committee but is entitled to reimbursement for
12 reasonable and necessary travel expenses incurred by the member
13 while conducting the business of the committee, as provided by the
14 General Appropriations Act.

15 (h) In developing its recommendations for the preferred
16 drug lists, the committee shall consider the clinical efficacy,
17 safety, and cost-effectiveness and any program benefit associated
18 with a product.

19 (i) The commission shall adopt rules governing the
20 operation of the committee, including rules governing the
21 procedures used by the committee for providing notice of a meeting
22 and rules prohibiting the committee from discussing confidential
23 information described by Section 531.071 in a public meeting. The
24 committee shall comply with the rules adopted under this
25 subsection.

26 (j) To the extent feasible, the committee shall review all
27 drug classes included in the preferred drug lists adopted under

1 Section 531.072 at least once every 12 months and may recommend
2 inclusions to and exclusions from the lists to ensure that the lists
3 provide for cost-effective medically appropriate drug therapies
4 for Medicaid recipients, children receiving health benefits
5 coverage under the child health plan program, and any other
6 affected individuals.

7 (k) The commission shall provide administrative support and
8 resources as necessary for the committee to perform its duties.

9 (l) Chapter 2110 does not apply to the committee.

10 (b) Not later than November 1, 2003, the governor shall
11 appoint members to the Pharmaceutical and Therapeutics Committee
12 established under Section 531.074, Government Code, as added by
13 this section.

14 (c) Not later than January 1, 2004, the Pharmaceutical and
15 Therapeutics Committee established under Section 531.074,
16 Government Code, as added by this section, shall submit
17 recommendations for the preferred drug lists the committee is
18 required to develop under that section to the Health and Human
19 Services Commission.

20 SECTION 2.16. Subchapter B, Chapter 531, Government Code,
21 is amended by adding Section 531.075 to read as follows:

22 Sec. 531.075. PRIOR AUTHORIZATION FOR HIGH-COST MEDICAL
23 SERVICES. The commission may evaluate and implement, as
24 appropriate, procedures, policies, and methodologies to require
25 prior authorization for high-cost medical services and procedures
26 and may contract with qualified service providers or organizations
27 to perform those functions. Any such program shall recognize any

1 prohibitions in state or federal law on limits in the amount,
2 duration, or scope of medically necessary services for children on
3 Medicaid.

4 SECTION 2.17. Subchapter B, Chapter 531, Government Code,
5 is amended by adding Section 531.077 to read as follows:

6 Sec. 531.077. RECOVERY OF MEDICAL ASSISTANCE. (a) The
7 commissioner shall ensure that the state Medicaid program
8 implements 42 U.S.C. Section 1396p(b)(1).

9 (b) The Medicaid account is an account in the general
10 revenue fund. Any funds recovered by implementing 42 U.S.C.
11 Section 1396p(b)(1) shall be deposited in the Medicaid account.
12 Money in the account may be appropriated only to fund long-term
13 care, including community-based care and facility-based care.

14 SECTION 2.18. (a) Section 531.101, Government Code, is
15 amended to read as follows:

16 Sec. 531.101. AWARD FOR REPORTING MEDICAID FRAUD, ABUSE, OR
17 OVERCHARGES. (a) The commission may grant an award to an individual
18 who reports activity that constitutes fraud or abuse of funds in the
19 state Medicaid program or reports overcharges in the program if the
20 commission determines that the disclosure results in the recovery
21 of an administrative penalty imposed under Section 32.039, Human
22 Resources Code. The commission may not grant an award to an
23 individual in connection with a report if the commission or
24 attorney general had independent knowledge of the activity reported
25 by the individual [~~overcharge or in the termination of the~~
26 ~~fraudulent activity or abuse of funds~~].

27 (b) The commission shall determine the amount of an award.

1 The award may not exceed five [~~must be equal to not less than 10~~]
2 percent of the amount of the administrative penalty imposed under
3 Section 32.039, Human Resources Code, [~~savings to this state~~] that
4 resulted [~~result~~] from the individual's disclosure. In determining
5 the amount of the award, the commission shall consider how
6 important the disclosure is in ensuring the fiscal integrity of the
7 program. The commission may also consider whether the individual
8 participated in the fraud, abuse, or overcharge.

9 (c) [~~An award under this section is subject to~~
10 ~~appropriation. The award must be paid from money appropriated to or~~
11 ~~otherwise available to the commission, and additional money may not~~
12 ~~be appropriated to the commission for the purpose of paying the~~
13 ~~award.~~

14 [~~(d) Payment of an award under this section from federal~~
15 ~~funds is subject to the permissible use under federal law of funds~~
16 ~~for this purpose.~~

17 [~~(e)~~] A person who brings an action under Subchapter C,
18 Chapter 36, Human Resources Code, is not eligible for an award under
19 this section.

20 (b) Section 531.101, Government Code, as amended by this
21 section, applies only to a report that occurs on or after the
22 effective date of this section. A report that occurs before the
23 effective date of this section is governed by the law in effect at
24 the time of the report, and the former law is continued in effect
25 for that purpose.

26 SECTION 2.19. (a) Section 531.102, Government Code, is
27 amended to read as follows:

1 Sec. 531.102. [~~INVESTIGATIONS AND ENFORCEMENT~~] OFFICE OF
2 INSPECTOR GENERAL. (a) The commission, through the commission's
3 office of inspector general [~~investigations and enforcement~~], is
4 responsible for the investigation of fraud and abuse in the
5 provision of health and human services and the enforcement of state
6 law relating to the provision of those services. The commission may
7 obtain any information or technology necessary to enable the office
8 to meet its responsibilities under this subchapter or other law.

9 (a-1) The governor shall appoint an inspector general to
10 serve as director of the office. The inspector general serves a
11 one-year term that expires on February 1.

12 (b) The commission, in consultation with the inspector
13 general, shall set clear objectives, priorities, and performance
14 standards for the office that emphasize:

15 (1) coordinating investigative efforts to
16 aggressively recover money;

17 (2) allocating resources to cases that have the
18 strongest supportive evidence and the greatest potential for
19 recovery of money; and

20 (3) maximizing opportunities for referral of cases to
21 the office of the attorney general in accordance with Section
22 531.103.

23 (c) The commission shall train office staff to enable the
24 staff to pursue priority Medicaid and other health and human
25 services [~~welfare~~] fraud and abuse cases as necessary.

26 (d) The commission may require employees of health and human
27 services agencies to provide assistance to the office [~~commission~~]

1 in connection with the office's [~~commission's~~] duties relating to
2 the investigation of fraud and abuse in the provision of health and
3 human services. The office is entitled to access to any information
4 maintained by a health and human services agency, including
5 internal records, relevant to the functions of the office.

6 (e) The commission, in consultation with the inspector
7 general, by rule shall set specific claims criteria that, when met,
8 require the office to begin an investigation.

9 (f)(1) If the commission receives a complaint of Medicaid
10 fraud or abuse from any source, the office must conduct an integrity
11 review to determine whether there is sufficient basis to warrant a
12 full investigation. An integrity review must begin not later than
13 the 30th day after the date the commission receives a complaint or
14 has reason to believe that fraud or abuse has occurred. An
15 integrity review shall be completed not later than the 90th day
16 after it began.

17 (2) If the findings of an integrity review give the
18 office reason to believe that an incident of fraud or abuse
19 involving possible criminal conduct has occurred in the Medicaid
20 program, the office must take the following action, as appropriate,
21 not later than the 30th day after the completion of the integrity
22 review:

23 (A) if a provider is suspected of fraud or abuse
24 involving criminal conduct, the office must refer the case to the
25 state's Medicaid fraud control unit, provided that the criminal
26 referral does not preclude the office from continuing its
27 investigation of the provider, which investigation may lead to the

1 imposition of appropriate administrative or civil sanctions; or

2 (B) if there is reason to believe that a
3 recipient has defrauded the Medicaid program, the office may
4 conduct a full investigation of the suspected fraud.

5 (g)(1) Whenever the office learns or has reason to suspect
6 that a provider's records are being withheld, concealed, destroyed,
7 fabricated, or in any way falsified, the office shall immediately
8 refer the case to the state's Medicaid fraud control unit. However,
9 such criminal referral does not preclude the office from continuing
10 its investigation of the provider, which investigation may lead to
11 the imposition of appropriate administrative or civil sanctions.

12 (2) In addition to other instances authorized under
13 state or federal law, the office shall impose without prior notice a
14 hold on payment of claims for reimbursement submitted by a provider
15 to compel production of records or when requested by the state's
16 Medicaid fraud control unit, as applicable. The office must notify
17 the provider of the hold on payment not later than the fifth working
18 day after the date the payment hold is imposed.

19 (3) On timely written request by a provider subject to
20 a hold on payment under Subdivision (2), other than a hold requested
21 by the state's Medicaid fraud control unit, the office shall file a
22 request with the State Office of Administrative Hearings for an
23 expedited administrative hearing regarding the hold. The provider
24 must request an expedited hearing under this subdivision not later
25 than the 10th day after the date the provider receives notice from
26 the office under Subdivision (2).

27 (4) The commission shall adopt rules that allow a

1 provider subject to a hold on payment under Subdivision (2), other
2 than a hold requested by the state's Medicaid fraud control unit, to
3 seek an informal resolution of the issues identified by the office
4 in the notice provided under that subdivision. A provider must seek
5 an informal resolution under this subdivision not later than the
6 deadline prescribed by Subdivision (3). A provider's decision to
7 seek an informal resolution under this subdivision does not extend
8 the time by which the provider must request an expedited
9 administrative hearing under Subdivision (3). However, a hearing
10 initiated under Subdivision (3) shall be stayed at the office's
11 request until the informal resolution process is completed.

12 (5) The office shall, in consultation with the state's
13 Medicaid fraud control unit, establish guidelines under which holds
14 on payment or program exclusions:

15 (A) may permissively be imposed on a provider; or

16 (B) shall automatically be imposed on a provider.

17 (h) In addition to performing functions and duties
18 otherwise provided by law, the office may:

19 (1) assess administrative penalties otherwise
20 authorized by law on behalf of the commission or a health and human
21 services agency;

22 (2) request that the attorney general obtain an
23 injunction to prevent a person from disposing of an asset
24 identified by the office as potentially subject to recovery by the
25 office due to the person's fraud or abuse;

26 (3) provide for coordination between the office and
27 special investigative units formed by managed care organizations

1 under Section 531.113 or entities with which managed care
2 organizations contract under that section;

3 (4) audit the use and effectiveness of state or
4 federal funds, including contract and grant funds, administered by
5 a person or state agency receiving the funds from a health and human
6 services agency;

7 (5) conduct investigations relating to the funds
8 described by Subdivision (4); and

9 (6) recommend policies promoting economical and
10 efficient administration of the funds described by Subdivision (4)
11 and the prevention and detection of fraud and abuse in
12 administration of those funds.

13 (i) Notwithstanding any other provision of law, a reference
14 in law or rule to the commission's office of investigations and
15 enforcement means the office of inspector general established under
16 this section.

17 (b) As soon as possible after the effective date of this
18 section, the governor shall appoint a person to serve as inspector
19 general in accordance with Section 531.102, Government Code, as
20 amended by this section. The initial term of the person appointed
21 in accordance with this subsection expires February 1, 2005.

22 SECTION 2.20. Subchapter C, Chapter 531, Government Code,
23 is amended by adding Section 531.1021 to read as follows:

24 Sec. 531.1021. SUBPOENAS. (a) The office of inspector
25 general may request that the commissioner or the commissioner's
26 designee approve the issuance by the office of a subpoena in
27 connection with an investigation conducted by the office. If the

1 request is approved, the office may issue a subpoena to compel the
2 attendance of a relevant witness or the production, for inspection
3 or copying, of relevant evidence that is in this state.

4 (b) A subpoena may be served personally or by certified
5 mail.

6 (c) If a person fails to comply with a subpoena, the office,
7 acting through the attorney general, may file suit to enforce the
8 subpoena in a district court in this state.

9 (d) On finding that good cause exists for issuing the
10 subpoena, the court shall order the person to comply with the
11 subpoena. The court may punish a person who fails to obey the court
12 order.

13 (e) The office shall pay a reasonable fee for photocopies
14 subpoenaed under this section in an amount not to exceed the amount
15 the office may charge for copies of its records.

16 (f) The reimbursement of the expenses of a witness whose
17 attendance is compelled under this section is governed by Section
18 2001.103.

19 (g) All information and materials subpoenaed or compiled by
20 the office in connection with an investigation are confidential and
21 not subject to disclosure under Chapter 552, and not subject to
22 disclosure, discovery, subpoena, or other means of legal compulsion
23 for their release to anyone other than the office or its employees
24 or agents involved in the investigation conducted by the office,
25 except that this information may be disclosed to the office of the
26 attorney general and law enforcement agencies.

27 SECTION 2.21. (a) Section 531.103, Government Code, is

1 amended to read as follows:

2 Sec. 531.103. INTERAGENCY COORDINATION. (a) The
3 commission, acting through the commission's office of inspector
4 general, and the office of the attorney general shall enter into a
5 memorandum of understanding to develop and implement joint written
6 procedures for processing cases of suspected fraud, waste, or
7 abuse, as those terms are defined by state or federal law, or other
8 violations of state or federal law under the state Medicaid program
9 or other program administered by the commission or a health and
10 human services agency, including the financial assistance program
11 under Chapter 31, Human Resources Code, a nutritional assistance
12 program under Chapter 33, Human Resources Code, and the child
13 health plan program. The memorandum of understanding shall
14 require:

15 (1) the office of inspector general [~~commission~~] and
16 the office of the attorney general to set priorities and guidelines
17 for referring cases to appropriate state agencies for
18 investigation, prosecution, or other disposition to enhance
19 deterrence of fraud, waste, [~~ex~~] abuse, or other violations of
20 state or federal law, including a violation of Chapter 102,
21 Occupations Code, in the programs [~~program~~] and maximize the
22 imposition of penalties, the recovery of money, and the successful
23 prosecution of cases;

24 (1-a) the office of inspector general to refer each
25 case of suspected provider fraud, waste, or abuse to the office of
26 the attorney general not later than the 20th business day after the
27 date the office of inspector general determines that the existence

1 of fraud, waste, or abuse is reasonably indicated;

2 (1-b) the office of the attorney general to take
3 appropriate action in response to each case referred to the
4 attorney general, which action may include direct initiation of
5 prosecution, with the consent of the appropriate local district or
6 county attorney, direct initiation of civil litigation, referral to
7 an appropriate United States attorney, a district attorney, or a
8 county attorney, or referral to a collections agency for initiation
9 of civil litigation or other appropriate action;

10 (2) the office of inspector general [~~commission~~] to
11 keep detailed records for cases processed by that office [~~the~~
12 ~~commission~~] or the office of the attorney general, including
13 information on the total number of cases processed and, for each
14 case:

15 (A) the agency and division to which the case is
16 referred for investigation;

17 (B) the date on which the case is referred; and

18 (C) the nature of the suspected fraud, waste, or
19 abuse;

20 (3) the office of inspector general [~~commission~~] to
21 notify each appropriate division of the office of the attorney
22 general of each case referred by the office of inspector general
23 [~~commission~~];

24 (4) the office of the attorney general to ensure that
25 information relating to each case investigated by that office is
26 available to each division of the office with responsibility for
27 investigating suspected fraud, waste, or abuse;

1 (5) the office of the attorney general to notify the
2 office of inspector general [~~commission~~] of each case the attorney
3 general declines to prosecute or prosecutes unsuccessfully;

4 (6) representatives of the office of inspector general
5 [~~commission~~] and of the office of the attorney general to meet not
6 less than quarterly to share case information and determine the
7 appropriate agency and division to investigate each case; and

8 (7) the office of inspector general [~~commission~~] and
9 the office of the attorney general to submit information requested
10 by the comptroller about each resolved case for the comptroller's
11 use in improving fraud detection.

12 (b) An exchange of information under this section between
13 the office of the attorney general and the commission, the office of
14 inspector general, or a health and human services agency does not
15 affect whether the information is subject to disclosure under
16 Chapter 552.

17 (c) The commission and the office of the attorney general
18 shall jointly prepare and submit a semiannual report to the
19 governor, lieutenant governor, [~~and~~] speaker of the house of
20 representatives, and comptroller concerning the activities of
21 those agencies in detecting and preventing fraud, waste, and abuse
22 under the state Medicaid program or other program administered by
23 the commission or a health and human services agency. The report
24 may be consolidated with any other report relating to the same
25 subject matter the commission or office of the attorney general is
26 required to submit under other law.

27 (d) The commission and the office of the attorney general

1 may not assess or collect investigation and attorney's fees on
2 behalf of any state agency unless the office of the attorney general
3 or other state agency collects a penalty, restitution, or other
4 reimbursement payment to the state.

5 (e) In addition to the provisions required by Subsection
6 (a), the memorandum of understanding required by this section must
7 also ensure that no barriers to direct fraud referrals to the office
8 of the attorney general's Medicaid fraud control unit or
9 unreasonable impediments to communication between Medicaid agency
10 employees and the Medicaid fraud control unit are imposed, and must
11 include procedures to facilitate the referral of cases directly to
12 the office of the attorney general. [~~The commission shall refer a~~
13 ~~case of suspected fraud, waste, or abuse under the state Medicaid~~
14 ~~program to the appropriate district attorney, county attorney, city~~
15 ~~attorney, or private collection agency if the attorney general~~
16 ~~fails to act within 30 days of referral of the case to the office of~~
17 ~~the attorney general. A failure by the attorney general to act~~
18 ~~within 30 days constitutes approval by the attorney general under~~
19 ~~Section 2107.003.~~]

20 (f) A [~~The~~] district attorney, county attorney, city
21 attorney, or private collection agency may collect and retain costs
22 associated with a [~~the~~] case referred to the attorney or agency in
23 accordance with procedures adopted under this section and 20
24 percent of the amount of the penalty, restitution, or other
25 reimbursement payment collected.

26 (b) Not later than December 1, 2003, the office of the
27 attorney general and the Health and Human Services Commission shall

1 amend the memorandum of understanding required by Section 531.103,
2 Government Code, as necessary to comply with that section, as
3 amended by this section.

4 SECTION 2.22. Section 531.104(b), Government Code, is
5 amended to read as follows:

6 (b) The memorandum of understanding must specify the type,
7 scope, and format of the investigative support provided to the
8 attorney general under this section [~~provide that the commission is~~
9 ~~not required to provide investigative support in more than 100 open~~
10 ~~investigations in a fiscal year~~].

11 SECTION 2.23. (a) Subchapter C, Chapter 531, Government
12 Code, is amended by adding Section 531.1063 to read as follows:

13 Sec. 531.1063. MEDICAID FRAUD PILOT PROGRAM. (a) The
14 commission, with cooperation from the Texas Department of Human
15 Services, shall develop and implement a front-end Medicaid fraud
16 reduction pilot program in one or more counties in this state to
17 address provider fraud and appropriate cases of third-party and
18 recipient fraud.

19 (b) The program must be designed to reduce:

20 (1) the number of fraud cases arising from
21 authentication fraud and abuse;

22 (2) the total amount of Medicaid expenditures; and

23 (3) the number of fraudulent participants.

24 (c) The program must include:

25 (1) participant smart cards and biometric readers that
26 reside at the point of contact with Medicaid providers, recipients,
27 participating pharmacies, hospitals, and appropriate third-party

1 participants;

2 (2) a secure finger-imaging system that is compliant
3 with the Health Insurance Portability and Accountability Act
4 (HIPAA) and the use of any existing state database of fingerprint
5 images developed in connection with the financial assistance
6 program under Chapter 31, Human Resources Code; fingerprint images
7 collected as part of the program shall only be placed on the smart
8 card; and

9 (3) a monitoring system.

10 (d) In implementing the program, the commission may:

11 (1) exempt recipients who are children or who are
12 elderly or disabled; and

13 (2) obtain a fingerprint image from a parent or
14 caretaker of a recipient who is a child, regardless of whether the
15 parent or caretaker is a recipient.

16 (e) The commission must ensure that the procedures for
17 obtaining fingerprint images of participating recipients and
18 parents and caretakers who are not recipients are designed in a
19 flexible manner that gives consideration to transportation
20 barriers and work schedules of those individuals.

21 (f) To ensure reliability, the program and all associated
22 hardware and software must easily integrate into participant
23 settings and must be initially tested in a physician environment in
24 this state and determined to be successful in authenticating
25 recipients, providers, and provider staff members before the
26 program is implemented throughout the program area.

27 (g) The commission may extend the program to additional

1 counties if the commission determines that expansion would be
2 cost-effective.

3 (b) Not later than January 1, 2004, the Health and Human
4 Services Commission shall begin implementation of the program
5 required by Section 531.1063, Government Code, as added by this
6 section.

7 (c) Not later than February 1, 2005, the Health and Human
8 Services Commission shall report to the governor, the lieutenant
9 governor, and the speaker of the house of representatives regarding
10 the program required by Section 531.1063, Government Code, as added
11 by this section. The report must include:

12 (1) an identification and evaluation of the benefits
13 of the program; and

14 (2) recommendations regarding expanding the program
15 statewide.

16 SECTION 2.24. Section 531.107(b), Government Code, is
17 amended to read as follows:

18 (b) The task force is composed of a representative of the:

19 (1) attorney general's office, appointed by the
20 attorney general;

21 (2) comptroller's office, appointed by the
22 comptroller;

23 (3) Department of Public Safety, appointed by the
24 public safety director;

25 (4) state auditor's office, appointed by the state
26 auditor;

27 (5) commission, appointed by the commissioner of

1 health and human services;

2 (6) .Texas Department of Human Services, appointed by
3 the commissioner of human services; [~~and~~]

4 (7) Texas Department of Insurance, appointed by the
5 commissioner of insurance; and

6 (8) Texas Department of Health, appointed by the
7 commissioner of public health.

8 SECTION 2.25. (a) Subchapter C, Chapter 531, Government
9 Code, is amended by adding Section 531.113 to read as follows:

10 Sec. 531.113. MANAGED CARE ORGANIZATIONS: SPECIAL
11 INVESTIGATIVE UNITS OR CONTRACTS. (a) Each managed care
12 organization that provides or arranges for the provision of health
13 care services to an individual under a government-funded program,
14 including the Medicaid program and the child health plan program,
15 shall:

16 (1) establish and maintain a special investigative
17 unit within the managed care organization to investigate fraudulent
18 claims and other types of program abuse by recipients and service
19 providers; or

20 (2) contract with another entity for the investigation
21 of fraudulent claims and other types of program abuse by recipients
22 and service providers.

23 (b) Each managed care organization subject to this section
24 shall adopt a plan to prevent and reduce fraud and abuse and
25 annually file that plan with the commission's office of inspector
26 general for approval. The plan must include:

27 (1) a description of the managed care organization's

1 procedures for detecting and investigating possible acts of fraud
2 or abuse;

3 (2) a description of the managed care organization's
4 procedures for the mandatory reporting of possible acts of fraud or
5 abuse to the commission's office of inspector general;

6 (3) a description of the managed care organization's
7 procedures for educating and training personnel to prevent fraud
8 and abuse;

9 (4) the name, address, telephone number, and fax
10 number of the individual responsible for carrying out the plan;

11 (5) a description or chart outlining the
12 organizational arrangement of the managed care organization's
13 personnel responsible for investigating and reporting possible
14 acts of fraud or abuse;

15 (6) a detailed description of the results of
16 investigations of fraud and abuse conducted by the managed care
17 organization's special investigative unit or the entity with which
18 the managed care organization contracts under Subsection (a)(2);
19 and

20 (7) provisions for maintaining the confidentiality of
21 any patient information relevant to an investigation of fraud or
22 abuse.

23 (c) If a managed care organization contracts for the
24 investigation of fraudulent claims and other types of program abuse
25 by recipients and service providers under Subsection (a)(2), the
26 managed care organization shall file with the commission's office
27 of inspector general:

1 (1) a copy of the written contract;

2 (2) the names, addresses, telephone numbers, and fax
3 numbers of the principals of the entity with which the managed care
4 organization has contracted; and

5 (3) a description of the qualifications of the
6 principals of the entity with which the managed care organization
7 has contracted.

8 (d) The commission's office of inspector general may review
9 the records of a managed care organization to determine compliance
10 with this section.

11 (e) The commissioner shall adopt rules as necessary to
12 accomplish the purposes of this section.

13 (b) A managed care organization subject to Section 531.113,
14 Government Code, as added by this section, shall comply with the
15 requirements of that section not later than September 1, 2004.

16 SECTION 2.26. (a) Subchapter C, Chapter 531, Government
17 Code, is amended by adding Section 531.114 to read as follows:

18 Sec. 531.114. FINANCIAL ASSISTANCE FRAUD. (a) For
19 purposes of establishing or maintaining the eligibility of a person
20 and the person's family for financial assistance under Chapter 31,
21 Human Resources Code, or for purposes of increasing or preventing a
22 reduction in the amount of that assistance, a person may not
23 intentionally:

24 (1) make a statement that the person knows is false or
25 misleading;

26 (2) misrepresent, conceal, or withhold a fact; or

27 (3) knowingly misrepresent a statement as being true.

1 (b) If after an investigation the commission determines
2 that a person violated Subsection (a), the commission shall:

3 (1) notify the person of the alleged violation not
4 later than the 30th day after the date the commission completes the
5 investigation and provide the person with an opportunity for a
6 hearing on the matter; or

7 (2) refer the matter to the appropriate prosecuting
8 attorney for prosecution.

9 (c) If a person waives the right to a hearing or if a hearing
10 officer at an administrative hearing held under this section
11 determines that a person violated Subsection (a), the person is
12 ineligible to receive financial assistance as provided by
13 Subsection (d). A person who a hearing officer determines violated
14 Subsection (a) may appeal that determination by filing a petition
15 in the district court in the county in which the violation occurred
16 not later than the 30th day after the date the hearing officer made
17 the determination.

18 (d) A person determined under Subsection (c) to have
19 violated Subsection (a) is not eligible for financial assistance:

20 (1) before the first anniversary of the date of that
21 determination, if the person has no previous violations; and

22 (2) permanently, if the person was previously
23 determined to have committed a violation.

24 (e) If a person is convicted of a state or federal offense
25 for conduct described by Subsection (a), or if the person is granted
26 deferred adjudication or placed on community supervision for that
27 conduct, the person is permanently disqualified from receiving

1 financial assistance.

2 (f) This section does not affect the eligibility for
3 financial assistance of any other member of the household of a
4 person ineligible as a result of Subsection (d) or (e).

5 (g) The commission shall adopt rules as necessary to
6 implement this section.

7 (b) Section 531.114, Government Code, as added by this
8 section, applies only to conduct occurring on or after the
9 effective date of this section. Conduct occurring before the
10 effective date of this section is governed by the law in effect on
11 the date the conduct occurred, and the former law is continued in
12 effect for that purpose.

13 SECTION 2.27. Subchapter C, Chapter 531, Government Code,
14 is amended by adding Section 531.115 to read as follows:

15 Sec. 531.115. FEDERAL FELONY MATCH. The commission shall
16 develop and implement a system to cross-reference data collected
17 for the programs listed under Section 531.008(c) with the list of
18 fugitive felons maintained by the federal government.

19 SECTION 2.28. Subchapter C, Chapter 531, Government Code,
20 is amended by adding Section 531.116 to read as follows:

21 Sec. 531.116. COMPLIANCE WITH LAW PROHIBITING
22 SOLICITATION. A provider who furnishes services under the Medicaid
23 program or child health plan program is subject to Chapter 102,
24 Occupations Code, and the provider's compliance with that chapter
25 is a condition of the provider's eligibility to participate as a
26 provider under those programs.

27 SECTION 2.29. Subchapter A, Chapter 533, Government Code,

1 is amended by adding Section 533.0025 to read as follows:

2 Sec. 533.0025. DELIVERY OF SERVICES. (a) In this section,
3 "medical assistance" has the meaning assigned by Section 32.003,
4 Human Resources Code.

5 (b) Except as otherwise provided by this section and
6 notwithstanding any other law, the commission shall provide medical
7 assistance for acute care through the most cost-effective model of
8 Medicaid managed care as determined by the commission. If the
9 commission determines that it is more cost-effective, the
10 commission may provide medical assistance for acute care in a
11 certain part of this state or to a certain population of recipients
12 using:

13 (1) a health maintenance organization model,
14 including the acute care portion of Medicaid Star + Plus pilot
15 programs;

16 (2) a primary care case management model;

17 (3) a prepaid health plan model;

18 (4) an exclusive provider organization model; or

19 (5) another Medicaid managed care model or
20 arrangement.

21 (c) In determining whether a model or arrangement described
22 by Subsection (b) is more cost-effective, the commissioner must
23 consider:

24 (1) the scope, duration, and types of health benefits
25 or services to be provided in a certain part of this state or to a
26 certain population of recipients;

27 (2) administrative costs necessary to meet federal and

1 state statutory and regulatory requirements;

2 (3) the anticipated effect of market competition
3 associated with the configuration of Medicaid service delivery
4 models determined by the commission; and

5 (4) the gain or loss to this state of a tax collected
6 under Article 4.11, Insurance Code.

7 (d) If the commission determines that it is not more
8 cost-effective to use a Medicaid managed care model to provide
9 certain types of medical assistance for acute care in a certain area
10 or to certain medical assistance recipients as prescribed by this
11 section, the commission shall provide medical assistance for acute
12 care through a traditional fee-for-service arrangement.

13 (e) Notwithstanding Subsection (b)(1), the commission may
14 not provide medical assistance using a health maintenance
15 organization in Cameron County, Hidalgo County, or Maverick County.

16 SECTION 2.30. Subchapter A, Chapter 533, Government Code,
17 is amended by adding Section 533.0132 to read as follows:

18 Sec. 533.0132. STATE TAXES. The commission shall ensure
19 that any experience rebate or profit sharing for managed care
20 organizations is calculated by treating premium, maintenance, and
21 other taxes under the Insurance Code and any other taxes payable to
22 this state as allowable expenses for purposes of determining the
23 amount of the experience rebate or profit sharing.

24 SECTION 2.31. Sections 403.105(a) and (c), Government Code,
25 are amended to read as follows:

26 (a) The permanent fund for health and tobacco education and
27 enforcement is a dedicated account in the general revenue fund. The

1 fund is composed of:

2 (1) money transferred to the fund at the direction of
3 the legislature;

4 (2) gifts and grants contributed to the fund; and

5 (3) the available earnings of the fund determined in
6 accordance with Section 403.1068.

7 (c) The available earnings of the fund may be appropriated
8 to the Texas Department of Health for:

9 (1) programs to reduce the use of cigarettes and
10 tobacco products in this state, including:

11 (A) [~~1~~] smoking cessation programs;

12 (B) [~~2~~] enforcement of Subchapters H, K, and N,
13 Chapter 161, Health and Safety Code, or other laws relating to
14 distribution of cigarettes or tobacco products to minors or use of
15 cigarettes or tobacco products by minors;

16 (C) [~~3~~] public awareness programs relating to
17 use of cigarettes and tobacco products, including general
18 educational programs and programs directed toward youth; and

19 (D) [~~4~~] specific programs for communities
20 traditionally targeted, by advertising and other means, by
21 companies that sell cigarettes or tobacco products; and

22 (2) the provision of preventive medical and dental
23 services to children in the medical assistance program under
24 Chapter 32, Human Resources Code.

25 SECTION 2.32. The heading to Section 403.105, Government
26 Code, is amended to read as follows:

27 Sec. 403.105. PERMANENT FUND FOR HEALTH AND TOBACCO

1 EDUCATION AND ENFORCEMENT.

2 SECTION 2.33. Section 403.1055(c), Government Code, is
3 amended to read as follows:

4 (c) The available earnings of the fund may be appropriated
5 to:

6 (1) the Texas Department of Health for the purpose of:

7 (A) developing and demonstrating cost-effective
8 prevention and intervention strategies for improving health
9 outcomes for children and the public;

10 (B) [~~and for~~] providing grants to local
11 communities to address specific public health priorities,
12 including sickle cell anemia, diabetes, high blood pressure,
13 cancer, heart attack, stroke, keloid tissue and scarring, and
14 respiratory disease;

15 (C) [~~and for~~] providing grants to local
16 communities for essential public health services as defined in the
17 Health and Safety Code; and

18 (D) providing grants to schools of public health
19 located in Texas; and

20 (2) the Interagency Council on Early Childhood
21 Intervention to provide intervention services for children with
22 developmental delay or who have a high probability of developing
23 developmental delay and the families of those children.

24 SECTION 2.34. Section 466.408(b), Government Code, is
25 amended to read as follows:

26 (b) If a claim is not made for prize money on or before the
27 180th day after the date on which the winner was selected, the prize

1 money shall be used in the following order of priority:

2 (1) subject to legislative appropriation, not more
3 than \$20 million in prize money each year may be deposited to or
4 appropriated from the Texas Department of Health state-owned
5 multicategorical teaching hospital account, which is an account in
6 the general revenue fund;

7 (2) not more than \$5 million in prize money each year
8 may be appropriated to the Health and Human Services Commission and
9 shall be used to support the provision of inpatient hospital
10 services in hospitals located in the 15 counties that comprise the
11 Texas-Mexico border area, with payment for those services to be not
12 less than the amount established under the Tax Equity and Fiscal
13 Responsibility Act of 1982 (TEFRA) cost reimbursement methodology
14 for the hospital providing the services; and

15 (3) all prize money subject to this section and not
16 appropriated from the Texas Department of Health state-owned
17 multicategorical teaching hospital account or not appropriated to
18 the Health and Human Services Commission for the purpose specified
19 in Subdivision (2) shall be deposited in the general revenue fund
20 and may be appropriated for any purpose as determined by the
21 legislature, including the provision of indigent health care
22 services as specified in Chapter 61, Health and Safety Code [~~shall~~
23 ~~be deposited to the credit of the Texas Department of Health~~
24 ~~state-owned multicategorical teaching hospital account or the~~
25 ~~tertiary care facility account as follows:~~

26 ~~(1) not more than \$40 million in prize money each~~
27 ~~biennium may be deposited to or appropriated from the Texas~~

1 ~~Department of Health state-owned multicategorical teaching~~
2 ~~hospital account, which is an account in the general revenue fund,~~
3 ~~and~~

4 ~~[(2) all prize money subject to this section in excess~~
5 ~~of \$40 million each biennium shall be deposited in the tertiary care~~
6 ~~facility account. Money deposited in the tertiary care facility~~
7 ~~account may only be appropriated to the department for purposes~~
8 ~~specified in Chapter 46 or 61, Health and Safety Code].~~

9 SECTION 2.35. Section 533.005, Government Code, is amended
10 to read as follows:

11 Sec. 533.005. REQUIRED CONTRACT PROVISIONS. (a) A
12 contract between a managed care organization and the commission for
13 the organization to provide health care services to recipients must
14 contain:

15 (1) procedures to ensure accountability to the state
16 for the provision of health care services, including procedures for
17 financial reporting, quality assurance, utilization review, and
18 assurance of contract and subcontract compliance;

19 (2) capitation and provider payment rates that ensure
20 the cost-effective provision of quality health care;

21 (3) a requirement that the managed care organization
22 provide ready access to a person who assists recipients in
23 resolving issues relating to enrollment, plan administration,
24 education and training, access to services, and grievance
25 procedures;

26 (4) a requirement that the managed care organization
27 provide ready access to a person who assists providers in resolving

1 issues relating to payment, plan administration, education and
2 training, and grievance procedures;

3 (5) a requirement that the managed care organization
4 provide information and referral about the availability of
5 educational, social, and other community services that could
6 benefit a recipient;

7 (6) procedures for recipient outreach and education;

8 (7) a requirement that the managed care organization
9 make payment to a physician or provider for health care services
10 rendered to a recipient under a managed care plan not later than the
11 45th day after the date a claim for payment is received with
12 documentation reasonably necessary for the managed care
13 organization to process the claim, or within a period, not to exceed
14 60 days, specified by a written agreement between the physician or
15 provider and the managed care organization;

16 (8) a requirement that the commission, on the date of a
17 recipient's enrollment in a managed care plan issued by the managed
18 care organization, inform the organization of the recipient's
19 Medicaid certification date;

20 (9) a requirement that the managed care organization
21 comply with Section 533.006 as a condition of contract retention
22 and renewal; ~~and~~

23 (10) a requirement that the managed care organization
24 provide the information required by Section 533.012 and otherwise
25 comply and cooperate with the commission's office of investigations
26 and enforcement;

27 (11) a requirement that the managed care

1 organization's usages of out-of-network providers or groups of
2 out-of-network providers may not exceed limits for those usages
3 relating to total inpatient admissions, total outpatient services,
4 and emergency room admissions determined by the commission; and

5 (12) if the commission finds that a managed care
6 organization has violated Subdivision (11), a requirement that the
7 managed care organization reimburse an out-of-network provider for
8 health care services at a rate that is equal to the allowable rate
9 for those services, as determined under Sections 32.028 and
10 32.0281, Human Resources Code.

11 (b) In accordance with Subsection (a)(12), all
12 post-stabilization services provided by an out-of-network provider
13 must be reimbursed by the managed care organization at the
14 allowable rate for those services until the managed care
15 organization arranges for the timely transfer of the recipient, as
16 determined by the recipient's attending physician, to a provider in
17 the network. A managed care organization may not refuse to
18 reimburse an out-of-network provider for emergency or
19 post-stabilization services provided as a result of the managed
20 care organization's failure to arrange for and authorize a timely
21 transfer of a recipient.

22 SECTION 2.36. Section 533.012(a), Government Code, is
23 amended to read as follows:

24 (a) Each managed care organization contracting with the
25 commission under this chapter shall submit to the commission:

26 (1) a description of any financial or other business
27 relationship between the organization and any subcontractor

1 providing health care services under the contract;

2 (2) a copy of each type of contract between the
3 organization and a subcontractor relating to the delivery of or
4 payment for health care services; ~~and~~

5 (3) a description of the fraud control program used by
6 any subcontractor that delivers health care services; and

7 (4) a description and breakdown of all funds paid to
8 the managed care organization, including a health maintenance
9 organization, primary care case management, and an exclusive
10 provider organization, necessary for the commission to determine
11 the actual cost of administering the managed care plan.

12 SECTION 2.37. The heading to Subchapter C, Chapter 531,
13 Government Code, is amended to read as follows:

14 SUBCHAPTER C. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES

15 [~~WELFARE~~] FRAUD, ABUSE, OR OVERCHARGES

16 SECTION 2.37A. Subchapter C, Chapter 531, Government Code,
17 is amended by adding Section 531.1011 to read as follows:

18 Sec. 531.1011. DEFINITIONS. For purposes of this
19 subchapter:

20 (1) "Fraud" means an intentional deception or
21 misrepresentation made by a person with the knowledge that the
22 deception could result in some unauthorized benefit to that person
23 or some other person, including any act that constitutes fraud
24 under applicable federal or state law.

25 (2) "Hold on payment" means the temporary denial of
26 reimbursement under the Medicaid program for items or services
27 furnished by a specified provider.

1 (3) "Practitioner" means a physician or other
2 individual licensed under state law to practice the individual's
3 profession.

4 (4) "Program exclusion" means the suspension of a
5 provider from being authorized under the Medicaid program to
6 request reimbursement for items or services furnished by that
7 specific provider.

8 (5) "Provider" means a person, firm, partnership,
9 corporation, agency, association, institution, or other entity
10 that was or is approved by the commission to:

11 (A) provide medical assistance under contract or
12 provider agreement with the commission; or

13 (B) provide third-party billing vendor services
14 under a contract or provider agreement with the commission.

15 SECTION 2.38. Section 2177.0001(3), Government Code, is
16 amended to read as follows:

17 (3) "State agency" has the meaning assigned by Section
18 2054.003, except that the term does not include a university system
19 or institution of higher education or an agency identified in
20 Section 531.001(4).

21 SECTION 2.39. Section 2177.101(a), Government Code, is
22 amended to read as follows:

23 (a) This subchapter does not apply to procurements
24 conducted by an agency identified in Section 531.001(4) or to
25 procurements for major construction projects, as defined by the
26 commission in consultation with the department, such as
27 procurements made under Chapter 223, Transportation Code. In

1 defining a major construction project, the commission shall base
2 its decision on whether the nature of the project, any related
3 contract or specifications, or other considerations are of a type
4 that would make electronic procurement inappropriate.

5 SECTION 2.40. Section 2055.001(4), Government Code, is
6 amended to read as follows:

7 (4) "State agency" has the meaning assigned by Section
8 2054.003, except that the term does not include a university system
9 or institution of higher education or an agency identified in
10 Section 531.001(4).

11 SECTION 2.41. Section 2055.002, Government Code, is amended
12 to read as follows:

13 Sec. 2055.002. APPLICABILITY TO INSTITUTIONS OF HIGHER
14 EDUCATION OR HEALTH AND HUMAN SERVICES AGENCIES. (a) Except as
15 provided by Subsection (b), the requirements of this chapter
16 regarding electronic government projects do not apply to
17 institutions of higher education or a health and human services
18 agency identified in Section 531.001(4), Government Code.

19 (b) Subject to approval by the office, an institution of
20 higher education or a health and human services agency may elect to
21 participate regarding an electronic government project of that
22 institution or agency in the same manner as a state agency under
23 this chapter. If the institution or health and human services
24 agency makes this election and the office approves the election,
25 the institution or health and human services agency:

26 (1) shall comply with this chapter regarding that
27 electronic government project in the same manner as a state agency;

1 and

2 (2) may not withdraw the project from management by
3 the office unless the office approves the withdrawal.

4 SECTION 2.42. (a) Subchapter B, Chapter 12, Health and
5 Safety Code, is amended by adding Sections 12.0111 and 12.0112 to
6 read as follows:

7 Sec. 12.0111. LICENSING FEES. (a) This section applies in
8 relation to each licensing program administered by the department
9 or administered by a regulatory board or other agency that is under
10 the jurisdiction of the department or administratively attached to
11 the department. In this section and Section 12.0112, "license"
12 includes a permit, certificate, or registration.

13 (b) Notwithstanding other law, the department shall charge
14 a fee for issuing or renewing a license that is in an amount
15 designed to allow the department to recover from its license
16 holders all of the department's direct and indirect costs in
17 administering and enforcing the applicable licensing program.

18 (c) Notwithstanding other law, each regulatory board or
19 other agency that is under the jurisdiction of the department or
20 administratively attached to the department and that issues
21 licenses shall charge a fee for issuing or renewing a license that
22 is in an amount designed to allow the department and the regulatory
23 board or agency to recover from the license holders all of the
24 direct and indirect costs to the department and to the regulatory
25 board or agency in administering and enforcing the applicable
26 licensing program.

27 (d) This section does not apply to a person regulated under

1 Chapter 773.

2 Sec. 12.0112. TERM OF LICENSE. (a) Notwithstanding other
3 law and except as provided by Subsection (b), the term of each
4 license issued by the department, or by a regulatory board or other
5 agency that is under the jurisdiction of the department or
6 administratively attached to the department, is two years. The
7 department, regulatory board, or agency may provide for staggering
8 the issuance and renewal of licenses.

9 (b) This section does not apply to a license issued for a
10 youth camp under Chapter 141.

11 (b) Section 12.0111, Health and Safety Code, as added by
12 this section, applies only to a license, permit, certificate, or
13 registration issued or renewed by the Texas Department of Health,
14 or by a regulatory board or other agency that is under the
15 jurisdiction of the department or administratively attached to the
16 department, on or after January 1, 2004.

17 (c) Section 12.0112, Health and Safety Code, as added by
18 this section, applies only to a license, permit, certificate, or
19 registration that is issued or renewed on or after January 1, 2005.

20 SECTION 2.43. Sections 62.055(a), (d), and (e), Health and
21 Safety Code, are amended to read as follows:

22 (a) It is the intent of the legislature that the commission
23 maximize the use of private resources in administering the child
24 health plan created under this chapter. In administering the child
25 health plan, the commission may contract with[+

26 [~~1~~] a third party administrator to provide
27 enrollment and related services under the state child health plan[+

1 ~~or~~

2 [~~(2) another entity, including the Texas Healthy Kids~~
3 ~~Corporation under Subchapter F, Chapter 109, to obtain health~~
4 ~~benefit plan coverage for children who are eligible for coverage~~
5 ~~under the state child health plan].~~

6 (d) A third party administrator [~~or other entity~~] may
7 perform tasks under the contract that would otherwise be performed
8 by the Texas Department of Health or Texas Department of Human
9 Services under this chapter.

10 (e) The commission shall:

11 (1) retain all policymaking authority over the state
12 child health plan;

13 (2) procure all contracts with a third party
14 administrator [~~or other entity~~] through a competitive procurement
15 process in compliance with all applicable federal and state laws or
16 regulations; and

17 (3) ensure that all contracts with child health plan
18 providers under Section 62.155 are procured through a competitive
19 procurement process in compliance with all applicable federal and
20 state laws or regulations.

21 SECTION 2.44. (a) Subchapter B, Chapter 62, Health and
22 Safety Code, is amended by adding Section 62.0582 to read as
23 follows:

24 Sec. 62.0582. THIRD-PARTY BILLING VENDORS. (a) A
25 third-party billing vendor may not submit a claim with the
26 commission for payment on behalf of a health plan provider under the
27 program unless the vendor has entered into a contract with the

1 commission authorizing that activity.

2 (b) To the extent practical, the contract shall contain
3 provisions comparable to the provisions contained in contracts
4 between the commission and health plan providers, with an emphasis
5 on provisions designed to prevent fraud or abuse under the program.
6 At a minimum, the contract must require the third-party billing
7 vendor to:

8 (1) provide documentation of the vendor's authority to
9 bill on behalf of each provider for whom the vendor submits claims;

10 (2) submit a claim in a manner that permits the
11 commission to identify and verify the vendor, any computer or
12 telephone line used in submitting the claim, any relevant user
13 password used in submitting the claim, and any provider number
14 referenced in the claim; and

15 (3) subject to any confidentiality requirements
16 imposed by federal law, provide the commission, the office of the
17 attorney general, or authorized representatives with:

18 (A) access to any records maintained by the
19 vendor, including original records and records maintained by the
20 vendor on behalf of a provider, relevant to an audit or
21 investigation of the vendor's services or another function of the
22 commission or office of attorney general relating to the vendor;
23 and

24 (B) if requested, copies of any records described
25 by Paragraph (A) at no charge to the commission, the office of the
26 attorney general, or authorized representatives.

27 (c) On receipt of a claim submitted by a third-party billing

1 vendor, the commission shall send a remittance notice directly to
2 the provider referenced in the claim. The notice must include
3 detailed information regarding the claim submitted on behalf of the
4 provider.

5 (d) The commission shall take all action necessary,
6 including any modifications of the commission's claims processing
7 system, to enable the commission to identify and verify a
8 third-party billing vendor submitting a claim for payment under the
9 program, including identification and verification of any computer
10 or telephone line used in submitting the claim, any relevant user
11 password used in submitting the claim, and any provider number
12 referenced in the claim.

13 (e) The commission shall audit each third-party billing
14 vendor subject to this section at least annually to prevent fraud
15 and abuse under the program.

16 (b) Section 62.0582, Health and Safety Code, as added by
17 this section, takes effect January 1, 2006.

18 SECTION 2.45. Section 62.002(4), Health and Safety Code, is
19 amended to read as follows:

20 (4) "Gross [~~Net~~] family income" means the total amount
21 of income established without consideration of any reduction for
22 offsets that may be available to the family under any other [~~for a~~
23 ~~family after reduction for offsets for expenses such as child care~~
24 ~~and work-related expenses, in accordance with standards applicable~~
25 ~~under the Medicaid]~~ program.

26 SECTION 2.46. Section 62.101(b), Health and Safety Code, is
27 amended to read as follows:

1 (b) The commission shall establish income eligibility
2 levels consistent with Title XXI, Social Security Act (42 U.S.C.
3 Section 1397aa et seq.), as amended, and any other applicable law or
4 regulations, and subject to the availability of appropriated money,
5 so that a child who is younger than 19 years of age and whose gross
6 [~~net~~] family income is at or below 200 percent of the federal
7 poverty level is eligible for health benefits coverage under the
8 program. In addition, the commission may establish eligibility
9 standards regarding the amount and types of allowable assets for a
10 family whose gross family income is above 150 percent of the federal
11 poverty level.

12 SECTION 2.47. Section 62.1015(b), Health and Safety Code,
13 is amended to read as follows:

14 (b) A child of an employee of a charter school, school
15 district, other educational district whose employees are members of
16 the Teacher Retirement System of Texas, or regional education
17 service center may be enrolled in health benefits coverage under
18 the child health plan. A child enrolled in the child health plan
19 under this section:

20 (1) participates in the same manner as any other child
21 enrolled in the child health plan; and

22 (2) is subject to the same requirements and
23 restrictions relating to income eligibility, continuous coverage,
24 and enrollment, including applicable waiting periods, as any other
25 child enrolled in the child health plan.

26 SECTION 2.48. Section 62.102, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 62.102. CONTINUOUS COVERAGE. (a) The commission
2 shall provide that an individual who is determined to be eligible
3 for coverage under the child health plan remains eligible for those
4 benefits until the earlier of:

5 (1) the end of a period, not to exceed 12 months,
6 following the date of the eligibility determination; or

7 (2) the individual's 19th birthday.

8 (b) The period of continuous eligibility may be established
9 at an interval of 6 months beginning immediately upon passage of
10 this Act and ending September 1, 2005, at which time an interval of
11 12 months of continuous eligibility will be re-established.

12 SECTION 2.49. Section 62.151, Health and Safety Code, is
13 amended by amending Subsection (b) and adding Subsections (e) and
14 (f) to read as follows:

15 (b) In developing the covered benefits, the commission
16 shall consider the health care needs of healthy children and
17 children with special health care needs. ~~[At the time the child~~
18 ~~health plan program is first implemented, the child health plan~~
19 ~~must provide a benefits package that is actuarially equivalent, as~~
20 ~~determined in accordance with 42 U.S.C. Section 1397cc, to the~~
21 ~~basic plan for active state employees offered through health~~
22 ~~maintenance organizations under the Texas Employees Uniform Group~~
23 ~~Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance~~
24 ~~Code), as determined by the commission. The child health plan must~~
25 ~~provide at least the covered benefits described by the recommended~~
26 ~~benefits package described for a state-designed child health plan~~
27 ~~by the Texas House of Representatives Committee on Public Health~~

1 ~~"CHIP" Interim Report to the Seventy-Sixth Texas Legislature dated~~
2 ~~December, 1998, and the Senate Interim Committee on Children's~~
3 ~~Health Insurance Report to the Seventy-Sixth Texas Legislature~~
4 ~~dated December 1, 1998.]~~

5 (e) In developing the covered benefits, the commission
6 shall seek input from the Public Assistance Health Benefit Review
7 and Design Committee established under Section 531.067, Government
8 Code.

9 (f) The commission, if it determines the policy to be
10 cost-effective, may ensure that an enrolled child does not, unless
11 authorized by the commission in consultation with the child's
12 attending physician or advanced practice nurse, receive under the
13 child health plan:

14 (1) more than four different outpatient brand-name
15 prescription drugs during a month; or

16 (2) more than a 34-day supply of a brand-name
17 prescription drug at any one time.

18 SECTION 2.50. Section 62.153, Health and Safety Code, is
19 amended by amending Subsection (b) and adding Subsection (d) to
20 read as follows:

21 (b) Subject to Subsection (d), cost-sharing [~~Cost-sharing~~]
22 provisions adopted under this section shall ensure that families
23 with higher levels of income are required to pay progressively
24 higher percentages of the cost of the plan.

25 (d) Cost-sharing provisions adopted under this section may
26 be determined based on the maximum level authorized under federal
27 law and applied to income levels in a manner that minimizes

1 administrative costs.

2 SECTION 2.51. (a) The heading to Section 62.154, Health and
3 Safety Code, is amended to read as follows:

4 Sec. 62.154. WAITING PERIOD; CROWD OUT.

5 (b) Sections 62.154(a), (b), and (d), Health and Safety
6 Code, are amended to read as follows:

7 (a) To the extent permitted under Title XXI of the Social
8 Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any
9 other applicable law or regulations, the child health plan must
10 include a waiting period. The child health plan [~~and~~] may include
11 copayments and other provisions intended to discourage:

12 (1) employers and other persons from electing to
13 discontinue offering coverage for children under employee or other
14 group health benefit plans; and

15 (2) individuals with access to adequate health benefit
16 plan coverage, other than coverage under the child health plan,
17 from electing not to obtain or to discontinue that coverage for a
18 child.

19 (b) A child is not subject to a waiting period adopted under
20 Subsection (a) if:

21 (1) the family lost coverage for the child as a result
22 of:

23 (A) termination of employment because of a layoff
24 or business closing;

25 (B) termination of continuation coverage under
26 the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L.
27 No. 99-272);

1 (C) change in marital status of a parent of the
2 child;

3 (D) termination of the child's Medicaid
4 eligibility because:

5 (i) the child's family's earnings or
6 resources increased; or

7 (ii) the child reached an age at which
8 Medicaid coverage is not available; or

9 (E) a similar circumstance resulting in the
10 involuntary loss of coverage;

11 (2) the family terminated health benefits plan
12 coverage for the child because the cost to the child's family for
13 the coverage exceeded 10 percent of the family's net income; [~~or~~]

14 (3) the child has access to group-based health
15 benefits plan coverage and is required to participate in the health
16 insurance premium payment reimbursement program administered by
17 the commission; or

18 (4) the commission has determined that other grounds
19 exist for a good cause exception.

20 (d) The waiting period required by Subsection (a) must [+
21 [~~1~~] extend for a period of 90 days after:

22 (1) the first day of the month in [~~last date on~~] which
23 the applicant is enrolled under the child health plan, if the date
24 of enrollment is on or before the 15th day of the month; or

25 (2) the first day of the month after which the
26 applicant is enrolled under the child health plan, if the date of
27 enrollment is after the 15th day of the month [~~was covered under a~~

1 ~~health benefits plan, and~~

2 ~~[(2) apply to a child who was covered by a health~~
3 ~~benefits plan at any time during the 90 days before the date of~~
4 ~~application for coverage under the child health plan, other than a~~
5 ~~child who was covered under a health benefits plan provided under~~
6 ~~Chapter 109].~~

7 SECTION 2.52. Sections 62.155(c) and (d), Health and Safety
8 Code, are amended to read as follows:

9 (c) In selecting a health plan provider, the commission:

10 (1) may give preference to a person who provides
11 similar coverage under the Medicaid program ~~[or through the Texas~~
12 ~~Healthy Kids Corporation]~~; and

13 (2) shall provide for a choice of at least two health
14 plan providers in each service ~~[metropolitan]~~ area.

15 (d) The commissioner may authorize an exception to
16 Subsection (c)(2) if there is only one acceptable applicant to
17 become a health plan provider in the service ~~[metropolitan]~~ area.

18 SECTION 2.53. Subchapter D, Chapter 62, Health and Safety
19 Code, is amended by adding Section 62.158 to read as follows:

20 Sec. 62.158. STATE TAXES. The commission shall ensure that
21 any experience rebate or profit-sharing for health plan providers
22 under the child health plan is calculated by treating premium,
23 maintenance, and other taxes under the Insurance Code and any other
24 taxes payable to this state as allowable expenses for purposes of
25 determining the amount of the experience rebate or profit-sharing.

26 SECTION 2.54. (a) Subtitle E, Title 2, Health and Safety
27 Code, is amended by adding Chapter 112 to read as follows:

1 CHAPTER 112. BORDER HEALTH FOUNDATION

2 Sec. 112.001. DEFINITIONS. In this chapter:

3 (1) "Board of directors" means the board of directors
4 of the Border Health Foundation.

5 (2) "Foundation" means the Border Health Foundation.

6 Sec. 112.002. CREATION OF FOUNDATION. (a) The department
7 shall establish the Border Health Foundation as a nonprofit
8 corporation that complies with the Texas Non-Profit Corporation Act
9 (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), except
10 as otherwise provided by this chapter, and qualifies as an
11 organization exempt from federal income tax under Section
12 501(c)(3), Internal Revenue Code of 1986, as amended.

13 (b) The department shall ensure that the foundation
14 operates independently of any state agency or political subdivision
15 of this state.

16 Sec. 112.003. POWERS AND DUTIES. (a) The foundation shall
17 raise money from other foundations, governmental entities, and
18 other sources to finance health programs in this state in areas
19 adjacent to the border with the United Mexican States.

20 (b) The foundation shall:

21 (1) identify and seek potential partners in the
22 private sector that will afford this state the opportunity to
23 maintain or increase the existing levels of financing of health
24 programs and activities;

25 (2) engage in outreach efforts to make the existence
26 of the office known to potential partners throughout this state;
27 and

1 (3) perform any other function necessary to carry out
2 the purposes of this section.

3 (c) The department shall review programs from all agencies
4 under its control to determine which projects should be available
5 to receive money under Subsection (a).

6 (d) The foundation has the powers necessary and convenient
7 to carry out its duties.

8 Sec. 112.004. ADMINISTRATION. (a) The foundation is
9 governed by a board of five directors appointed by the Texas Board
10 of Health from individuals recommended by the commissioner.

11 (b) Members of the board of directors serve for staggered
12 terms of six years, with as near as possible to one-third of the
13 members' terms expiring every two years.

14 (c) Appointments to the board of directors shall be made
15 without regard to the race, color, disability, sex, religion, age,
16 or national origin of the appointees.

17 (d) The board of directors shall ensure that the foundation
18 remains eligible for an exemption from federal income tax under
19 Section 501(a), Internal Revenue Code of 1986, as amended, by being
20 listed as an exempt organization under Section 501(c)(3) of that
21 code, as amended.

22 Sec. 112.005. RESTRICTIONS ON BOARD APPOINTMENT,
23 MEMBERSHIP, AND EMPLOYMENT. (a) In this section, "Texas trade
24 association" means a cooperative and voluntarily joined
25 association of business or professional competitors in this state
26 designed to assist its members and its industry or profession in
27 dealing with mutual business or professional problems and in

1 promoting their common interest.

2 (b) A person may not be a member of the board of directors
3 and may not be a foundation employee employed in a "bona fide
4 executive, administrative, or professional capacity," as that
5 phrase is used for purposes of establishing an exemption to the
6 overtime provisions of the federal Fair Labor Standards Act of 1938
7 (29 U.S.C. Section 201 et seq.), as amended, if:

8 (1) the person is an officer, employee, or paid
9 consultant of a Texas trade association in the field of health care;
10 or

11 (2) the person's spouse is an officer, manager, or paid
12 consultant of a Texas trade association in the field of health care.

13 (c) A person may not be a member of the board of directors or
14 act as the general counsel to the board of directors or the
15 foundation if the person is required to register as a lobbyist under
16 Chapter 305, Government Code, because of the person's activities
17 for compensation on behalf of a profession related to the operation
18 of the foundation.

19 Sec. 112.006. REMOVAL OF BOARD MEMBER. (a) It is a ground
20 for removal from the board of directors that a member:

21 (1) is ineligible for membership under Section
22 112.005;

23 (2) cannot, because of illness or disability,
24 discharge the member's duties for a substantial part of the member's
25 term; or

26 (3) is absent from more than half of the regularly
27 scheduled board meetings that the member is eligible to attend

1 during a calendar year without an excuse approved by a majority vote
2 of the board of directors.

3 (b) The validity of an action of the board of directors is
4 not affected by the fact that it is taken when a ground for removal
5 of a board member exists.

6 (c) The foundation in its articles or bylaws shall establish
7 the manner in which a board member may be removed under this section
8 and may establish other grounds for removal of a member.

9 Sec. 112.007. VACANCY. A vacancy on the board of directors
10 shall be filled for the remainder of the unexpired term in the same
11 manner as provided in Section 112.004(a).

12 Sec. 112.008. OFFICERS. The board of directors shall elect
13 from among its members a presiding officer, an assistant presiding
14 officer, and other necessary officers. The presiding officer and
15 assistant presiding officer serve for a period of one year and may
16 be reelected.

17 Sec. 112.009. MEETINGS. The board of directors may meet as
18 often as necessary, but shall meet at least twice a year.

19 Sec. 112.010. TAX EXEMPTION. All income, property, and
20 other assets of the foundation are exempt from taxation by this
21 state and political subdivisions of this state.

22 Sec. 112.011. MEMORANDUM OF UNDERSTANDING. The foundation
23 and the department shall enter into a memorandum of understanding
24 that:

25 (1) requires the board of directors and staff of the
26 foundation to report to the commissioner and department;

27 (2) allows the department to provide staff functions

1 to the foundation; and

2 (3) outlines the financial contributions to be made to
3 the foundation from funds obtained from grants and other sources.

4 Sec. 112.012. FUNDING. (a) The department, another agency
5 of this state, including an institution of higher education as
6 defined by Section 61.003, Education Code, or a political
7 subdivision of this state may contract with the foundation to
8 finance, on behalf of the department, agency, or political
9 subdivision, health programs described by Section 112.003.

10 (b) The foundation may apply for and accept funds from the
11 federal government or any other public or private entity. The
12 foundation or any member of the foundation may also solicit and
13 accept pledges, gifts, and endowments from private sources on the
14 foundation's behalf. The foundation may only accept a pledge,
15 gift, or endowment solicited under this section that is consistent
16 with the purposes of the foundation.

17 (c) The board of directors of the foundation shall manage
18 and approve disbursements of funds, pledges, gifts, and endowments
19 that are the property of the foundation.

20 (d) The board of directors of the foundation shall manage
21 any capital improvements constructed, owned, or leased by the
22 foundation and any real property acquired by the foundation.

23 Sec. 112.013. RECORDS. (a) The foundation shall maintain
24 financial records and reports independently from those of the
25 department.

26 (b) The foundation shall comply with all filing
27 requirements of the secretary of state and the Internal Revenue

1 Service.

2 Sec. 112.014. REPORT TO DEPARTMENT. Not later than the 60th
3 day after the last day of the fiscal year, the foundation shall
4 submit to the department a report itemizing all income and
5 expenditures and describing all activities of the foundation during
6 the preceding fiscal year.

7 (b) The Border Health Foundation shall be created as
8 required by this section not later than June 1, 2004.

9 SECTION 2.55. Section 142.003(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) The following persons need not be licensed under this
12 chapter:

13 (1) a physician, dentist, registered nurse,
14 occupational therapist, or physical therapist licensed under the
15 laws of this state who provides home health services to a client
16 only as a part of and incidental to that person's private office
17 practice;

18 (2) a registered nurse, licensed vocational nurse,
19 physical therapist, occupational therapist, speech therapist,
20 medical social worker, or any other health care professional as
21 determined by the department who provides home health services as a
22 sole practitioner;

23 (3) a registry that operates solely as a clearinghouse
24 to put consumers in contact with persons who provide home health,
25 hospice, or personal assistance services and that does not maintain
26 official client records, direct client services, or compensate the
27 person who is providing the service;

1 (4) an individual whose permanent residence is in the
2 client's residence;

3 (5) an employee of a person licensed under this
4 chapter who provides home health, hospice, or personal assistance
5 services only as an employee of the license holder and who receives
6 no benefit for providing the services, other than wages from the
7 license holder;

8 (6) a home, nursing home, convalescent home, assisted
9 living facility, special care facility, or other institution for
10 individuals who are elderly or who have disabilities that provides
11 home health or personal assistance services only to residents of
12 the home or institution;

13 (7) a person who provides one health service through a
14 contract with a person licensed under this chapter;

15 (8) a durable medical equipment supply company;

16 (9) a pharmacy or wholesale medical supply company
17 that does not furnish services, other than supplies, to a person at
18 the person's house;

19 (10) a hospital or other licensed health care facility
20 that provides home health or personal assistance services only to
21 inpatient residents of the hospital or facility;

22 (11) a person providing home health or personal
23 assistance services to an injured employee under Title 5, Labor
24 Code;

25 (12) a visiting nurse service that:

26 (A) is conducted by and for the adherents of a
27 well-recognized church or religious denomination; and

1 (B) provides nursing services by a person exempt
2 from licensing by Section 301.004, Occupations Code, because the
3 person furnishes nursing care in which treatment is only by prayer
4 or spiritual means;

5 (13) an individual hired and paid directly by the
6 client or the client's family or legal guardian to provide home
7 health or personal assistance services;

8 (14) a business, school, camp, or other organization
9 that provides home health or personal assistance services,
10 incidental to the organization's primary purpose, to individuals
11 employed by or participating in programs offered by the business,
12 school, or camp that enable the individual to participate fully in
13 the business's, school's, or camp's programs;

14 (15) a person or organization providing
15 sitter-companion services or chore or household services that do
16 not involve personal care, health, or health-related services;

17 (16) a licensed health care facility that provides
18 hospice services under a contract with a hospice;

19 (17) a person delivering residential acquired immune
20 deficiency syndrome hospice care who is licensed and designated as
21 a residential AIDS hospice under Chapter 248; [~~e~~]

22 (18) the Texas Department of Criminal Justice;

23 (19) a person that provides home health, hospice, or
24 personal assistance services only to persons enrolled in a program
25 funded wholly or partly by the Texas Department of Mental Health and
26 Mental Retardation and monitored by the Texas Department of Mental
27 Health and Mental Retardation or its designated local authority in

1 accordance with standards set by the Texas Department of Mental
2 Health and Mental Retardation; or

3 (20) an individual who provides home health or
4 personal assistance services as the employee of a consumer or an
5 entity or employee of an entity acting as a consumer's fiscal agent
6 under Section 531.051, Government Code.

7 SECTION 2.56. Section 142.009(j), Health and Safety Code,
8 is amended to read as follows:

9 (j) Except as provided by Subsections (h) [~~(i)~~] and (l),
10 an on-site survey must be conducted within 18 months after a survey
11 for an initial license. After that time, an on-site survey must be
12 conducted at least every 36 months.

13 SECTION 2.57. (a) Section 242.047, Health and Safety Code,
14 is amended to read as follows:

15 Sec. 242.047. ACCREDITATION REVIEW TO SATISFY [~~INSTEAD OF~~]
16 INSPECTION OR CERTIFICATION REQUIREMENTS. (a) The department
17 shall accept an annual accreditation review from the Joint
18 Commission on Accreditation of Health Organizations for a nursing
19 home instead of an inspection for renewal of a license under Section
20 242.033 and in satisfaction of the requirements for certification
21 by the department for participation in the medical assistance
22 program under Chapter 32, Human Resources Code, and the federal
23 Medicare program, but only if:

24 (1) the nursing home is accredited by the commission
25 under the commission's long-term care standards;

26 (2) the commission maintains an annual inspection or
27 review program that, for each nursing home, meets the department's

1 applicable minimum standards as confirmed by the board;

2 (3) the commission conducts an annual on-site
3 inspection or review of the home; [~~and~~]

4 (4) the nursing home submits to the department a copy
5 of its annual accreditation review from the commission in addition
6 to the application, fee, and any report required for renewal of a
7 license or for certification, as applicable; and

8 (5) the department has:

9 (A) determined whether a waiver or authorization
10 from a federal agency is necessary under federal law, including for
11 federal funding purposes, before the department accepts an annual
12 accreditation review from the joint commission:

13 (i) instead of an inspection for license
14 renewal purposes;

15 (ii) as satisfying the requirements for
16 certification by the department for participation in the medical
17 assistance program; or

18 (iii) as satisfying the requirements for
19 certification by the department for participation in the federal
20 Medicare program; and

21 (B) obtained any necessary federal waivers or
22 authorizations.

23 (b) The department shall coordinate its licensing and
24 certification activities with the commission.

25 (c) The department and the commission shall sign a
26 memorandum of agreement to implement this section. The memorandum
27 must provide that if all parties to the memorandum do not agree in

1 the development, interpretation, and implementation of the
2 memorandum, any area of dispute is to be resolved by the board.

3 (d) Except as specifically provided by this section, this
4 [~~This~~] section does not limit the department in performing any
5 duties and inspections authorized by this chapter or under any
6 contract relating to the medical assistance program under Chapter
7 32, Human Resources Code, and Titles XVIII and XIX of the Social
8 Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.),
9 including authority to take appropriate action relating to an
10 institution, such as closing the institution.

11 (e) This section does not require a nursing home to obtain
12 accreditation from the commission.

13 (b) Not later than October 1, 2003, the Texas Department of
14 Human Services shall:

15 (1) determine whether a waiver or authorization from a
16 federal agency is necessary under federal law, including for
17 federal funding purposes, before the department may accept an
18 annual accreditation review from the Joint Commission on
19 Accreditation of Health Organizations for a nursing home:

20 (A) instead of an inspection for purposes of
21 renewing a nursing home license under Chapter 242, Health and
22 Safety Code;

23 (B) as satisfying the requirements for
24 certification by the department for participation in the medical
25 assistance program under Chapter 32, Human Resources Code; and

26 (C) as satisfying the requirements for
27 certification by the department for participation in the federal

1 Medicare program; and

2 (2) if the department determines that a waiver or
3 authorization is necessary, request any required waivers or
4 authorizations that the department may possibly obtain under
5 federal law.

6 (c) Not later than December 1, 2003, the Texas Department of
7 Human Services shall report its progress under Subsection (b) of
8 this section to the governor and to the presiding officer of each
9 house of the legislature.

10 SECTION 2.58. (a) Section 242.063(d), Health and Safety
11 Code, is amended to read as follows:

12 (d) A [~~Notwithstanding Chapter 15, Civil Practice and~~
13 ~~Remedies Code, or Section 65.023, Civil Practice and Remedies Code,~~
14 a] suit for a temporary restraining order or other injunctive
15 relief must [~~may~~] be brought in [~~Travis County or in~~] the county in
16 which the alleged violation occurs.

17 (b) Section 242.063(e), Health and Safety Code, is
18 repealed.

19 (c) The changes in law made by this section to Section
20 242.063(d), Health and Safety Code, apply only to a suit filed on or
21 after the effective date of this section. A suit filed before the
22 effective date of this section is covered by the law in effect when
23 the suit was filed, and that law is continued in effect for that
24 purpose.

25 SECTION 2.59. Section 242.065(b), Health and Safety Code,
26 is amended to read as follows:

27 (b) In determining the amount of a penalty to be awarded

1 under this section, the trier of fact shall consider:

2 (1) the seriousness of the violation [~~, including the~~
3 ~~nature, circumstances, extent, and gravity of the violation and the~~
4 ~~hazard or potential hazard created by the violation to the health or~~
5 ~~safety of a resident~~];

6 (2) the history of violations committed by the person
7 or the person's affiliate, employee, or controlling person;

8 (3) the amount necessary to deter future violations;

9 (4) the efforts made to correct the violation;

10 (5) any misrepresentation made to the department or to
11 another person regarding:

12 (A) the quality of services rendered or to be
13 rendered to residents;

14 (B) the compliance history of the institution or
15 any institutions owned or controlled by an owner or controlling
16 person of the institution; or

17 (C) the identity of an owner or controlling
18 person of the institution;

19 (6) the culpability of the individual who committed
20 the violation; and

21 (7) any other matter that should, as a matter of
22 justice or equity, be considered.

23 SECTION 2.60. (a) Section 242.070, Health and Safety Code,
24 is amended to read as follows:

25 Sec. 242.070. APPLICATION OF OTHER LAW. The department may
26 not assess more than one monetary penalty under this chapter and
27 Chapter 32, Human Resources Code, for a violation arising out of the

1 same act or failure to act, except as provided by Section
2 242.0665(c). The [~~This section does not prohibit the~~] department
3 may assess the greater of [~~from assessing~~] a monetary penalty under
4 this chapter or [~~and~~] a monetary penalty under Chapter 32, Human
5 Resources Code, for the same act or failure to act.

6 (b) The change in law made by this section to Section
7 242.070, Health and Safety Code, applies only to a penalty assessed
8 on or after the effective date of this section.

9 SECTION 2.61. Section 242.601(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) An institution must establish medication administration
12 procedures [~~to ensure that~~

13 [~~(1) medications to be administered are checked~~
14 ~~against the order of a physician, advanced practice nurse, or~~
15 ~~physician assistant pursuant to protocols jointly developed with a~~
16 ~~physician,~~

17 [~~(2) the resident is identified before the~~
18 ~~administration of a medication,~~

19 [~~(3) each resident's clinical record includes an~~
20 ~~individual medication record in which the dose of medication~~
21 ~~administered is properly recorded by the person who administered~~
22 ~~the medication,~~

23 [~~(4) medications and biologicals are prepared and~~
24 ~~administered to a resident by the same individual, except under~~
25 ~~unit-of-use package distribution systems, and~~

26 [~~(5) a medication prescribed for one resident is not~~
27 ~~administered to any other person].~~

1 SECTION 2.62. Section 242.603(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) An institution shall store medications under
4 appropriate conditions of sanitation, temperature, light,
5 moisture, ventilation, segregation, and security. [~~Poisons,
6 medications used externally, and medications taken internally
7 shall be stored on separate shelves or in separate cabinets.
8 Medication stored in a refrigerator containing other items shall be
9 kept in a separate compartment with appropriate security. The
10 institution shall store a medication in a locked area that must
11 remain locked unless an individual authorized to distribute the
12 medication is present.~~]

13 SECTION 2.63. (a) Section 245.004(a), Health and Safety
14 Code, is amended to read as follows:

15 (a) The following facilities need not be licensed under this
16 chapter:

17 (1) a hospital licensed under Chapter 241 (Texas
18 Hospital Licensing Law); or

19 (2) the office of a physician licensed under Subtitle
20 B, Title 3, Occupations Code, unless the office is used for the
21 purpose of performing more than 50 [~~300~~] abortions in any 12-month
22 period.

23 (b) An office of a physician required by Section 245.004(a),
24 Health and Safety Code, as amended by this section, to be licensed
25 under Chapter 245, Health and Safety Code, must obtain that license
26 not later than January 1, 2004.

27 SECTION 2.64. Section 252.202(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) A quality assurance fee is imposed on each facility for
 3 which a license fee must be paid under Section 252.034, ~~and~~ on
 4 each facility owned by a community mental health and mental
 5 retardation center, as described by Subchapter A, Chapter 534, and
 6 on each facility owned by the Texas Department of Mental Health and
 7 Mental Retardation. The fee:

8 (1) is an amount established under Subsection (b)
 9 multiplied by the number of patient days as determined in
 10 accordance with Section 252.203;

11 (2) is payable monthly; and

12 (3) is in addition to other fees imposed under this
 13 chapter.

14 SECTION 2.65. Section 252.203, Health and Safety Code, is
 15 amended to read as follows:

16 Sec. 252.203. PATIENT DAYS. For each calendar day, a
 17 facility shall determine the number of patient days by adding the
 18 following:

19 (1) the number of patients occupying a facility bed
 20 immediately before midnight of that day; and

21 ~~(2) [the number of beds that are on hold on that day~~
 22 ~~and that have been placed on hold for a period not to exceed three~~
 23 ~~consecutive calendar days during which a patient is in a hospital,~~
 24 ~~and~~

25 ~~[(3)]~~ the number of beds that are on hold on that day
 26 and that have been placed on hold for a period not to exceed three
 27 consecutive calendar days during which a patient is on therapeutic

1 ~~home~~ leave.

2 SECTION 2.66. Section 252.204(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) Each facility shall:

5 (1) not later than the 20th ~~[10th]~~ day after the last
6 day of a month file a report with the Health and Human Services
7 Commission or the department, as appropriate, stating the total
8 patient days for the month; and

9 (2) not later than the 30th day after the last day of
10 the month pay the quality assurance fee.

11 SECTION 2.67. Sections 252.207(a) and (c), Health and
12 Safety Code, are amended to read as follows:

13 (a) Subject to legislative appropriation and state and
14 federal law, the ~~[The]~~ Health and Human Services Commission may
15 ~~[shall]~~ use money in the quality assurance fund, together with any
16 federal money available to match that money~~[, to]~~:

17 (1) to offset ~~[allowable]~~ expenses incurred to
18 administer the quality assurance fee under this chapter ~~[under the~~
19 ~~Medicaid program]~~; ~~[or]~~

20 (2) to increase reimbursement rates paid under the
21 Medicaid program to facilities or waiver programs for persons with
22 mental retardation operated in accordance with 42 U.S.C. Section
23 1396n(c) and its subsequent amendments; or

24 (3) for any other health and human services purpose
25 approved by the governor and Legislative Budget Board~~[, subject to~~
26 ~~Section 252.206(d)]~~.

27 (c) If money in the quality assurance fund is used to

1 increase a reimbursement rate in the Medicaid program, the [The]
2 Health and Human Services Commission shall ensure that the
3 reimbursement methodology used to set that rate describes how the
4 money in the fund will be used to increase the rate and [formula
5 devised under Subsection (b)] provides incentives to increase
6 direct care staffing and direct care wages and benefits.

7 SECTION 2.68. Section 253.008, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 253.008. VERIFICATION OF EMPLOYABILITY. (a) Before a
10 facility, ~~[or]~~ an agency licensed under Chapter 142, or a person
11 exempt from licensing under Section 142.003(a)(19) may hire an
12 employee, the facility, ~~[or]~~ agency, or person shall search the
13 employee misconduct registry under this chapter and the nurse aide
14 registry maintained under the Omnibus Budget Reconciliation Act of
15 1987 (Pub. L. No. 100-203) to determine whether the applicant for
16 employment ~~[person]~~ is designated in either registry as having
17 abused, neglected, or exploited a resident or consumer of a
18 facility or an individual receiving services from an agency
19 licensed under Chapter 142 or from a person exempt from licensing
20 under Section 142.003(a)(19).

21 (b) A facility, ~~[or]~~ agency licensed under Chapter 142, or a
22 person exempt from licensing under Section 142.003(a)(19) may not
23 employ a person who is listed in either registry as having abused,
24 neglected, or exploited a resident or consumer of a facility or an
25 individual receiving services from an agency licensed under Chapter
26 142 or from a person exempt from licensing under Section
27 142.003(a)(19).

1 SECTION 2.69. Section 253.009(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) Each facility, ~~[or]~~ each agency licensed under Chapter
4 142, and each person exempt from licensing under Section
5 142.003(a)(19) shall notify its employees in a manner prescribed by
6 the department:

7 (1) about the employee misconduct registry; and

8 (2) that an employee may not be employed if the
9 employee is listed in the registry.

10 SECTION 2.70. (a) Chapter 285, Health and Safety Code, is
11 amended by adding Subchapter M to read as follows:

12 SUBCHAPTER M. PROVISION OF SERVICES

13 Sec. 285.201. PROVISION OF MEDICAL AND HOSPITAL CARE. As
14 authorized by 8 U.S.C. Section 1621(d), this chapter affirmatively
15 establishes eligibility for a person who would otherwise be
16 ineligible under 8 U.S.C. Section 1621(a), provided that only local
17 funds are utilized for the provision of nonemergency public health
18 benefits. A person is not considered a resident of a governmental
19 entity or hospital district if the person attempted to establish
20 residence solely to obtain health care assistance.

21 (b) This section takes effect immediately if this Act
22 receives a vote of two-thirds of all the members elected to each
23 house, as provided by Section 39, Article III, Texas Constitution.
24 If this Act does not receive the vote necessary for immediate
25 effect, this section takes effect September 1, 2003.

26 SECTION 2.71. Section 431.021, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 431.021. PROHIBITED ACTS. The following acts and the
2 causing of the following acts within this state are unlawful and
3 prohibited:

4 (a) the introduction or delivery for introduction into
5 commerce of any food, drug, device, or cosmetic that is adulterated
6 or misbranded;

7 (b) the adulteration or misbranding of any food, drug,
8 device, or cosmetic in commerce;

9 (c) the receipt in commerce of any food, drug, device, or
10 cosmetic that is adulterated or misbranded, and the delivery or
11 proffered delivery thereof for pay or otherwise;

12 (d) the distribution in commerce of a consumer commodity, if
13 such commodity is contained in a package, or if there is affixed to
14 that commodity a label that does not conform to the provisions of
15 this chapter and of rules adopted under the authority of this
16 chapter; provided, however, that this prohibition shall not apply
17 to persons engaged in business as wholesale or retail distributors
18 of consumer commodities except to the extent that such persons:

19 (1) are engaged in the packaging or labeling of such
20 commodities; or

21 (2) prescribe or specify by any means the manner in
22 which such commodities are packaged or labeled;

23 (e) the introduction or delivery for introduction into
24 commerce of any article in violation of Section 431.084, 431.114,
25 or 431.115;

26 (f) the dissemination of any false advertisement;

27 (g) the refusal to permit entry or inspection, or to permit

1 the taking of a sample or to permit access to or copying of any
2 record as authorized by Sections 431.042-431.044; or the failure to
3 establish or maintain any record or make any report required under
4 Section 512(j), (l), or (m) of the federal Act, or the refusal to
5 permit access to or verification or copying of any such required
6 record;

7 (h) the manufacture within this state of any food, drug,
8 device, or cosmetic that is adulterated or misbranded;

9 (i) the giving of a guaranty or undertaking referred to in
10 Section 431.059, which guaranty or undertaking is false, except by
11 a person who relied on a guaranty or undertaking to the same effect
12 signed by, and containing the name and address of the person
13 residing in this state from whom the person received in good faith
14 the food, drug, device, or cosmetic; or the giving of a guaranty or
15 undertaking referred to in Section 431.059, which guaranty or
16 undertaking is false;

17 (j) the use, removal, or disposal of a detained or embargoed
18 article in violation of Section 431.048;

19 (k) the alteration, mutilation, destruction, obliteration,
20 or removal of the whole or any part of the labeling of, or the doing
21 of any other act with respect to a food, drug, device, or cosmetic,
22 if such act is done while such article is held for sale after
23 shipment in commerce and results in such article being adulterated
24 or misbranded;

25 (l)(1) forging, counterfeiting, simulating, or falsely
26 representing, or without proper authority using any mark, stamp,
27 tag, label, or other identification device authorized or required

1 by rules adopted under this chapter or the regulations promulgated
2 under the provisions of the federal Act;

3 (2) making, selling, disposing of, or keeping in
4 possession, control, or custody, or concealing any punch, die,
5 plate, stone, or other thing designed to print, imprint, or
6 reproduce the trademark, trade name, or other identifying mark,
7 imprint, or device of another or any likeness of any of the
8 foregoing on any drug or container or labeling thereof so as to
9 render such drug a counterfeit drug;

10 (3) the doing of any act that causes a drug to be a
11 counterfeit drug, or the sale or dispensing, or the holding for sale
12 or dispensing, of a counterfeit drug;

13 (m) the using by any person to the person's own advantage,
14 or revealing, other than to the commissioner, an authorized agent,
15 a health authority or to the courts when relevant in any judicial
16 proceeding under this chapter, of any information acquired under
17 the authority of this chapter concerning any method or process that
18 as a trade secret is entitled to protection;

19 (n) the using, on the labeling of any drug or device or in
20 any advertising relating to such drug or device, of any
21 representation or suggestion that approval of an application with
22 respect to such drug or device is in effect under Section 431.114 or
23 Section 505, 515, or 520(g) of the federal Act, as the case may be,
24 or that such drug or device complies with the provisions of such
25 sections;

26 (o) the using, in labeling, advertising or other sales
27 promotion of any reference to any report or analysis furnished in

1 compliance with Sections 431.042-431.044 or Section 704 of the
2 federal Act;

3 (p) in the case of a prescription drug distributed or
4 offered for sale in this state, the failure of the manufacturer,
5 packer, or distributor of the drug to maintain for transmittal, or
6 to transmit, to any practitioner licensed by applicable law to
7 administer such drug who makes written request for information as
8 to such drug, true and correct copies of all printed matter that is
9 required to be included in any package in which that drug is
10 distributed or sold, or such other printed matter as is approved
11 under the federal Act. Nothing in this subsection shall be
12 construed to exempt any person from any labeling requirement
13 imposed by or under other provisions of this chapter;

14 (q)(1) placing or causing to be placed on any drug or device
15 or container of any drug or device, with intent to defraud, the
16 trade name or other identifying mark, or imprint of another or any
17 likeness of any of the foregoing;

18 (2) selling, dispensing, disposing of or causing to be
19 sold, dispensed, or disposed of, or concealing or keeping in
20 possession, control, or custody, with intent to sell, dispense, or
21 dispose of, any drug, device, or any container of any drug or
22 device, with knowledge that the trade name or other identifying
23 mark or imprint of another or any likeness of any of the foregoing
24 has been placed thereon in a manner prohibited by Subdivision (1) of
25 this subsection; or

26 (3) making, selling, disposing of, causing to be made,
27 sold, or disposed of, keeping in possession, control, or custody,

1 or concealing with intent to defraud any punch, die, plate, stone,
2 or other thing designed to print, imprint, or reproduce the
3 trademark, trade name, or other identifying mark, imprint, or
4 device of another or any likeness of any of the foregoing on any
5 drug or container or labeling of any drug or container so as to
6 render such drug a counterfeit drug;

7 (r) dispensing or causing to be dispensed a different drug
8 in place of the drug ordered or prescribed without the express
9 permission in each case of the person ordering or prescribing;

10 (s) the failure to register in accordance with Section 510
11 of the federal Act, the failure to provide any information required
12 by Section 510(j) or (k) of the federal Act, or the failure to
13 provide a notice required by Section 510(j)(2) of the federal Act;

14 (t)(1) the failure or refusal to:

15 (A) comply with any requirement prescribed under
16 Section 518 or 520(g) of the federal Act; or

17 (B) furnish any notification or other material or
18 information required by or under Section 519 or 520(g) of the
19 federal Act;

20 (2) with respect to any device, the submission of any
21 report that is required by or under this chapter that is false or
22 misleading in any material respect;

23 (u) the movement of a device in violation of an order under
24 Section 304(g) of the federal Act or the removal or alteration of
25 any mark or label required by the order to identify the device as
26 detained;

27 (v) the failure to provide the notice required by Section

1 412(b) or 412(c), the failure to make the reports required by
2 Section 412(d)(1)(B), or the failure to meet the requirements
3 prescribed under Section 412(d)(2) of the federal Act;

4 (w) except as provided under Subchapter M of this chapter
5 and Section 562.1085, Occupations Code, the acceptance by a person
6 of an unused prescription or drug, in whole or in part, for the
7 purpose of resale, after the prescription or drug has been
8 originally dispensed, or sold;

9 (x) engaging in the wholesale distribution of drugs or
10 operating as a distributor or manufacturer of devices in this state
11 without filing a licensing statement with the commissioner as
12 required by Section 431.202 or having a license as required by
13 Section 431.272, as applicable;

14 (y) engaging in the manufacture of food in this state or
15 operating as a food wholesaler in this state without having a
16 license as required by Section 431.222; or

17 (z) unless approved by the United States Food and Drug
18 Administration pursuant to the federal Act, the sale, delivery,
19 holding, or offering for sale of a self-testing kit designed to
20 indicate whether a person has a human immunodeficiency virus
21 infection, acquired immune deficiency syndrome, or a related
22 disorder or condition.

23 SECTION 2.72. (a) Section 461.018(b), Health and Safety
24 Code, is amended to read as follows:

25 (b) The commission's program under Subsection (a) must
26 include:

27 (1) establishing and maintaining a list of webpages

1 and toll-free "800" telephone numbers of nonprofit entities that
2 ~~[number to]~~ provide crisis counseling and referral services to
3 families experiencing difficulty as a result of problem or
4 compulsive gambling;

5 (2) promoting public awareness regarding the
6 recognition and prevention of problem or compulsive gambling;

7 (3) facilitating, through in-service training and
8 other means, the availability of effective assistance programs for
9 problem or compulsive gamblers; and

10 (4) conducting studies to identify adults and
11 juveniles in this state who are, or who are at risk of becoming,
12 problem or compulsive gamblers.

13 (b) Section 466.251(b), Government Code, and Section
14 2001.417(b), Occupations Code, are repealed.

15 SECTION 2.73. Section 533.034, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED
18 SERVICES. (a) The department may cooperate, negotiate, and
19 contract with local agencies, hospitals, private organizations and
20 foundations, community centers, physicians, and other persons to
21 plan, develop, and provide community-based mental health and mental
22 retardation services.

23 (b) The department may adopt a schedule of initial and
24 annual renewal compliance fees for persons that provide services
25 under a home and community-based services waiver program for
26 persons with mental retardation adopted in accordance with Section
27 1915(c) of the federal Social Security Act (42 U.S.C. Section

1 1396n), as amended, and that is funded wholly or partly by the
2 department and monitored by the department or by a designated local
3 authority in accordance with standards adopted by the department.
4 This subsection expires September 1, 2005.

5 SECTION 2.74. Section 533.035, Health and Safety Code, is
6 amended by amending Subsection (c) and by adding Subsections (e),
7 (f), and (g) to read as follows:

8 (c) A local mental health and mental retardation authority,
9 with the department's approval, shall use the funds received under
10 Subsection (b) to ensure mental health, mental retardation, and
11 chemical dependency services are provided in the local service
12 area. The local authority shall consider public input, ultimate
13 cost-benefit, and client care issues to ensure consumer choice and
14 the best use of public money in:

15 (1) assembling a network of service providers; and

16 (2) [~~determining whether to become a provider of a~~
17 ~~service or to contract that service to another organization; and~~

18 [~~3~~] making recommendations relating to the most
19 appropriate and available treatment alternatives for individuals
20 in need of mental health or mental retardation services.

21 (e) In assembling a network of service providers, a local
22 mental health and mental retardation authority may serve as a
23 provider of services only as a provider of last resort and only if
24 the authority demonstrates to the department that:

25 (1) the authority has made every reasonable attempt to
26 solicit the development of an available and appropriate provider
27 base that is sufficient to meet the needs of consumers in its

1 service area; and

2 (2) there is not a willing provider of the relevant
3 services in the authority's service area or in the county where the
4 provision of the services is needed.

5 (f) The department shall review the appropriateness of a
6 local mental health and mental retardation authority's status as a
7 service provider at least biennially.

8 (g) The department, together with local mental health and
9 mental retardation authorities and other interested persons, shall
10 develop and implement a plan to privatize all services by
11 intermediate facilities for persons with mental retardation and all
12 related waiver services programs operated by an authority. The
13 transfer of services to private providers may not occur on or before
14 August 31, 2006. The plan must provide criteria that:

15 (1) promote the transition of services to private
16 providers in a manner that causes the least disruption practicable
17 to the consumers of those services;

18 (2) ensure the continuation of services at the same
19 level of service provided before the transfer;

20 (3) provide for consumer choice as appropriate and as
21 required by rule; and

22 (4) require local mental health and mental retardation
23 authorities to implement the privatization of services in a
24 fiscally responsible manner.

25 SECTION 2.75. Subchapter B, Chapter 533, Health and Safety
26 Code, is amended by adding Section 533.0354 to read as follows:

27 Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL

1 DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES. (a) A local
2 mental health authority shall ensure the provision of assessment
3 services, crisis services, and intensive and comprehensive
4 services using disease management practices for adults with bipolar
5 disorder, schizophrenia, or clinically severe depression and for
6 children with serious emotional illnesses. The local mental health
7 authority shall ensure that individuals are engaged with treatment
8 services that are:

9 (1) ongoing and matched to the needs of the individual
10 in type, duration, and intensity;

11 (2) focused on a process of recovery designed to allow
12 the individual to progress through levels of service;

13 (3) guided by evidence-based protocols and a
14 strength-based paradigm of service; and

15 (4) monitored by a system that holds the local
16 authority accountable for specific outcomes, while allowing
17 flexibility to maximize local resources.

18 (b) The department shall require each local mental health
19 authority to incorporate jail diversion strategies into the
20 authority's disease management practices for managing adults with
21 schizophrenia and bipolar disorder to reduce the involvement of
22 those client populations with the criminal justice system.

23 (c) The department shall enter into performance contracts
24 between the department and each local mental health authority for
25 the fiscal years ending August 31, 2004, and August 31, 2005, that
26 specify measurable outcomes related to their success in using
27 disease management practices to meet the needs of the target

1 populations.

2 (d) The department shall study the implementation of
3 disease management practices, including the jail diversion
4 measures, and shall submit to the governor, the lieutenant
5 governor, and the speaker of the house of representatives a report
6 on the progress in implementing disease management practices and
7 jail diversion measures by local mental health authorities. The
8 report must be delivered not later than December 31, 2004, and must
9 include specific information on:

10 (1) the implementation of jail diversion measures
11 undertaken; and

12 (2) the effect of disparities in per capita funding
13 levels among local mental health authorities on the implementation
14 and effectiveness of disease management practices and jail
15 diversion measures.

16 (e) The department may use the fiscal year ending August 31,
17 2004, as a transition period for implementing the requirements of
18 Subsections (a)-(c).

19 SECTION 2.76. Subchapter B, Chapter 533, Health and Safety
20 Code, is amended by adding Section 533.0355 to read as follows:

21 Sec. 533.0355. ALLOCATION OF DUTIES UNDER CERTAIN MEDICAID
22 WAIVER PROGRAMS. (a) In this section, "waiver program" means the
23 local mental retardation authority waiver program established
24 under the state Medicaid program.

25 (b) A provider of services under the waiver program shall:

26 (1) develop a person-directed plan and an individual
27 program plan for each person who receives services from the

1 provider under the waiver program;

2 (2) perform justification and implementation
3 functions for the plans described by Subdivision (1);

4 (3) conduct case management under the waiver program,
5 other than case management under Subsection (c)(3), in accordance
6 with applicable state and federal laws; and

7 (4) plan, coordinate, and review the provision of
8 services to all persons who receive services from the service
9 provider under the waiver program.

10 (c) A local mental retardation authority shall:

11 (1) manage any waiting lists for services under the
12 waiver program;

13 (2) perform functions relating to consumer choice and
14 enrollment for persons who receive services under the waiver
15 program; and

16 (3) conduct case management under the waiver program
17 relating to funding disputes between a service provider and the
18 local mental retardation authority.

19 (d) The department shall perform all administrative
20 functions under the waiver program that are not assigned to a
21 service provider under Subsection (b) or to a local mental
22 retardation authority under Subsection (c). Administrative
23 functions performed by the department include:

24 (1) any surveying, certification, and utilization
25 review functions required under the waiver program; and

26 (2) managing an appeals process relating to decisions
27 that affect a person receiving services under the waiver program.

1 (e) The department shall review:

2 (1) screening and assessment of levels of care;

3 (2) case management fees paid under the waiver program
4 to a community center; and

5 (3) administrative fees paid under the waiver program
6 to a service provider.

7 (f) The department shall perform any function relating to
8 inventory for persons who receive services under the waiver program
9 and agency planning assessments.

10 (g) The review required under Subsection (e) must include a
11 comparison of fees paid before the implementation of this section
12 with fees paid after the implementation of this section. The
13 department may adjust fees paid based on that review.

14 (h) The department shall allocate the portion of the gross
15 reimbursement funds paid to a local authority and a service
16 provider for client services for the case management function in
17 accordance with this section and to the extent allowed by law.

18 (i) The department may adopt rules governing the functions
19 of a local mental retardation authority or service provider under
20 this section.

21 SECTION 2.77. (a) Subchapter B, Chapter 533, Health and
22 Safety Code, is amended by adding Section 533.049 to read as
23 follows:

24 Sec. 533.049. PRIVATIZATION OF STATE SCHOOL. (a) After
25 August 31, 2004, and before September 1, 2005, the department may
26 contract with a private service provider to operate a state school
27 only if:

1 (1) the Health and Human Services Commission
2 determines that the private service provider will operate the state
3 school at a cost that is at least 25 percent less than the cost to
4 the department to operate the state school;

5 (2) the Health and Human Services Commission approves
6 the contract;

7 (3) the private service provider is required under the
8 contract to operate the school at a quality level at least equal to
9 the quality level achieved by the department when the department
10 operated the school, as measured by the school's most recent
11 applicable ICF-MR survey; and

12 (4) the state school, when operated under the
13 contract, treats a population with the same characteristics and
14 need levels as the population treated by the state school when
15 operated by the department.

16 (b) On or before April 1, 2004, the department shall report
17 to the commissioner of health and human services whether the
18 department has received a proposal by a private service provider to
19 operate a state school. The report must include an evaluation of
20 the private service provider's qualifications, experience, and
21 financial strength, a determination of whether the provider can
22 operate the state school under the same standard of care as the
23 department, and an analysis of the projected savings under a
24 proposed contract with the provider. The savings analysis must
25 include all department costs to operate the state school, including
26 costs, such as employee benefits, that are not appropriated to the
27 department.

1 (c) If the department contracts with a private service
2 provider to operate a state school, the department, the Governor's
3 Office of Budget and Planning, and the Legislative Budget Board
4 shall identify sources of funding that must be transferred to the
5 department to fund the contract.

6 (d) The department may renew a contract under this section.
7 The conditions listed in Subsections (a)(1)-(3) apply to the
8 renewal of the contract.

9 (b) Section 533.049, Health and Safety Code, as added by
10 this section, takes effect September 1, 2004.

11 SECTION 2.78. (a) Subchapter B, Chapter 533, Health and
12 Safety Code, is amended by adding Section 533.050 to read as
13 follows:

14 Sec. 533.050. PRIVATIZATION OF STATE MENTAL HOSPITAL. (a)
15 After August 31, 2004, and before September 1, 2005, the department
16 may contract with a private service provider to operate a state
17 mental hospital owned by the department only if:

18 (1) the Health and Human Services Commission
19 determines that the private service provider will operate the
20 hospital at a cost that is at least 25 percent less than the cost to
21 the department to operate the hospital;

22 (2) the Health and Human Services Commission approves
23 the contract;

24 (3) the hospital, when operated under the contract,
25 treats a population with the same characteristics and acuity levels
26 as the population treated at the hospital when operated by the
27 department; and

1 (4) the private service provider is required under the
2 contract to operate the hospital at a quality level at least equal
3 to the quality level achieved by the department when the department
4 operated the hospital, as measured by the hospital's most recent
5 applicable accreditation determination from the Joint Commission
6 on Accreditation of Healthcare Organizations (JCAHO).

7 (b) On or before April 1, 2004, the department shall report
8 to the commissioner of health and human services whether the
9 department has received a proposal by a private service provider to
10 operate a state mental hospital. The report must include an
11 evaluation of the private service provider's qualifications,
12 experience, and financial strength, a determination of whether the
13 provider can operate the hospital under the same standard of care as
14 the department, and an analysis of the projected savings under a
15 proposed contract with the provider. The savings analysis must
16 include all department costs to operate the hospital, including
17 costs, such as employee benefits, that are not appropriated to the
18 department.

19 (c) If the department contracts with a private service
20 provider to operate a state mental hospital, the department, the
21 Governor's Office of Budget and Planning, and the Legislative
22 Budget Board shall identify sources of funding that must be
23 transferred to the department to fund the contract.

24 (d) The department may renew a contract under this section.
25 The conditions listed in Subsections (a)(1)-(3) apply to the
26 renewal of the contract.

27 (b) Section 533.050, Health and Safety Code, as added by

1 this section, takes effect September 1, 2004.

2 SECTION 2.79. Section 533.084, Health and Safety Code, is
3 amended by adding Subsections (b-1) and (b-2) to read as follows:

4 (b-1) Notwithstanding Subsection (b) or any other law, the
5 proceeds from the disposal of any surplus real property by the
6 department that occurs before September 1, 2005:

7 (1) are not required to be deposited to the credit of
8 the department in the Texas capital trust fund established under
9 Chapter 2201, Government Code; and

10 (2) may be appropriated for any general governmental
11 purpose.

12 (b-2) Subsection (b-1) and this subsection expire September
13 1, 2005.

14 SECTION 2.80. Subchapter D, Chapter 533, Health and Safety
15 Code, is amended by adding Section 533.0844 to read as follows:

16 Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT.

17 (a) The mental health community services account is an account in
18 the general revenue fund that may be appropriated only for the
19 provision of mental health services by or under contract with the
20 department.

21 (b) The department shall deposit to the credit of the mental
22 health community services account any money donated to the state
23 for inclusion in the account, including life insurance proceeds
24 designated for deposit to the account.

25 (c) Interest earned on the mental health community services
26 account shall be credited to the account. The account is exempt
27 from the application of Section 403.095, Government Code.

1 SECTION 2.81. Subchapter D, Chapter 533, Health and Safety
2 Code, is amended by adding Section 533.0846 to read as follows:

3 Sec. 533.0846. MENTAL RETARDATION COMMUNITY SERVICES
4 ACCOUNT. (a) The mental retardation community services account is
5 an account in the general revenue fund that may be appropriated only
6 for the provision of mental retardation services by or under
7 contract with the department.

8 (b) The department shall deposit to the credit of the mental
9 retardation community services account any money donated to the
10 state for inclusion in the account, including life insurance
11 proceeds designated for deposit to the account.

12 (c) Interest earned on the mental retardation community
13 services account shall be credited to the account. The account is
14 exempt from the application of Section 403.095, Government Code.

15 SECTION 2.82. Effective September 1, 2006, Section
16 534.001(b), Health and Safety Code, is amended to read as follows:

17 (b) In accordance with this subtitle, a [A] community center
18 may be:

19 (1) a community mental health center that provides
20 mental health services;

21 (2) a community mental retardation center that
22 provides mental retardation services; or

23 (3) a community mental health and mental retardation
24 center that provides mental health and mental retardation services.

25 SECTION 2.82A. Effective September 1, 2006, Section
26 535.002(b), Health and Safety Code, is amended to read as follows:

27 (b) If feasible and economical, the department may use local

1 mental health and mental retardation authorities to implement this
2 chapter. However, the department may not designate a ~~[these]~~ local
3 mental health or ~~[and]~~ mental retardation authority ~~[authorities]~~
4 as a provider ~~[the sole providers]~~ of services if other providers
5 are available.

6 SECTION 2.83. Section 572.0025(f), Health and Safety Code,
7 is amended to read as follows:

8 (f) A prospective voluntary patient may not be formally
9 accepted for treatment in a facility unless:

10 (1) the facility has a physician's order admitting the
11 prospective patient, which order may be issued orally,
12 electronically, or in writing, signed by the physician, provided
13 that, in the case of an oral order or an electronically transmitted
14 unsigned order, a signed original is presented to the mental health
15 facility within 24 hours of the initial order; the order must be
16 from:

17 (A) an admitting physician who has, either in
18 person or through the use of audiovisual or other
19 telecommunications technology, conducted a [an-in-person] physical
20 and psychiatric examination within 72 hours of the admission; or

21 (B) an admitting physician who has consulted with
22 a physician who has, either in person or through the use of
23 audiovisual or other telecommunications technology, conducted an
24 [in-person] examination within 72 hours of the admission; and

25 (2) the facility administrator or a person designated
26 by the administrator has agreed to accept the prospective patient
27 and has signed a statement to that effect.

1 SECTION 2.84. (a) Section 773.050(c), Health and Safety
2 Code, is amended to read as follows:

3 (c) The board shall consider the education, training, and
4 experience of allied health professionals in adopting the minimum
5 standards for emergency medical services personnel certification
6 and may establish criteria for interstate reciprocity of emergency
7 medical services personnel. Each out-of-state application for
8 certification must be accompanied by a nonrefundable fee of not
9 more than \$120 [~~\$100~~]. The board may also establish criteria for
10 out-of-country emergency medical services personnel certification.
11 Each out-of-country application for certification must be
12 accompanied by a nonrefundable fee of not more than \$180 [~~\$150~~].

13 (b) Section 773.052(a), Health and Safety Code, is amended
14 to read as follows:

15 (a) An emergency medical services provider with a specific
16 hardship may apply to the bureau chief for a variance from a rule
17 adopted under this chapter. The board may adopt a fee of not more
18 than \$30 [~~\$25~~] for filing an application for a variance.

19 (c) Sections 773.054(c) and (d), Health and Safety Code, are
20 amended to read as follows:

21 (c) Each application under Subsection (a)(3) must be
22 accompanied by a nonrefundable fee of not more than \$30 [~~\$25~~] for a
23 program instructor or examiner or \$60 [~~\$50~~] for a course
24 coordinator. The department may not require a fee for a
25 certification from an instructor, examiner, or coordinator who does
26 not receive compensation for providing services.

27 (d) Each application under Subsection (a)(2) must be

1 accompanied by a nonrefundable fee of not more than \$30 [~~\$25~~] for a
2 basic course or training program or \$60 [~~\$50~~] for an advanced course
3 or training program. The department may not require a fee for
4 approval of a course or training program if the course coordinator
5 or sponsoring agency does not receive compensation for providing
6 the course or training program.

7 (d) Sections 773.055(a), (d), and (e), Health and Safety
8 Code, are amended to read as follows:

9 (a) A nonrefundable fee must accompany each application for
10 emergency medical services personnel certification. The fee may
11 not exceed:

12 (1) \$90 [~~\$75~~] for an emergency medical
13 technician-paramedic or emergency medical
14 technician-intermediate;

15 (2) \$60 [~~\$50~~] for an emergency medical technician or
16 emergency care attendant;

17 (3) \$90 [~~\$75~~] for recertification of an emergency
18 medical technician-paramedic or emergency medical
19 technician-intermediate;

20 (4) \$60 [~~\$50~~] for recertification of an emergency
21 medical technician or emergency care attendant; or

22 (5) \$120 [~~\$100~~] for certification or recertification
23 of a licensed paramedic.

24 (d) The department shall furnish a person who fails an
25 examination for certification with an analysis of the person's
26 performance on the examination if requested in writing by that
27 person. The board may adopt rules to allow a person who fails the

1 examination to retake all or part of the examination. A fee of not
2 more than \$30 [~~\$25~~] must accompany each application for
3 reexamination.

4 (e) The department shall issue certificates to emergency
5 medical services personnel who meet the minimum standards for
6 personnel certification adopted under Section 773.050. A
7 certificate is valid for four years from the date of issuance. The
8 department shall charge a fee of not more than \$10 [~~\$5~~] to replace a
9 lost certificate.

10 (e) Section 773.056(b), Health and Safety Code, is amended
11 to read as follows:

12 (b) The department shall issue a certificate to each program
13 instructor, examiner, or course coordinator who meets the minimum
14 standards adopted under Section 773.050. The certificate is valid
15 for two years. The department shall charge a fee of not more than
16 \$10 [~~\$5~~] to replace a lost or stolen certificate.

17 (f) Section 773.057(b), Health and Safety Code, is amended
18 to read as follows:

19 (b) A nonrefundable application and vehicle fee determined
20 by the board must accompany each application. The application fee
21 may not exceed \$500 [~~\$150~~] for each application and the vehicle fee
22 may not exceed \$180 for each emergency medical services vehicle
23 operated by the provider.

24 (g) Section 773.0572, Health and Safety Code, is amended to
25 read as follows:

26 Sec. 773.0572. PROVISIONAL LICENSES. The board by rule
27 shall establish conditions under which an emergency medical

1 services provider who fails to meet the minimum standards
2 prescribed by this chapter may be issued a provisional license. The
3 department may issue a provisional license to an emergency medical
4 services provider under this chapter if the department finds that
5 issuing the license would serve the public interest and that the
6 provider meets the requirements of the rules adopted under this
7 section. A nonrefundable fee of not more than \$30 [~~\$25~~] must
8 accompany each application for a provisional license.

9 (h) Section 773.0611(c), Health and Safety Code, is amended
10 to read as follows:

11 (c) The board shall adopt rules for unannounced inspections
12 authorized under this section. The department or its
13 representative shall perform unannounced inspections in accordance
14 with those rules. An emergency medical services provider shall pay
15 to the department a nonrefundable fee of not more than \$30 [~~\$25~~] if
16 reinspection is necessary to determine compliance with this chapter
17 and the rules adopted under this chapter.

18 (i) Section 773.065(c), Health and Safety Code, is amended
19 to read as follows:

20 (c) The penalty may not exceed \$7,500 [~~\$1,000~~] for each
21 violation. The board by rule shall establish gradations of
22 penalties in accordance with the relative seriousness of the
23 violation.

24 (j) Subchapter C, Chapter 773, Health and Safety Code, is
25 amended by adding Section 773.071 to read as follows:

26 Sec. 773.071. FEES. (a) To the extent feasible, the board
27 by rule shall set the fees under this subchapter in amounts

1 necessary for the department to recover the cost of administering
2 this subchapter.

3 (b) Subsection (a) does not apply to fees for which Section
4 773.059 prescribes the method for determining the amount of the
5 fees.

6 (k) Sections 773.116(b) and (d), Health and Safety Code, are
7 amended to read as follows:

8 (b) The board by rule shall set the amount of the fee
9 schedule for initial or continuing designation as a trauma facility
10 according to the number of beds in the health care facility. The
11 amount of the fee may not exceed:

12 (1) \$5,000 for a Level I or II facility;

13 (2) \$2,500 for a Level III facility; or

14 (3) \$1,000 for a Level IV facility.

15 (d) To the extent feasible, the board by rule shall set the
16 fee in an amount necessary for the department to recover [~~A fee~~
17 ~~under Subsection (c) may not exceed~~] the cost directly related to
18 designating trauma facilities under this subchapter.

19 (l) Section 773.116(c), Health and Safety Code, is
20 repealed.

21 (m) The changes in law made by this section relating to
22 administrative penalties apply only to a violation that occurs on
23 or after the effective date of this section. For the purposes of
24 this subsection, an offense is committed before the effective date
25 of this section if any element of the offense occurs before that
26 date. A violation that occurred before the effective date of this
27 section is covered by the law in effect when the violation occurred,

1 and the former law is continued in effect for that purpose.

2 (n) The changes in law made by this section relating to fees
3 imposed under Chapter 773, Health and Safety Code, apply only to
4 fees for an application filed or an inspection conducted on or after
5 the effective date of this section. A fee for an application filed
6 or an inspection conducted before the effective date of this
7 section is covered by the law in effect when the application was
8 filed or the inspection was conducted, and the former law is
9 continued in effect for that purpose.

10 SECTION 2.85. Chapter 22, Human Resources Code, is amended
11 by adding Section 22.040 to read as follows:

12 Sec. 22.040. THIRD-PARTY INFORMATION. Notwithstanding any
13 other provision of this code, the department may use information
14 obtained from a third party to verify the assets and resources of a
15 person for purposes of determining the person's eligibility and
16 need for medical assistance, financial assistance, or nutritional
17 assistance. Third-party information includes information obtained
18 from:

19 (1) a consumer reporting agency, as defined by Section
20 20.01, Business & Commerce Code;

21 (2) an appraisal district; or

22 (3) the Texas Department of Transportation's vehicle
23 registration record database.

24 SECTION 2.86. (a) Section 31.0031, Human Resources Code,
25 is amended by amending Subsection (g) and adding Subsection (h) to
26 read as follows:

27 (g) In this section:

1 (1) "Caretaker [~~,"caretaker~~] relative" means a person
2 who is listed as a relative eligible to receive assistance under 42
3 U.S.C. Section 602(a).

4 (2) "Payee" means a person who resides in a household
5 with a dependent child and who is within the degree of relationship
6 with the child that is required of a caretaker but whose needs are
7 not included in determining the amount of financial assistance
8 provided for the person's household.

9 (h) The department shall require each payee to sign a bill
10 of responsibilities that defines the responsibilities of the state
11 and of the payee. The responsibility agreement must require that a
12 payee comply with the requirements of Subsections (d)(1), (2), (5),
13 (6), and (7).

14 (b) Not later than January 1, 2004, the Texas Department of
15 Human Services shall require each payee of financial assistance
16 under Chapter 31, Human Resources Code, who received that
17 assistance on behalf of a dependent child before September 1, 2003,
18 and each recipient of financial assistance under Chapter 31, Human
19 Resources Code, who received that assistance before September 1,
20 2003, to enter into a responsibility agreement that complies with
21 the requirements of Section 31.0031, Human Resources Code, as
22 amended by this section, to continue receiving that assistance.
23 The department may not enforce the terms of the new agreement until
24 the payee or recipient has an opportunity to enter into the
25 agreement.

26 SECTION 2.87. Section 31.0031(c), Human Resources Code, is
27 amended to read as follows:

1 (c) The department shall adopt rules governing sanctions
2 and penalties under this section to or for:

3 (1) a person who fails to cooperate [~~comply~~] with each
4 applicable requirement of the responsibility agreement prescribed
5 by this section; and

6 (2) the family of a person who fails to cooperate with
7 each applicable requirement of the responsibility agreement.

8 SECTION 2.88. (a) Sections 31.0032, 31.0033, and 31.0034,
9 Human Resources Code, are amended to read as follows:

10 Sec. 31.0032. PAYMENT OF ASSISTANCE FOR PERFORMANCE
11 [~~PENALTIES AND SANCTIONS~~]. (a) Except as provided by Section
12 231.115, Family Code, [~~as added by Chapter 911, Acts of the 75th~~
13 ~~Legislature, Regular Session, 1997,~~] if after an investigation the
14 department or the Title IV-D agency determines that a person is not
15 cooperating [~~complying~~] with a requirement of the responsibility
16 agreement required under Section 31.0031, the department
17 [~~immediately~~] shall immediately apply a sanction terminating the
18 total amount of financial assistance provided under this chapter to
19 or for the person and the person's family [~~apply appropriate~~
20 ~~sanctions or penalties regarding the assistance provided to or for~~
21 ~~that person under this chapter~~].

22 (a-1) The department shall apply a sanction or penalty
23 imposed under Subsection (a) for a period ending when the person
24 demonstrates cooperation with the requirement of the
25 responsibility agreement for which the sanction was imposed or for
26 a one-month period, whichever is longer.

27 (b) The department shall immediately notify the caretaker

1 relative, second parent, or payee receiving the financial
2 assistance if the department will not make the financial assistance
3 payment for the period prescribed by Subsection (a-1) because of a
4 person's failure to cooperate with the requirements of the
5 responsibility agreement during a month [~~whether sanctions will be~~
6 ~~applied under this section~~].

7 (c) To the extent allowed by federal law, the Health and
8 Human Services Commission or any health and human services agency,
9 as defined by Section 531.001, Government Code, may deny medical
10 assistance for a person who is eligible for financial assistance
11 but to whom that assistance is not paid because of the person's
12 failure to cooperate. Medical assistance to the person's family
13 may not be denied for the person's failure to cooperate. Medical
14 assistance may not be denied to a person receiving assistance under
15 this chapter who is under the age of 19, a pregnant adult, or any
16 other person who may not be denied medical assistance under federal
17 law.

18 (d) This section does not prohibit the Texas Workforce
19 Commission, the Health and Human Services Commission, or any health
20 and human services agency, as defined by Section 531.001,
21 Government Code, [department] from providing [medical assistance,]
22 child care[7] or any other related social or support services for an
23 individual who is eligible for financial assistance but to whom
24 that assistance is not paid because of the individual's failure to
25 cooperate [~~subject to sanctions or penalties under this chapter~~].

26 (e) The department by rule shall establish procedures to
27 determine whether a person has cooperated with the requirements of

1 the responsibility agreement.

2 Sec. 31.0033. GOOD CAUSE [~~NONCOMPLIANCE~~] HEARING FOR
3 FAILURE TO COOPERATE. (a) If the department or Title IV-D agency
4 determines that a person has failed to cooperate with the
5 requirements of the responsibility agreement under Section 31.0031
6 [penalties and sanctions should be applied under Section 31.0032],
7 the person determined to have failed to cooperate [~~not complied~~]
8 or, if different, the person receiving the financial assistance may
9 request a hearing to show good cause for failure to cooperate
10 [~~noncompliance~~] not later than the 13th day after the date the [~~on~~
11 ~~which~~] notice is sent [~~received~~] under Section 31.0032. If the
12 person determined to have failed to cooperate or, if different, the
13 person receiving the financial assistance requests a hearing to
14 show good cause not later than the 13th day after the date on which
15 the notice is sent under Section 31.0032, the department may not
16 withhold or reduce the payment of financial assistance until the
17 department determines whether the person had good cause for the
18 person's failure to cooperate. On a showing of good cause for
19 failure to cooperate [~~noncompliance~~], the person may receive a
20 financial assistance payment for the period in which the person
21 failed to cooperate, but had good cause for that failure to
22 cooperate [~~sanctions may not be imposed~~].

23 (b) The department shall promptly conduct a hearing if a
24 timely request is made under Subsection (a).

25 (c) If the department finds that good cause for the person's
26 failure to cooperate [~~noncompliance~~] was not shown at a hearing,
27 the department may not make a financial assistance payment in any

1 amount to the person for the person or the person's family for the
2 period prescribed by Section 31.0032(a-1) [~~shall apply appropriate~~
3 sanctions or penalties to or for that person until the department,
4 or the Title IV-D agency in a Title IV-D case, determines that the
5 person is in compliance with the terms of the responsibility
6 agreement].

7 (d) The department by rule shall establish criteria for good
8 cause failure to cooperate [~~noncompliance~~] and guidelines for what
9 constitutes a good faith effort on behalf of a recipient under this
10 section.

11 (e) Except as provided by a waiver or modification granted
12 under Section 31.0322, a person has good cause for failing or
13 refusing to cooperate with the requirement of the responsibility
14 agreement under Section 31.0031(d)(1) only if:

15 (1) the person's cooperation would be harmful to the
16 physical, mental, or emotional health of the person or the person's
17 dependent child; or

18 (2) the person's noncooperation resulted from other
19 circumstances the person could not control.

20 Sec. 31.0034. ANNUAL REPORT. The department shall prepare
21 and submit an annual report to the legislature that contains
22 statistical information regarding persons who are applying for or
23 receiving financial assistance or services under this chapter,
24 including the number of persons receiving assistance, the type of
25 assistance those persons are receiving, and the length of time
26 those persons have been receiving the assistance. The report also
27 must contain information on:

1 (1) the number of persons to whom [~~sanctions and~~] time
2 limits apply;

3 (2) the number of persons under each time limit
4 category;

5 (3) the number of persons who are exempt from
6 participation under Section 31.012(c);

7 (4) the number of persons who were receiving financial
8 assistance under this chapter but are no longer eligible to receive
9 that assistance because they failed to cooperate [~~comply~~] with the
10 requirements prescribed by Section 31.0031;

11 (5) the number of persons who are no longer eligible to
12 receive financial assistance or transitional benefits under this
13 chapter because:

14 (A) the person's household income has increased
15 due to employment; or

16 (B) the person has exhausted the person's
17 benefits under this chapter; [~~and~~]

18 (6) the number of persons receiving child care, job
19 training, or other support services designed to assist the
20 transition to self-sufficiency; and

21 (7) the number of persons who were eligible to receive
22 financial assistance under this chapter for each one-month period
23 but to whom that financial assistance was not paid because the
24 person failed to cooperate with the requirements of the
25 responsibility agreement under Section 31.0031.

26 (b) Subchapter A, Chapter 31, Human Resources Code, is
27 amended by adding Section 31.00331 to read as follows:

1 Sec. 31.00331. ADDITIONAL PENALTY FOR CONTINUOUS FAILURE TO
2 COOPERATE. A person who fails to cooperate with the responsibility
3 agreement for two consecutive months becomes ineligible for
4 financial assistance for the person or the person's family. The
5 person may reapply for financial assistance but must cooperate with
6 the requirements of the responsibility agreement for a one-month
7 period before receiving an assistance payment for that month.

8 (c) The changes in law made by this section apply to a person
9 receiving financial assistance under Chapter 31, Human Resources
10 Code, on or after the effective date of this section, regardless of
11 the date on which eligibility for financial assistance was
12 determined.

13 SECTION 2.89. Subchapter A, Chapter 31, Human Resources
14 Code, is amended by adding Section 31.0038 to read as follows:

15 Sec. 31.0038. TEMPORARY EXCLUSION OF NEW SPOUSE'S INCOME.

16 (a) Subject to the limitations prescribed by Subsection (b),
17 income earned by an individual who marries an individual receiving
18 financial assistance at the time of the marriage may not be
19 considered by the department during the six-month period following
20 the date of the marriage for purposes of determining:

21 (1) the amount of financial assistance granted to an
22 individual under this chapter for the support of dependent
23 children; or

24 (2) whether the family meets household income and
25 resource requirements for financial assistance under this chapter.

26 (b) To be eligible for the income disregard provided by
27 Subsection (a), the combined income of the individual receiving

1 financial assistance and the new spouse cannot exceed 200 percent
2 of the federal poverty level for their family size.

3 SECTION 2.90. Sections 31.012(b) and (c), Human Resources
4 Code, are amended to read as follows:

5 (b) The department by rule shall establish criteria for good
6 cause failure to cooperate [~~noncompliance~~] and for notification
7 procedures regarding participation in work or employment
8 activities under this section.

9 (c) A person who is the caretaker of a physically or
10 mentally disabled child who requires the caretaker's presence is
11 not required to participate in a program under this section. A
12 [~~Effective January 1, 2000, a single person who is the caretaker of~~
13 ~~a child is not required to participate in a program under this~~
14 ~~section until the caretaker's youngest child at the time the~~
15 ~~caretaker first became eligible for assistance reaches the age of~~
16 ~~three. Effective September 1, 2000, a single person who is the~~
17 ~~caretaker of a child is exempt until the caretaker's youngest child~~
18 ~~at the time the caretaker first became eligible for assistance~~
19 ~~reaches the age of two. Effective September 1, 2001, a]~~ single
20 person who is the caretaker of a child is exempt until the
21 caretaker's youngest child at the time the caretaker first became
22 eligible for assistance reaches the age of one. Notwithstanding
23 Sections 31.0035(b) and 32.0255(b), the department shall provide to
24 a person who is exempt under this subsection and who voluntarily
25 participates in a program under Subsection (a)(2) six months of
26 transitional benefits in addition to the applicable limit
27 prescribed by Section 31.0065.

1 SECTION 2.91. Subchapter A, Chapter 31, Human Resources
2 Code, is amended by adding Section 31.015 to read as follows:

3 Sec. 31.015. HEALTHY MARRIAGE DEVELOPMENT PROGRAM. (a)
4 Subject to available federal funding, the department shall develop
5 and implement a healthy marriage development program for recipients
6 of financial assistance under this chapter.

7 (b) The healthy marriage development program shall promote
8 and provide three instructional courses on the following topics:

9 (1) premarital counseling for engaged couples and
10 marriage counseling for married couples that includes skill
11 development for:

12 (A) anger resolution;

13 (B) family violence prevention;

14 (C) communication;

15 (D) honoring your spouse; and

16 (E) managing a budget;

17 (2) physical fitness and active lifestyles and
18 nutrition and cooking, including:

19 (A) abstinence for all unmarried persons,
20 including abstinence for persons who have previously been married;
21 and

22 (B) nutrition on a budget; and

23 (3) parenting skills, including parenting skills for
24 character development, academic success, and stepchildren.

25 (c) The department shall provide to a recipient of financial
26 assistance under this chapter additional financial assistance of
27 not more than \$20 for the recipient's participation in a course

1 offered through the healthy marriage development program up to a
2 maximum payment of \$60 a month.

3 (d) The department may provide the courses or may contract
4 with any person, including a community or faith-based organization,
5 for the provision of the courses. The department must provide all
6 participants with an option of attending courses in a
7 non-faith-based organization.

8 (e) The department shall develop rules as necessary for the
9 administration of the healthy marriage development program.

10 (f) The department must ensure that the courses provided by
11 the department and courses provided through contracts with other
12 organizations will be sensitive to the needs of individuals from
13 different religions, races, and genders.

14 SECTION 2.92. (a) Section 32.021, Human Resources Code, is
15 amended by adding Subsections (q), (r), and (s) to read as follows:

16 (q) The department shall include in its contracts for the
17 delivery of medical assistance by nursing facilities clearly
18 defined minimum standards that relate directly to the quality of
19 care for residents of those facilities. The department shall
20 consider the recommendations made by the nursing facility quality
21 assurance team under Section 32.060 in establishing the standards.

22 The department shall include in each contract:

23 (1) specific performance measures by which the
24 department may evaluate the extent to which the nursing facility is
25 meeting the standards; and

26 (2) provisions that allow the department to terminate
27 the contract if the nursing facility is not meeting the standards.

1 (r) The department may not award a contract for the delivery
2 of medical assistance to a nursing facility that does not meet the
3 minimum standards that would be included in the contract as
4 required by Subsection (g). The department shall terminate a
5 contract for the delivery of medical assistance by a nursing
6 facility that does not meet or maintain the minimum standards
7 included in the contract in a manner consistent with the terms of
8 the contract.

9 (s) Not later than November 15 of each even-numbered year,
10 the department shall submit a report to the legislature regarding
11 nursing facilities that contract with the department to provide
12 medical assistance under this chapter and other nursing facilities
13 with which the department was prohibited to contract as provided by
14 Subsection (r). The department may include the report required
15 under this section with the report made by the long-term care
16 legislative oversight committee as required by Section 242.654,
17 Health and Safety Code. The report must include:

18 (1) recommendations for improving the quality of
19 information provided to consumers about the facilities;

20 (2) the minimum standards and performance measures
21 included in the department's contracts with those facilities;

22 (3) the performance of the facilities with regard to
23 the minimum standards;

24 (4) the number of facilities with which the department
25 has terminated a contract or to which the department will not award
26 a contract because the facilities do not meet the minimum
27 standards; and

1 (5) the overall impact of the minimum standards on the
2 quality of care provided by the facilities, consumers' access to
3 facilities, and cost of care.

4 (b) Section 32.021(q), Human Resources Code, as added by
5 this section, applies only to a contract for the delivery of medical
6 assistance by a nursing facility that is entered into or renewed on
7 or after May 1, 2004. A contract for the delivery of medical
8 assistance by a nursing facility entered into before that date is
9 governed by the law in effect on the date the contract was entered
10 into, and the former law is continued in effect for that purpose.

11 SECTION 2.93. (a) Subchapter A, Chapter 302, Labor Code,
12 is amended by adding Sections 302.0025, 302.0026, 302.0036,
13 302.0037, and 302.0038 to read as follows:

14 Sec. 302.0025. EMPLOYMENT PLAN AND POSTEMPLOYMENT
15 STRATEGIES. (a) The commission shall ensure that an individual
16 employment plan developed for a recipient of financial assistance
17 participating in an employment program under Chapter 31, Human
18 Resources Code, includes specific postemployment strategies to
19 assist the recipient in making a transition to stable employment at
20 a wage that enables the recipient and the recipient's family to
21 maintain self-sufficiency.

22 (b) The individual employment plan must:

23 (1) consider a recipient's individual circumstances
24 and needs in determining the recipient's initial job placement;

25 (2) identify a target wage that enables the recipient
26 and the recipient's family to maintain self-sufficiency;

27 (3) provide specific postemployment goals and include

1 methods and time frames by which the recipient is to achieve those
2 goals; and

3 (4) refer the recipient to additional educational and
4 training opportunities.

5 Sec. 302.0026. EMPLOYMENT SERVICES REFERRAL PROGRAM. (a)

6 The commission and local workforce development boards shall develop
7 an employment services referral program for recipients of financial
8 assistance who participate in employment programs under Chapter 31,
9 Human Resources Code, and have, in comparison to other recipients,
10 higher levels of barriers to employment. The referral program must
11 be designed to provide to a recipient referrals to preemployment
12 and postemployment services offered by community-based
13 organizations.

14 (b) In developing the referral program, the commission and
15 local workforce development boards shall, subject to the
16 availability of funds, coordinate partnerships and contract with
17 community-based organizations that provide employment services
18 specifically for persons with high levels of barriers to
19 employment.

20 Sec. 302.0036. TRANSPORTATION ASSISTANCE. (a) To the

21 extent funds are available, the commission and local workforce
22 development boards shall provide transportation assistance to
23 recipients of financial assistance participating in employment
24 programs under Chapter 31, Human Resources Code, that enables the
25 recipients to maintain a stable work history and attain financial
26 stability and self-sufficiency.

27 (b) The commission and local workforce development boards

1 may provide the assistance described by Subsection (a) by
2 implementing new initiatives or expanding existing initiatives
3 that provide transportation assistance to recipients of financial
4 assistance for whom transportation is a barrier to employment.

5 Sec. 302.0037. MAXIMIZING FEDERAL FUNDS FOR TRANSPORTATION
6 ASSISTANCE. (a) The commission and local workforce development
7 boards shall maximize the state's receipt of federal funds
8 available to provide transportation assistance to recipients of
9 financial assistance participating in employment programs under
10 Chapter 31, Human Resources Code.

11 (b) The commission and local workforce development boards
12 may, within any applicable appropriation limits, take any action
13 required by federal law to receive federal funds to provide
14 transportation assistance.

15 Sec. 302.0038. HOUSING RESOURCES FOR CERTAIN RECIPIENTS OF
16 FINANCIAL ASSISTANCE. (a) The commission, in cooperation with
17 local workforce development boards, shall, for a recipient of
18 financial assistance participating in an employment program under
19 Chapter 31, Human Resources Code:

20 (1) identify unmet housing needs and assess whether
21 those needs are barriers to the recipient's full participation in
22 the workforce and attainment of financial stability and
23 self-sufficiency; and

24 (2) develop a service plan that takes into
25 consideration the recipient's unmet housing needs.

26 (b) The commission by rule shall develop and implement a
27 program through which a recipient identified under Subsection (a)

1 as having unmet housing needs is referred by the commission or local
2 workforce development board to agencies and organizations
3 providing housing programs and services and connected to other
4 housing resources. To provide those referrals and connections, the
5 commission shall establish collaborative partnerships between:

6 (1) the commission;

7 (2) local workforce development boards;

8 (3) municipal, county, and regional housing
9 authorities; and

10 (4) sponsors of local housing programs and services.

11 (c) The commission shall ensure that commission and local
12 workforce development board staff members receive training
13 regarding the programs and services offered by agencies and
14 organizations with which the commission establishes partnerships
15 under Subsection (b) and other available housing resources.

16 (b) Not later than December 1, 2003, the Texas Workforce
17 Commission and local workforce development boards shall develop the
18 employment services referral program required by Section 302.0026,
19 Labor Code, as added by this section.

20 (c) Not later than December 1, 2003, the Texas Workforce
21 Commission shall develop and implement the program required by
22 Section 302.0038(b), Labor Code, as added by this section.

23 SECTION 2.94. Section 302.011, Labor Code, is amended to
24 read as follows:

25 Sec. 302.011. POSTEMPLOYMENT CASE MANAGEMENT AND
26 MENTORING. The commission shall encourage local workforce
27 development boards to provide postemployment case management

1 services for and use mentoring techniques to assist recipients of
2 financial assistance who participate in employment programs under
3 Chapter 31, Human Resources Code, and have, in comparison to other
4 recipients, higher levels of barriers to employment. The case
5 management services and mentoring techniques must be designed to
6 increase the recipient's potential for wage growth and development
7 of a stable employment history.

8 SECTION 2.95. Subchapter B, Chapter 32, Human Resources
9 Code, is amended by adding Section 32.0212 to read as follows:

10 Sec. 32.0212. DELIVERY OF MEDICAL ASSISTANCE.
11 Notwithstanding any other law and subject to Section 533.0025,
12 Government Code, the department shall provide medical assistance
13 for acute care through the Medicaid managed care system implemented
14 under Chapter 533, Government Code.

15 SECTION 2.96. Section 32.024(i), Human Resources Code, is
16 amended to read as follows:

17 (i) The department in its adoption of rules may [~~shall~~]
18 establish a medically needy program that serves pregnant women,
19 children, and caretakers who have high medical expenses, subject to
20 availability of appropriated funds.

21 SECTION 2.97. (a) Section 32.024, Human Resources Code, is
22 amended by adding Subsections (t-1), (z), and (z-1) to read as
23 follows:

24 (t-1) The department, in its rules governing the medical
25 transportation program, may not prohibit a recipient of medical
26 assistance from receiving transportation services through the
27 program to obtain renal dialysis treatment on the basis that the

1 recipient resides in a nursing facility.

2 (z) In its rules and standards governing the vendor drug
3 program, the department, to the extent allowed by federal law and if
4 the department determines the policy to be cost-effective, may
5 ensure that a recipient of prescription drug benefits under the
6 medical assistance program does not, unless authorized by the
7 department in consultation with the recipient's attending
8 physician or advanced practice nurse, receive under the medical
9 assistance program:

10 (1) more than four different outpatient brand-name
11 prescription drugs during a month; or

12 (2) more than a 34-day supply of a brand-name
13 prescription drug at any one time.

14 (z-1) Subsection (z) does not affect any other limit on
15 prescription medications otherwise prescribed by department rule.

16 (b) Section 32.024(z), Human Resources Code, as added by
17 this section, applies to a person receiving medical assistance on
18 or after the effective date of this section regardless of the date
19 on which the person began receiving that medical assistance.

20 SECTION 2.98. [RESERVED]

21 SECTION 2.99. (a) Section 32.026(e), Human Resources Code,
22 is amended to read as follows:

23 (e) The department shall permit a recertification review of
24 the eligibility and need for medical assistance of a child under 19
25 years of age to be conducted by telephone or mail instead of through
26 a personal appearance at a department office, unless the department
27 determines that the information needed to verify eligibility cannot

1 be obtained in that manner. The department by rule may develop
2 procedures to determine whether there is a need for a
3 recertification review of a child described by this subsection to
4 be conducted through a personal interview with a department
5 representative. Procedures developed under this subsection shall
6 be based on objective, risk-based factors and conditions and shall
7 focus on a targeted group of recertification reviews for which
8 there is a high probability that eligibility will not be
9 recertified.

10 (b) Contingent upon enactment of Senate Bill 1522, Senate
11 Bill 1522 prevails regarding this section notwithstanding Section
12 2.157.

13 SECTION 2.100. (a) Section 32.0315(a), Human Resources
14 Code, is amended to read as follows:

15 (a) Subject to appropriated state funds, the [The]
16 department shall establish procedures and formulas for the
17 allocation of federal medical assistance funds that are directed to
18 be used to support graduate medical education in connection with
19 the medical assistance program.

20 (b) Sections 32.0315(d)-(h), Human Resources Code, are
21 repealed.

22 SECTION 2.101. Section 10(c), Chapter 584, Acts of the 77th
23 Legislature, Regular Session, 2001, is amended to read as follows:

24 (c) The Health and Human Services Commission or the
25 appropriate state agency operating part of the medical assistance
26 program under Chapter 32, Human Resources Code, shall adopt rules
27 required by Section 32.0261, Human Resources Code, as added by this

1 Act, so that the rules take effect in accordance with that section
2 not earlier than September 1, 2002, or later than September 1, 2005
3 [~~June 1, 2003~~]. The rules must provide for a 12-month period of
4 continuous eligibility in accordance with that section for a child
5 whose initial or continued eligibility is determined on or after
6 the effective date of the rules.

7 SECTION 2.102. (a) Section 32.028, Human Resources Code,
8 is amended by amending Subsection (g) and adding Subsections (i),
9 (j), (k), (l), and (m) to read as follows:

10 (g) Subject to Subsection (i), the [~~The~~] Health and Human
11 Services Commission shall ensure that the rules governing the
12 determination of rates paid for nursing home services improve the
13 quality of care by:

14 (1) providing a program offering incentives for
15 increasing direct care staff and direct care wages and benefits,
16 but only to the extent that appropriated funds are available after
17 money is allocated to base rate reimbursements as determined by the
18 Health and Human Services Commission's nursing facility rate
19 setting methodologies; and

20 (2) if appropriated funds are available after money is
21 allocated for payment of incentive-based rates under Subdivision
22 (1), providing incentives that incorporate the use of a quality of
23 care index, a customer satisfaction index, and a resolved
24 complaints index developed by the commission.

25 (i) The Health and Human Services Commission shall ensure
26 that rules governing the incentives program described by Subsection
27 (g)(1):

1 (1) provide that participation in the program by a
2 nursing home is voluntary;

3 (2) do not impose on a nursing home not participating
4 in the program a minimum spending requirement for direct care staff
5 wages and benefits;

6 (3) do not set a base rate for a nursing home
7 participating in the program that is more than the base rate for a
8 nursing home not participating in the program; and

9 (4) establish a funding process to provide incentives
10 for increasing direct care staff and direct care wages and benefits
11 in accordance with appropriations provided.

12 (j) The Health and Human Services Commission shall adopt
13 rules governing the determination of the amount of reimbursement or
14 credit for restocking drugs under Section 562.1085, Occupations
15 Code, that recognize the costs of processing the drugs, including
16 the cost of:

17 (1) reporting the drug's prescription number and date
18 of original issue;

19 (2) verifying whether the drug's expiration date or
20 the drug's recommended shelf life exceeds 120 days;

21 (3) determining the source of payment; and

22 (4) preparing credit records.

23 (k) The commission shall provide an electronic system for
24 the issuance of credit for returned drugs that complies with the
25 Health Insurance Portability and Accountability Act of 1996, Pub.
26 L. No. 104-191, as amended. To ensure a cost-effective system, only
27 drugs for which the credit exceeds the cost of the restocking fee by

1 at least 100 percent are eligible for credit.

2 (l) The commission shall establish a task force to develop
3 the rules necessary to implement Subsections (j) and (k). The task
4 force must include representatives of nursing facilities and
5 pharmacists.

6 (m) The commission may not fund an incentive program under
7 Subsection (g)(1) using money appropriated for base rate
8 reimbursements for nursing facilities.

9 (b) The Health and Human Services Commission shall adopt the
10 rules required by Sections 32.028(j) and (k), Human Resources Code,
11 as added by this section, not later than December 1, 2003.

12 SECTION 2.103. Subchapter B, Chapter 32, Human Resources
13 Code, is amended by adding Section 32.0291 to read as follows:

14 Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS.

15 (a) Notwithstanding any other law, the department may:

16 (1) perform a prepayment review of a claim for
17 reimbursement under the medical assistance program to determine
18 whether the claim involves fraud or abuse; and

19 (2) as necessary to perform that review, withhold
20 payment of the claim for not more than five working days without
21 notice to the person submitting the claim.

22 (b) Notwithstanding any other law, the department may
23 impose a postpayment hold on payment of future claims submitted by a
24 provider if the department has reliable evidence that the provider
25 has committed fraud or wilful misrepresentation regarding a claim
26 for reimbursement under the medical assistance program. The
27 department must notify the provider of the postpayment hold not

1 later than the fifth working day after the date the hold is imposed.

2 (c) On timely written request by a provider subject to a
3 postpayment hold under Subsection (b), the department shall file a
4 request with the State Office of Administrative Hearings for an
5 expedited administrative hearing regarding the hold. The provider
6 must request an expedited hearing under this subsection not later
7 than the 10th day after the date the provider receives notice from
8 the department under Subsection (b). The department shall
9 discontinue the hold unless the department makes a prima facie
10 showing at the hearing that the evidence relied on by the department
11 in imposing the hold is relevant, credible, and material to the
12 issue of fraud or wilful misrepresentation.

13 (d) The department shall adopt rules that allow a provider
14 subject to a postpayment hold under Subsection (b) to seek an
15 informal resolution of the issues identified by the department in
16 the notice provided under that subsection. A provider must seek an
17 informal resolution under this subsection not later than the
18 deadline prescribed by Subsection (c). A provider's decision to
19 seek an informal resolution under this subsection does not extend
20 the time by which the provider must request an expedited
21 administrative hearing under Subsection (c). However, a hearing
22 initiated under Subsection (c) shall be stayed at the department's
23 request until the informal resolution process is completed.

24 SECTION 2.104. Section 32.032, Human Resources Code, is
25 amended to read as follows:

26 Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE.

27 The department shall adopt reasonable rules for minimizing the

1 opportunity for fraud and abuse, for establishing and maintaining
2 methods for detecting and identifying situations in which a
3 question of fraud or abuse in the program may exist, and for
4 referring cases where fraud or abuse appears to exist to the
5 appropriate law enforcement agencies for prosecution.

6 SECTION 2.105. Section 32.0321, Human Resources Code, is
7 amended to read as follows:

8 Sec. 32.0321. SURETY BOND. (a) The department by rule may
9 require each provider of medical assistance in a provider type that
10 has demonstrated significant potential for fraud or abuse to file
11 with the department a surety bond in a reasonable amount. The
12 department by rule shall require a provider of medical assistance
13 to file with the department a surety bond in a reasonable amount if
14 the department identifies a pattern of suspected fraud or abuse
15 involving criminal conduct relating to the provider's services
16 under the medical assistance program that indicates the need for
17 protection against potential future acts of fraud or abuse.

18 (b) The bond under Subsection (a) must be payable to the
19 department to compensate the department for damages resulting from
20 or penalties or fines imposed in connection with an act of fraud or
21 abuse committed by the provider under the medical assistance
22 program.

23 (c) Subject to Subsection (d) or (e), the department by rule
24 may require each provider of medical assistance that establishes a
25 resident's trust fund account to post a surety bond to secure the
26 account. The bond must be payable to the department to compensate
27 residents of the bonded provider for trust funds that are lost,

1 stolen, or otherwise unaccounted for if the provider does not repay
2 any deficiency in a resident's trust fund account to the person
3 legally entitled to receive the funds.

4 (d) The department may not require the amount of a surety
5 bond posted for a single facility provider under Subsection (c) to
6 exceed the average of the total average monthly balance of all the
7 provider's resident trust fund accounts for the 12-month period
8 preceding the bond issuance or renewal date.

9 (e) If an employee of a provider of medical assistance is
10 responsible for the loss of funds in a resident's trust fund
11 account, the resident, the resident's family, and the resident's
12 legal representative are not obligated to make any payments to the
13 provider that would have been made out of the trust fund had the
14 loss not occurred.

15 SECTION 2.106. (a) Subchapter B, Chapter 32, Human
16 Resources Code, is amended by adding Section 32.0423 to read as
17 follows:

18 Sec. 32.0423. RECOVERY OF REIMBURSEMENTS FROM HEALTH
19 COVERAGE PROVIDERS. To the extent allowed by federal law, a health
20 care service provider must seek reimbursement from available
21 third-party health coverage or insurance that the provider knows
22 about or should know about before billing the medical assistance
23 program.

24 (b) Section 32.0423, Human Resources Code, as added by this
25 section, applies to a person receiving medical assistance on or
26 after the effective date of this section regardless of the date on
27 which the person began receiving that medical assistance.

1 SECTION 2.107. (a) Subchapter B, Chapter 32, Human
2 Resources Code, is amended by adding Section 32.0462 to read as
3 follows:

4 Sec. 32.0462. MEDICATIONS AND MEDICAL SUPPLIES. The
5 department may adopt rules establishing procedures for the purchase
6 and distribution of medically necessary, over-the-counter
7 medications and medical supplies under the medical assistance
8 program that were previously being provided by prescription if the
9 department determines it is more cost-effective than obtaining
10 those medications and medical supplies through a prescription.

11 (b) Not later than January 1, 2004, the Health and Human
12 Services Commission shall submit a report to the clerks of the
13 standing committees of the senate and house of representatives with
14 jurisdiction over the state Medicaid program describing the status
15 of any cost savings generated by purchasing over-the-counter
16 medications and medical supplies as provided by Section 32.0462,
17 Human Resources Code, as added by this section. The report must be
18 updated not later than January 1, 2005.

19 SECTION 2.108. Section 32.050, Human Resources Code, is
20 amended by adding Subsections (d), (e), and (f) to read as follows:

21 (d) Except as provided by Subsection (e), a nursing
22 facility, a home health services provider, or any other similar
23 long-term care services provider that is Medicare-certified and
24 provides care to individuals who are eligible for Medicare must:

25 (1) seek reimbursement from Medicare before billing
26 the medical assistance program for services provided to an
27 individual identified under Subsection (a); and

1 (2) as directed by the department, appeal Medicare
2 claim denials for payment services provided to an individual
3 identified under Subsection (a).

4 (e) A home health services provider is not required to seek
5 reimbursement from Medicare before billing the medical assistance
6 program for services provided to a person who is eligible for
7 Medicare and who:

8 (1) has been determined as not being homebound; or

9 (2) meets other criteria determined by the department.

10 (f) If the Medicare reimbursement rate for a service
11 provided to an individual identified under Subsection (a) exceeds
12 the medical assistance reimbursement rate for a comparable service,
13 the medical assistance program may not pay a Medicare coinsurance
14 or deductible amount for that service.

15 SECTION 2.109. (a) Subchapter B, Chapter 32, Human
16 Resources Code, is amended by adding Section 32.060 to read as
17 follows:

18 Sec. 32.060. NURSING FACILITY QUALITY ASSURANCE TEAM. (a)
19 The nursing facility quality assurance team is established to make
20 recommendations to the department designed to promote high-quality
21 care for residents of nursing facilities.

22 (b) The team is composed of nine members appointed by the
23 governor as follows:

24 (1) two physicians with expertise in providing
25 long-term care;

26 (2) one registered nurse with expertise in providing
27 long-term care;

1 (3) three nursing facility advocates not affiliated
2 with the nursing facility industry; and

3 (4) three representatives of the nursing facility
4 industry.

5 (c) The governor shall designate a member of the team to
6 serve as presiding officer. The members of the team shall elect any
7 other necessary officers.

8 (d) The team shall meet at the call of the presiding
9 officer.

10 (e) A member of the team serves at the will of the governor.

11 (f) A member of the team may not receive compensation for
12 servng on the team but is entitled to reimbursement for travel
13 expenses incurred by the member while conducting the business of
14 the team as provided by the General Appropriations Act.

15 (g) The team shall:

16 (1) develop and recommend clearly defined minimum
17 standards to be considered for inclusion in contracts between the
18 department and nursing facilities for the delivery of medical
19 assistance under this chapter that are designed to:

20 (A) ensure that the care provided by nursing
21 facilities to residents who are recipients of medical assistance
22 meets or exceeds the minimum acceptable standard of care; and

23 (B) encourage nursing facilities to provide the
24 highest quality of care to those residents; and

25 (2) develop and recommend improvements to consumers'
26 access to information regarding the quality of care provided by
27 nursing facilities that contract with the department to provide

1 medical assistance, including improvements in:

2 (A) the types and amounts of information to which
3 consumers have access, such as expanding the types and amounts of
4 information available through the department's Internet website;
5 and

6 (B) the department's data systems that compile
7 nursing facilities' inspection or survey data and other data
8 relating to quality of care in nursing facilities.

9 (h) In developing minimum standards for contracts as
10 required by Subsection (g)(1), the team shall:

11 (1) study the risk factors identified by the Texas
12 Department of Insurance as contributing to lawsuits against nursing
13 facilities;

14 (2) consider for inclusion in the minimum standards:

15 (A) the practices the Texas Department of
16 Insurance recommends nursing facilities adopt to reduce the
17 likelihood of those lawsuits; and

18 (B) other standards designed to improve the
19 quality of care;

20 (3) focus on a minimum number of critical standards
21 necessary to identify nursing facilities with poor quality services
22 that should not be awarded contracts for the delivery of medical
23 assistance; and

24 (4) with the assistance of the department, assess the
25 potential cost impacts on providers necessary to meet the minimum
26 standards and the commensurate fiscal impact on the department's
27 appropriations requirement.

1 (i) The department shall ensure the accuracy of information
2 provided to the team for use by the team in performing the team's
3 duties under this section. The Health and Human Services
4 Commission shall provide administrative support and resources to
5 the team and request additional administrative support and
6 resources from health and human services agencies as necessary.

7 (b) The governor shall appoint the members of the nursing
8 facility quality assurance team established under Section 32.060,
9 Human Resources Code, as added by this section, not later than
10 January 1, 2004.

11 (c) The nursing facility quality assurance team shall
12 develop and make the recommendations required by Section 32.060,
13 Human Resources Code, as added by this section, not later than May
14 1, 2004.

15 (d) The nursing facility quality assurance team shall
16 report on its work and recommendations to the governor and the
17 Legislative Budget Board no later than October 1, 2004, for
18 consideration by the 79th Legislature.

19 SECTION 2.110. Subchapter B, Chapter 32, Human Resources
20 Code, is amended by adding Section 32.061 to read as follows:

21 Sec. 32.061. COMMUNITY ATTENDANT SERVICES PROGRAM. Any home
22 and community-based services that the department provides under
23 Section 1929, Social Security Act (42 U.S.C. Section 1396t) and its
24 subsequent amendments to functionally disabled individuals who
25 have income that exceeds the limit established by federal law for
26 Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.)
27 and its subsequent amendments shall be provided through the

1 community attendant services program.

2 SECTION 2.111. (a) Subchapter B, Chapter 32, Human
3 Resources Code, is amended by adding Section 32.063 to read as
4 follows:

5 Sec. 32.063. THIRD-PARTY BILLING VENDORS. (a) A
6 third-party billing vendor may not submit a claim with the
7 department for reimbursement on behalf of a provider of medical
8 services under the medical assistance program unless the vendor has
9 entered into a contract with the department authorizing that
10 activity.

11 (b) To the extent practical, the contract shall contain
12 provisions comparable to the provisions contained in contracts
13 between the department and providers of medical services, with an
14 emphasis on provisions designed to prevent fraud or abuse under the
15 medical assistance program. At a minimum, the contract must
16 require the third-party billing vendor to:

17 (1) provide documentation of the vendor's authority to
18 bill on behalf of each provider for whom the vendor submits claims;

19 (2) submit a claim in a manner that permits the
20 department to identify and verify the vendor, any computer or
21 telephone line used in submitting the claim, any relevant user
22 password used in submitting the claim, and any provider number
23 referenced in the claim; and

24 (3) subject to any confidentiality requirements
25 imposed by federal law, provide the department, the office of the
26 attorney general, or authorized representatives with:

27 (A) access to any records maintained by the

1 vendor, including original records and records maintained by the
2 vendor on behalf of a provider, relevant to an audit or
3 investigation of the vendor's services or another function of the
4 department or office of the attorney general relating to the
5 vendor; and

6 (B) if requested, copies of any records described
7 by Paragraph (A) at no charge to the department, the office of the
8 attorney general, or authorized representatives.

9 (c) On receipt of a claim submitted by a third-party billing
10 vendor, the department shall send a remittance notice directly to
11 the provider referenced in the claim. The notice must:

12 (1) include detailed information regarding the claim
13 submitted on behalf of the provider; and

14 (2) require the provider to review the claim for
15 accuracy and notify the department promptly regarding any errors.

16 (d) The department shall take all action necessary,
17 including any modifications of the department's claims processing
18 system, to enable the department to identify and verify a
19 third-party billing vendor submitting a claim for reimbursement
20 under the medical assistance program, including identification and
21 verification of any computer or telephone line used in submitting
22 the claim, any relevant user password used in submitting the claim,
23 and any provider number referenced in the claim.

24 (e) The department shall audit each third-party billing
25 vendor subject to this section at least annually to prevent fraud
26 and abuse under the medical assistance program.

27 (b) Section 32.063, Human Resources Code, as added by this

1 section, takes effect January 1, 2004.

2 SECTION 2.112. (a) Subchapter B, Chapter 32, Human
3 Resources Code, is amended by adding Section 32.064 to read as
4 follows:

5 Sec. 32.064. COST SHARING. (a) To the extent permitted
6 under Title XIX, Social Security Act (42 U.S.C. Section 1396 et
7 seq.), as amended, and any other applicable law or regulations, the
8 Health and Human Services Commission shall adopt provisions
9 requiring recipients of medical assistance to share the cost of
10 medical assistance, including provisions requiring recipients to
11 pay:

12 (1) an enrollment fee;

13 (2) a deductible; or

14 (3) coinsurance or a portion of the plan premium, if
15 the recipients receive medical assistance under the Medicaid
16 managed care program under Chapter 533, Government Code, or a
17 Medicaid managed care demonstration project under Section 32.041.

18 (b) Subject to Subsection (d), cost-sharing provisions
19 adopted under this section shall ensure that families with higher
20 levels of income are required to pay progressively higher
21 percentages of the cost of the medical assistance.

22 (c) If cost-sharing provisions imposed under Subsection (a)
23 include requirements that recipients pay a portion of the plan
24 premium, the commission shall specify the manner in which the
25 premium is paid. The commission may require that the premium be
26 paid to the commission, an agency operating part of the medical
27 assistance program, or the Medicaid managed care plan.

1 (d) Cost-sharing provisions adopted under this section may
2 be determined based on the maximum level authorized under federal
3 law and applied to income levels in a manner that minimizes
4 administrative costs.

5 (b) The changes in law made by Section 32.064, Human
6 Resources Code, as added by this section, apply to a person
7 receiving medical assistance on or after the effective date of this
8 section, regardless of the date on which eligibility for that
9 assistance was determined.

10 SECTION 2.113. Section 48.401(1), Human Resources Code, is
11 amended to read as follows:

12 (1) "Agency" means:

13 (A) an entity licensed under Chapter 142, Health
14 and Safety Code; or

15 (B) a person exempt from licensing under Section
16 142.003(a)(19), Health and Safety Code.

17 SECTION 2.114. Section 73.0051, Human Resources Code, is
18 amended by adding Subsection (1) to read as follows:

19 (1) The council by rule may establish a system of payments
20 by families of children receiving services under this chapter,
21 including a schedule of sliding fees, in a manner consistent with 34
22 C.F.R. Sections 303.12(a)(3)(iv), 303.520, and 303.521.

23 SECTION 2.115. (a) Sections 91.027(a) and (b), Human
24 Resources Code, are amended to read as follows:

25 (a) To the extent that funds are available under Sections
26 521.421(f), as added by Chapter 510, Acts of the 75th Legislature,
27 Regular Session, 1997, and 521.422(b), Transportation Code, the

1 ~~[The]~~ commission shall operate ~~[develop]~~ a Blindness Education,
2 Screening, and Treatment Program to provide:

3 (1) blindness prevention education and ~~[to provide]~~
4 screening and treatment to prevent blindness for residents who are
5 not covered under an adequate health benefit plan; and

6 (2) transition services to blind disabled individuals
7 eligible for vocational rehabilitation services under Section
8 91.052.

9 (b) ~~[The commission shall implement the program only to the~~
10 ~~extent that funds are available under Section 521.421(f),~~
11 ~~Transportation Code.]~~ The program shall include:

12 (1) public education about blindness and other eye
13 conditions;

14 (2) screenings and eye examinations to identify
15 conditions that may cause blindness; ~~[and]~~

16 (3) treatment procedures necessary to prevent
17 blindness; and

18 (4) transition services.

19 (b) The Texas Commission for the Blind shall establish the
20 consolidated program under Section 91.027, Human Resources Code, as
21 amended by this section, not later than the 90th day after the
22 effective date of this section.

23 SECTION 2.116. (a) Section 111.052, Human Resources Code,
24 is amended to read as follows:

25 Sec. 111.052. GENERAL FUNCTIONS. (a) The commission
26 shall, to the extent of resources available and priorities
27 established by the board, provide rehabilitation services directly

1 or through public or private resources to individuals determined by
2 the commission to be eligible for the services under a vocational
3 rehabilitation program[~~, an extended rehabilitation services~~
4 ~~program,~~] or other program established to provide rehabilitative
5 services.

6 (b) In carrying out the purposes of this chapter, the
7 commission may:

8 (1) cooperate with other departments, agencies,
9 political subdivisions, and institutions, both public and private,
10 in providing the services authorized by this chapter to eligible
11 individuals, in studying the problems involved, and in planning,
12 establishing, developing, and providing necessary or desirable
13 programs, facilities, and services, including those jointly
14 administered with state agencies;

15 (2) enter into reciprocal agreements with other
16 states;

17 (3) establish or construct rehabilitation facilities
18 and workshops, contract with or provide grants to agencies,
19 organizations, or individuals as necessary to implement this
20 chapter, make contracts or other arrangements with public and other
21 nonprofit agencies, organizations, or institutions for the
22 establishment of workshops and rehabilitation facilities, and
23 operate facilities for carrying out the purposes of this chapter;

24 (4) conduct research and compile statistics relating
25 to the provision of services to or the need for services by disabled
26 individuals;

27 (5) provide for the establishment, supervision,

1 management, and control of small business enterprises to be
2 operated by individuals with significant disabilities where their
3 operation will be improved through the management and supervision
4 of the commission;

5 (6) contract with schools, hospitals, private
6 industrial firms, and other agencies and with doctors, nurses,
7 technicians, and other persons for training, physical restoration,
8 transportation, and other rehabilitation services; and

9 (7) assess the statewide need for services necessary
10 to prepare students with disabilities for a successful transition
11 to employment, establish collaborative relationships with each
12 school district with education service centers to the maximum
13 extent possible within available resources, and develop strategies
14 to assist vocational rehabilitation counselors in identifying and
15 reaching students in need of transition planning [~~contract with a~~
16 ~~public or private agency to provide and pay for rehabilitative~~
17 ~~services under the extended rehabilitation services program,~~
18 ~~including alternative sheltered employment or community integrated~~
19 ~~employment for a person participating in the program].~~

20 (b) Sections 111.002(7), 111.0525(a), and 111.073, Human
21 Resources Code, are repealed.

22 SECTION 2.117. Section 111.060, Human Resources Code, is
23 amended by adding Subsection (d) to read as follows:

24 (d) Notwithstanding any other provision of this section,
25 any money in the comprehensive rehabilitation fund may be used for
26 general governmental purposes if:

27 (1) the comptroller certifies that appropriations

1 from general revenue made by the preceding legislature for the
 2 current biennium exceed available general revenues and cash
 3 balances for the remainder of that biennium;

4 (2) an estimate of anticipated revenues for a
 5 succeeding biennium prepared by the comptroller in accordance with
 6 Section 49a, Article III, Texas Constitution, is less than the
 7 revenues that are estimated at the same time by the comptroller to
 8 be available for the current biennium; or

9 (3) the Legislative Budget Board otherwise determines
 10 that a state fiscal emergency exists that requires use of any money
 11 in the fund for general governmental purposes.

12 SECTION 2.118. (a) Subchapter I, Chapter 264, Family Code,
 13 is transferred to Chapter 33, Education Code, is redesignated as
 14 Subchapter E, Chapter 33, Education Code, and is amended to read as
 15 follows:

16 SUBCHAPTER E [~~I~~]. COMMUNITIES IN SCHOOLS PROGRAM

17 Sec. 33.151 [~~264.751~~]. DEFINITIONS. In this subchapter:

18 (1) "Department" [~~"Agency"~~] means the Department of
 19 Protective and Regulatory Services [~~Texas Education Agency~~].

20 (2) "Communities In Schools program" means an
 21 exemplary youth dropout prevention program.

22 (3) "Delinquent conduct" has the meaning assigned by
 23 Section 51.03, Family Code.

24 (4) "Student at risk of dropping out of school" means:
 25 (A) a student at risk of dropping out of school as
 26 defined [~~has the meaning assigned~~] by Section 29.081;

27 (B) [~~, Education Code, or means~~] a student who is

1 eligible for a free or reduced lunch; or

2 (C) a student who is in family conflict or
3 crisis.

4 Sec. 33.152 [~~264.752~~]. STATEWIDE OPERATION OF PROGRAM. It
5 is the intent of the legislature that the Communities In Schools
6 program operate throughout this state. It is also the intent of the
7 legislature that programs established under Chapter 305, Labor
8 Code, as that chapter existed on August 31, 1999, and its
9 predecessor statute, the Texas Unemployment Compensation Act
10 (Article 5221b-9d, Vernon's Texas Civil Statutes), and programs
11 established under this subchapter shall remain eligible to
12 participate in the Communities In Schools program if funds are
13 available and if their performance meets the criteria established
14 by the agency [~~department~~] for renewal of their contracts.

15 Sec. 33.153 [~~264.753~~]. STATE DIRECTOR. The commissioner
16 [~~executive director of the department~~] shall designate a state
17 director for the Communities In Schools program.

18 Sec. 33.154 [~~264.754~~]. DUTIES OF STATE DIRECTOR. The state
19 director shall:

20 (1) coordinate the efforts of the Communities In
21 Schools program with other social service organizations and
22 agencies and with public school personnel to provide services to
23 students who are at risk of dropping out of school or engaging in
24 delinquent conduct, including students who are in family conflict
25 or emotional crisis;

26 (2) set standards for the Communities In Schools
27 program and establish state performance goals, objectives, and

1 measures for the program;

2 (3) obtain information to determine accomplishment of
3 state performance goals, objectives, and measures;

4 (4) promote and market the program in communities in
5 which the program is not established;

6 (5) help communities that want to participate in the
7 program establish a local funding base; and

8 (6) provide training and technical assistance for
9 participating communities and programs.

10 Sec. 33.155 [~~264.755~~]. DEPARTMENT [~~AGENCY~~] COOPERATION;
11 MEMORANDUM OF UNDERSTANDING. (a) The agency, the department, and
12 Communities In Schools, Inc. shall work together to maximize the
13 effectiveness of the Communities In Schools program.

14 (b) The agency and the department shall develop and
15 [~~mutually~~] agree to a memorandum of understanding to clearly define
16 the responsibilities of the agency and of the department under this
17 subchapter. The memorandum must address:

18 (1) the roles [~~role~~] of the agency and department in
19 encouraging local business to participate in local Communities In
20 Schools programs;

21 (2) the role of the agency in obtaining information
22 from participating school districts;

23 (3) the use of federal or state funds available to the
24 agency or the department for programs of this nature; and

25 (4) other areas identified by the agency and the
26 department that require clarification.

27 (c) The agency and the department shall adopt rules to

1 implement the memorandum and shall update the memorandum and rules
2 annually.

3 Sec. 33.156 [~~264.756~~]. FUNDING; EXPANSION OF PARTICIPATION.

4 (a) The agency [~~department~~] shall develop and implement an
5 equitable formula for the funding of local Communities In Schools
6 programs. The formula may provide for the reduction of funds
7 annually contributed by the state to a local program by an amount
8 not more than 50 percent of the amount contributed by the state for
9 the first year of the program. The formula must consider the
10 financial resources of individual communities and school
11 districts. Savings accomplished through the implementation of the
12 formula may be used to extend services to counties and
13 municipalities currently not served by a local program or to extend
14 services to counties and municipalities currently served by an
15 existing local program.

16 (b) Each local Communities In Schools program shall develop
17 a funding plan which ensures that the level of services is
18 maintained if state funding is reduced.

19 (c) A local Communities In Schools program may accept
20 federal funds, state funds, private contributions, grants, and
21 public and school district funds to support a campus participating
22 in the program.

23 Sec. 33.157 [~~264.757~~]. PARTICIPATION IN PROGRAM. An
24 elementary or secondary school receiving funding [~~designated~~]
25 under Section 33.156 [~~264.756~~] shall participate in a local
26 Communities In Schools program if the number of students enrolled
27 in the school who are at risk of dropping out of school is equal to

1 at least 10 percent of the number of students in average daily
2 attendance at the school, as determined by the agency.

3 Sec. 33.158 [~~264.758~~]. DONATIONS TO PROGRAM. (a) The agency
4 [~~department~~] may accept a donation of services or money or other
5 property that the agency [~~department~~] determines furthers the
6 lawful objectives of the agency [~~department~~] in connection with the
7 Communities In Schools program.

8 (b) Each donation, with the name of the donor and the
9 purpose of the donation, must be reported in the public records of
10 the agency [~~department~~].

11 (b) Section 302.062(g), Labor Code, is amended to read as
12 follows:

13 (g) Block grant funding under this section does not apply
14 to:

15 (1) the work and family policies program under Chapter
16 81;

17 (2) a program under the skills development fund
18 created under Chapter 303;

19 (3) the job counseling program for displaced
20 homemakers under Chapter 304;

21 (4) the Communities In Schools program under
22 Subchapter E [~~F~~], Chapter 33 [~~264~~], Education [~~Family~~] Code, to the
23 extent that funds are available to the commission for that program;

24 (5) the reintegration of offenders program under
25 Chapter 306;

26 (6) apprenticeship programs under Chapter 133,
27 Education Code;

1 (7) the continuity of care program under Section
2 501.095, Government Code;

3 (8) employment programs under Chapter 31, Human
4 Resources Code;

5 (9) the senior citizens employment program under
6 Chapter 101, Human Resources Code;

7 (10) the programs described by Section 302.021(b)(3);

8 (11) the community service program under the National
9 and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);

10 (12) the trade adjustment assistance program under
11 Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et
12 seq.);

13 (13) the programs to enhance the employment
14 opportunities of veterans; and

15 (14) the functions of the State Occupational
16 Information Coordinating Committee.

17 (c) On September 1, 2003:

18 (1) all powers, duties, functions, and activities
19 relating to the Communities In Schools program assigned to or
20 performed by the Department of Protective and Regulatory Services
21 immediately before September 1, 2003, are transferred to the Texas
22 Education Agency;

23 (2) all funds, rights, obligations, and contracts of
24 the Department of Protective and Regulatory Services related to the
25 Communities In Schools program are transferred to the Texas
26 Education Agency for the Communities In Schools program;

27 (3) all property and records in the custody of the

1 Department of Protective and Regulatory Services related to the
2 Communities In Schools program and all funds appropriated by the
3 legislature for the Communities In Schools program are transferred
4 to the Texas Education Agency for the Communities In Schools
5 program; and

6 (4) all employees of the Department of Protective and
7 Regulatory Services who primarily perform duties related to the
8 Communities In Schools program become employees of the Texas
9 Education Agency, to be assigned duties related to the Communities
10 In Schools program.

11 (d) For the 2003 and 2004 state fiscal years, all full-time
12 equivalent positions (FTEs) authorized by the General
13 Appropriations Act for the Communities In Schools program are
14 transferred to the Texas Education Agency and are not included in
15 determining the agency's compliance with any limitation on the
16 number of full-time equivalent positions (FTEs) imposed by the
17 General Appropriations Act.

18 (e) A reference in law or administrative rule to the
19 Department of Protective and Regulatory Services that relates to
20 the Communities In Schools program means the Texas Education
21 Agency. A reference in law or administrative rule to the executive
22 director of the Department of Protective and Regulatory Services
23 that relates to the Communities In Schools program means the
24 commissioner of education.

25 (f) A rule of the Department of Protective and Regulatory
26 Services relating to the Communities In Schools program continues
27 in effect as a rule of the commissioner of education until

1 superseded by rule of the commissioner of education. The secretary
2 of state is authorized to adopt rules as necessary to expedite the
3 implementation of this subsection.

4 (g) The transfer of the Communities In Schools program and
5 associated powers, duties, functions, and activities under this
6 section does not affect or impair any act done, any obligation,
7 right, order, license, permit, rule, criterion, standard, or
8 requirement existing, any investigation begun, or any penalty
9 accrued under former law, and that law remains in effect for any
10 action concerning those matters.

11 (h) An action brought or proceeding commenced before
12 September 1, 2003, including a contested case or a remand of any
13 action or proceeding by a reviewing court, is governed by the law
14 and rules applicable to the action or proceeding immediately before
15 September 1, 2003.

16 SECTION 2.119. (a) Sections 2(a) and (c), Article 4.11,
17 Insurance Code, are amended to read as follows:

18 (a) "Carrier" means any insurer, managed care organization,
19 or group hospital service plan transacting any such insurance
20 business in this state including companies operating under the
21 provisions of Chapters 841, 842, 843, 861, 881, 882, 883, 884, 941,
22 942, and 982, [3, 8, 11, 13, 15, 18, 19, 20, 20A, and 22 of the]
23 Insurance Code, Chapter 533, Government Code, or Title XIX of the
24 federal Social Security Act. The term does not include [but
25 excluding] local mutual aid associations, fraternal benefit
26 societies or associations, and societies that limit their
27 membership to one occupation. For purposes of computing the premium

1 tax under this article, a managed care organization shall be
2 treated in the same manner as a health maintenance organization.

3 (c) "Gross premiums" are the total gross amount of all
4 premiums, membership fees, assessments, dues, and any other
5 considerations for such insurance received during the taxable year
6 on each and every kind of such insurance policy or contract covering
7 persons located in the State of Texas and arising from the types of
8 insurance specified in Section 1 of this article, but deducting
9 returned premiums, any dividends applied to purchase paid-up
10 additions to insurance or to shorten the endowment or premium
11 payment period, and excluding those premiums received from
12 insurance carriers for reinsurance and there shall be no deduction
13 for premiums paid for reinsurance. For purposes of this article, a
14 stop-loss or excess loss insurance policy issued to a health
15 maintenance organization, as defined under the Texas Health
16 Maintenance Organization Act (Chapter 20A, Vernon's Texas
17 Insurance Code), shall be considered reinsurance. Such gross
18 premiums shall not include premiums received from the [~~Treasury of~~
19 ~~the State of Texas or from the~~] Treasury of the United States for
20 [~~insurance contracted for by the state or federal government for~~
21 ~~the purpose of providing welfare benefits to designated welfare~~
22 ~~recipients or for~~] insurance contracted for by the [~~state or~~]
23 federal government in accordance with or in furtherance of the
24 provisions of Title XVIII of [~~2, Human Resources Code, or~~] the
25 Federal Social Security Act (42 U.S.C. Section 1395c et seq.) and
26 its subsequent amendments. The gross premiums receipts so reported
27 shall not include the amount of premiums paid on group health,

1 accident, and life policies in which the group covered by the policy
2 consists of a single nonprofit trust established to provide
3 coverage primarily for employees of:

4 (1) a municipality, county, or hospital district in
5 this state; or

6 (2) a county or municipal hospital, without regard to
7 whether the employees are employees of the county or municipality
8 or another entity operating the hospital on behalf of the county or
9 municipality.

10 (b) The change in law made by this section applies only to a
11 tax report originally due on or after January 1, 2004.

12 SECTION 2.120. (a) Article 4.17(a), Insurance Code, is
13 amended to read as follows:

14 (a) The commissioner shall annually determine the rate of
15 assessment of a maintenance tax to be paid on an annual, semiannual,
16 or other periodic basis, as determined by the comptroller. The rate
17 of assessment may not exceed .04 percent of the correctly reported
18 gross premiums of life, health, and accident insurance coverages
19 and the gross considerations for annuity and endowment contracts
20 collected by all authorized insurers writing life, health, and
21 accident insurance, annuity, or endowment contracts in this state.
22 The comptroller shall collect the maintenance tax. For purposes of
23 this article, the gross premiums on which an assessment is based may
24 not include premiums received from [~~this state or~~] the United
25 States for insurance contracted for by [~~this state or~~] the United
26 States [~~for the purpose of providing welfare benefits to designated~~
27 ~~welfare recipients or for insurance contracted for by this state or~~

1 ~~the United States]~~ in accordance with or in furtherance of Title
2 XVIII of [2, Human Resources Code, or] the federal Social Security
3 Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments
4 [~~42 U.S.C. Section 301 et seq.~~].

5 (b) The change in law made by this section applies only to a
6 tax report originally due on or after January 1, 2004.

7 SECTION 2.121. (a) Section 33(d), Texas Health Maintenance
8 Organization Act (Article 20A.33, Vernon's Texas Insurance Code),
9 is amended to read as follows:

10 (d) The commissioner shall annually determine the rate of
11 assessment of a per capita maintenance tax to be paid on an annual
12 or semiannual basis, on the correctly reported gross revenues for
13 the issuance of health maintenance certificates or contracts
14 collected by all authorized health maintenance organizations
15 issuing such coverages in this state. The rate of assessment may
16 not exceed \$2 for each enrollee. The rate of assessment may differ
17 between basic health care plans, limited health care service plans,
18 and single health care service plans and shall equitably reflect
19 any differences in regulatory resources attributable to each type
20 of plan. The comptroller shall collect the maintenance tax. For
21 purposes of this section, the amount of maintenance tax assessed
22 may not be computed on enrollees who as individual certificate
23 holders or their dependents are covered by a master group policy
24 paid for by revenues received from [~~this state or~~] the United States
25 for insurance contracted for by [~~this state or~~] the United States
26 [~~for the purpose of providing welfare benefits to designated~~
27 ~~welfare recipients or for insurance contracted for by this state or~~

1 ~~the United States~~] in accordance with or in furtherance of Title
 2 XVIII of [2, Human Resources Code, or] the federal Social Security
 3 Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments
 4 [~~42 U.S.C. Section 301 et seq.~~].

5 (b) The change in law made by this section applies only to a
 6 tax report originally due on or after January 1, 2004.

7 SECTION 2.122. Section 2, Article 21.52K, Insurance Code,
 8 is amended by amending Subsections (c) and (d) and adding
 9 Subsection (g) to read as follows:

10 (c) If an individual described by Subsection (a), ~~(b)~~ (b),
 11 or (g) of this section is not eligible to enroll in the plan unless a
 12 family member of the individual is also enrolled in the plan, the
 13 issuer, on receipt of the written notice or request under
 14 Subsection (a), ~~(b)~~ (b), or (g) of this section, shall enroll both
 15 the individual and the family member in the plan.

16 (d) Unless enrollment occurs during an established
 17 enrollment period, enrollment under this article takes effect on
 18 the first day of the calendar month that begins at least 30 days
 19 after the date written notice or request is received by the issuer
 20 under Subsection (a), ~~(b)~~ (b), or (g) of this section.

21 (g) The issuer of a group health benefit plan shall permit
 22 an individual who is otherwise eligible for enrollment in the plan
 23 to enroll in the plan without regard to any enrollment period
 24 restriction if the individual:

25 (1) becomes ineligible for medical assistance under
 26 the state Medicaid program or enrollment in the state child health
 27 plan under Chapter 62, Health and Safety Code, after initially

1 establishing eligibility; and

2 (2) provides a written request for enrollment in the
3 group health benefit plan not later than the 30th day after the date
4 the individual's eligibility for the state Medicaid program or the
5 state child health plan terminated.

6 SECTION 2.123. (a) Article 21.53F, Insurance Code, as
7 added by Chapter 683, Acts of the 75th Legislature, Regular
8 Session, 1997, is amended by adding Section 9 to read as follows:

9 Sec. 9. OFFER OF COVERAGE REQUIRED; CERTAIN THERAPIES FOR
10 CHILDREN WITH DEVELOPMENTAL DELAYS. (a) For purposes of this
11 section, rehabilitative and habilitative therapies include:

- 12 (1) occupational therapy evaluations and services;
13 (2) physical therapy evaluations and services;
14 (3) speech therapy evaluations and services; and
15 (4) dietary or nutritional evaluations.

16 (b) The issuer of a health benefit plan must offer coverage
17 that complies with this section. The individual or group policy or
18 contract holder may reject coverage required to be offered under
19 this subsection.

20 (c) A health benefit plan that provides coverage for
21 rehabilitative and habilitative therapies under this section may
22 not prohibit or restrict payment for covered services provided to a
23 child and determined to be necessary to and provided in accordance
24 with an individualized family service plan issued by the
25 Interagency Council on Early Childhood Intervention under Chapter
26 73, Human Resources Code.

27 (d) Rehabilitative and habilitative therapies described by

1 Subsection (c) of this section must be covered in the amount,
2 duration, scope, and service setting established in the child's
3 individualized family service plan.

4 (e) Under the coverage required to be offered under this
5 section, a health benefit plan issuer may not:

6 (1) apply the cost of rehabilitative and habilitative
7 therapies described by Subsection (c) of this section to an annual
8 or lifetime maximum plan benefit or similar provision under the
9 plan; or

10 (2) use the cost of rehabilitative or habilitative
11 therapies described by Subsection (c) of this section as the sole
12 justification for:

13 (A) increasing plan premiums; or

14 (B) terminating the insured's or enrollee's
15 participation in the plan.

16 (b) The change in law made by this section applies only to a
17 health benefit plan that is delivered, issued for delivery, or
18 renewed on or after January 1, 2004. A health benefit plan that is
19 delivered, issued for delivery, or renewed before January 1, 2004,
20 is governed by the law as it existed immediately before the
21 effective date of this section, and the former law is continued in
22 effect for that purpose.

23 SECTION 2.124. Article 27.05, Insurance Code, is amended to
24 read as follows:

25 Art. 27.05. EXEMPTION FROM PREMIUM TAX. The issuer of a
26 children's health benefit plan approved under Article 27.03 of this
27 code is not subject to the premium tax imposed by Article 4.11 of

1 this code or the tax on revenues imposed under Section 33, Texas
2 Health Maintenance Organization Act (Article 20A.33, Vernon's
3 Texas Insurance Code), with respect to money received for coverage
4 provided under that plan.

5 SECTION 2.125. Chapter 27, Insurance Code, is amended by
6 adding Article 27.07 to read as follows:

7 Art. 27.07. INAPPLICABILITY TO CERTAIN PLANS. This chapter
8 does not apply to a health benefit plan provided under the state
9 Medicaid program or the state child health plan.

10 SECTION 2.126. Subchapter C, Chapter 562, Occupations Code,
11 is amended by adding Sections 562.1085 and 562.1086 to read as
12 follows:

13 Sec. 562.1085. UNUSED DRUGS RETURNED BY CERTAIN
14 PHARMACISTS. (a) A pharmacist who practices in or serves as a
15 consultant for a health care facility in this state may return to a
16 pharmacy certain unused drugs, other than a controlled substance as
17 defined by Chapter 481, Health and Safety Code, purchased from the
18 pharmacy as provided by board rule. The unused drugs must:

19 (1) be approved by the federal Food and Drug
20 Administration and be:

21 (A) sealed in the manufacturer's original
22 unopened tamper-evident packaging and either individually
23 packaged or packaged in unit-dose packaging;

24 (B) oral or parenteral medication in sealed
25 single-dose containers approved by the federal Food and Drug
26 Administration;

27 (C) topical or inhalant drugs in sealed

1 units-of-use containers approved by the federal Food and Drug
2 Administration; or

3 (D) parenteral medications in sealed
4 multiple-dose containers approved by the federal Food and Drug
5 Administration from which doses have not been withdrawn; and

6 (2) not be the subject of a mandatory recall by a state
7 or federal agency or a voluntary recall by a drug seller or
8 manufacturer.

9 (b) A pharmacist for the pharmacy shall examine a drug
10 returned under this section to ensure the integrity of the drug
11 product. A health care facility may not return a drug that:

12 (1) has been compounded;

13 (2) appears on inspection to be adulterated;

14 (3) requires refrigeration; or

15 (4) has less than 120 days until the expiration date or
16 end of the shelf life.

17 (c) The pharmacy may restock and redistribute unused drugs
18 returned under this section.

19 (d) The pharmacy shall reimburse or credit the state
20 Medicaid program for an unused drug returned under this section.

21 (e) The board shall adopt the rules, policies, and
22 procedures necessary to administer this section, including rules
23 that require a health care facility to inform the Health and Human
24 Services Commission of medicines returned to a pharmacy under this
25 section.

26 Sec. 562.1086. LIMITATION ON LIABILITY. (a) A pharmacy that
27 returns unused drugs and a manufacturer that accepts the unused

1 drugs under Section 562.1085 and the employees of the pharmacy or
2 manufacturer are not liable for harm caused by the accepting,
3 dispensing, or administering of drugs returned in strict compliance
4 with Section 562.1085 unless the harm is caused by:

5 (1) wilful or wanton acts of negligence;

6 (2) conscious indifference or reckless disregard for
7 the safety of others; or

8 (3) intentional conduct.

9 (b) This section does not limit, or in any way affect or
10 diminish, the liability of a drug seller or manufacturer under
11 Chapter 82, Civil Practice and Remedies Code.

12 (c) This section does not apply if harm results from the
13 failure to fully and completely comply with the requirements of
14 Section 562.1085.

15 (d) This section does not apply to a pharmacy or
16 manufacturer that fails to comply with the insurance provisions of
17 Chapter 84, Civil Practice and Remedies Code.

18 SECTION 2.127. Section 455.0015, Transportation Code, is
19 amended by amending Subsection (b) and adding Subsections (c) and
20 (d) to read as follows:

21 (b) It is the intent of the legislature that, whenever
22 possible, and to the maximum extent feasible, the existing network
23 of transportation providers, and in particular the fixed route
24 components of the existing networks, be used to meet the client
25 transportation requirements of the state's social service agencies
26 and their agents. The legislature recognizes the contributions of
27 nonprofit entities dedicated to providing social services and

1 related activities and encourages the continued community
2 involvement of these entities in this area. The legislature
3 likewise recognizes the potential cost savings and other benefits
4 for utilizing existing private sector transportation resources.
5 The department will contract with and promote the use of private
6 sector transportation resources to the maximum extent feasible
7 consistent with the goals of this subsection.

8 (c) The Texas Department of Health and the Health and Human
9 Services Commission shall contract with the department for the
10 department to assume all responsibilities of the Texas Department
11 of Health and the Health and Human Services Commission relating to
12 the provision of transportation services for clients of eligible
13 programs. The department shall hold at least one public hearing to
14 solicit the views of the public concerning the transition of
15 transportation services to the department under this subsection and
16 shall meet with and consider the views of interested persons,
17 including persons representing transportation clients.

18 (d) The department may contract with any public or private
19 transportation provider or with any regional transportation broker
20 for the provision of public transportation services.

21 SECTION 2.128. Section 40.002, Human Resources Code, is
22 amended by adding Subsection (f) to read as follows:

23 (f) The department may contract with the Texas Department of
24 Transportation for the Texas Department of Transportation to assume
25 all responsibilities of the department relating to the provision of
26 transportation services for clients of eligible programs.

27 SECTION 2.129. Section 22.001, Human Resources Code, is

1 amended by adding Subsection (e) to read as follows:

2 (e) The department shall contract with the Texas Department
3 of Transportation for the Texas Department of Transportation to
4 assume all responsibilities of the department relating to the
5 provision of transportation services for clients of eligible
6 programs.

7 SECTION 2.130. Section 91.021, Human Resources Code, is
8 amended by adding Subsection (g) to read as follows:

9 (g) The commission shall contract with the Texas Department
10 of Transportation for the Texas Department of Transportation to
11 assume all responsibilities of the commission relating to the
12 provision of transportation services for clients of eligible
13 programs.

14 SECTION 2.131. Section 101.0256, Human Resources Code, is
15 amended to read as follows:

16 Sec. 101.0256. COORDINATED ACCESS TO LOCAL SERVICES. (a)
17 The department and the Texas Department of Human Services shall
18 develop standardized assessment procedures to share information on
19 common clients served in a similar service region.

20 (b) The department shall contract with the Texas Department
21 of Transportation for the Texas Department of Transportation to
22 assume all responsibilities of the department relating to the
23 provision of transportation services for clients of eligible
24 programs.

25 SECTION 2.132. Section 111.0525, Human Resources Code, is
26 amended by adding Subsection (d) to read as follows:

27 (d) The commission shall contract with the Texas Department

1 of Transportation for the Texas Department of Transportation to
2 assume all responsibilities of the commission relating to the
3 provision of transportation services for clients of eligible
4 programs.

5 SECTION 2.133. Section 461.012(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) The commission shall:

8 (1) provide for research and study of the problems of
9 chemical dependency in this state and seek to focus public
10 attention on those problems through public information and
11 education programs;

12 (2) plan, develop, coordinate, evaluate, and
13 implement constructive methods and programs for the prevention,
14 intervention, treatment, and rehabilitation of chemical dependency
15 in cooperation with federal and state agencies, local governments,
16 organizations, and persons, and provide technical assistance,
17 funds, and consultation services for statewide and community-based
18 services;

19 (3) cooperate with and enlist the assistance of:

20 (A) other state, federal, and local agencies;

21 (B) hospitals and clinics;

22 (C) public health, welfare, and criminal justice
23 system authorities;

24 (D) educational and medical agencies and
25 organizations; and

26 (E) other related public and private groups and
27 persons;

1 (4) expand chemical dependency services for children
2 when funds are available because of the long-term benefits of those
3 services to the state and its citizens;

4 (5) sponsor, promote, and conduct educational
5 programs on the prevention and treatment of chemical dependency,
6 and maintain a public information clearinghouse to purchase and
7 provide books, literature, audiovisuals, and other educational
8 material for the programs;

9 (6) sponsor, promote, and conduct training programs
10 for persons delivering prevention, intervention, treatment, and
11 rehabilitation services and for persons in the criminal justice
12 system or otherwise in a position to identify chemically dependent
13 persons and their families in need of service;

14 (7) require programs rendering services to chemically
15 dependent persons to safeguard those persons' legal rights of
16 citizenship and maintain the confidentiality of client records as
17 required by state and federal law;

18 (8) maximize the use of available funds for direct
19 services rather than administrative services;

20 (9) consistently monitor the expenditure of funds and
21 the provision of services by all grant and contract recipients to
22 assure that the services are effective and properly staffed and
23 meet the standards adopted under this chapter;

24 (10) make the monitoring reports prepared under
25 Subdivision (9) a matter of public record;

26 (11) license treatment facilities under Chapter 464;

27 (12) use funds appropriated to the commission to carry

1 out this chapter and maximize the overall state allotment of
2 federal funds;

3 (13) develop and implement policies that will provide
4 the public with a reasonable opportunity to appear before the
5 commission and to speak on any issue under the commission's
6 jurisdiction;

7 (14) establish minimum criteria that peer assistance
8 programs must meet to be governed by and entitled to the benefits of
9 a law that authorizes licensing and disciplinary authorities to
10 establish or approve peer assistance programs for impaired
11 professionals;

12 (15) adopt rules governing the functions of the
13 commission, including rules that prescribe the policies and
14 procedures followed by the commission in administering any
15 commission programs;

16 (16) plan, develop, coordinate, evaluate, and
17 implement constructive methods and programs to provide healthy
18 alternatives for youth at risk of selling controlled substances;

19 (17) submit to the federal government reports and
20 strategies necessary to comply with Section 1926 of the federal
21 Alcohol, Drug Abuse, and Mental Health Administration
22 Reorganization Act, Pub. L. 102-321 (42 U.S.C. Section 300x-26);
23 reports and strategies are to be coordinated with appropriate state
24 governmental entities; ~~and~~

25 (18) regulate, coordinate, and provide training for
26 alcohol awareness courses required under Section 106.115,
27 Alcoholic Beverage Code, and may charge a fee for an activity

1 performed by the commission under this subdivision; and
2 (19) contract with the Texas Department of
3 Transportation for the Texas Department of Transportation to assume
4 all responsibilities of the commission relating to the provision of
5 transportation services for clients of eligible programs.

6 SECTION 2.134. Section 533.012, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 533.012. COOPERATION OF STATE AGENCIES. (a) At the
9 department's request, all state departments, agencies, officers,
10 and employees shall cooperate with the department in activities
11 that are consistent with their functions.

12 (b) The department shall contract with the Texas Department
13 of Transportation for the Texas Department of Transportation to
14 assume all responsibilities of the department relating to the
15 provision of transportation services for clients of eligible
16 programs.

17 SECTION 2.135. (a) Section 1551.159, Insurance Code, as
18 effective June 1, 2003, is amended by amending Subsection (a) and
19 adding Subsection (h) to read as follows:

20 (a) Subject to any applicable limit in the General
21 Appropriations Act, the board of trustees shall use money
22 appropriated for employer contributions to fund 80 percent of the
23 cost of basic coverage for a child who:

24 (1) is a dependent of an employee;

25 (2) would be eligible, if the child were not the
26 dependent of the employee, for benefits under the state child
27 health plan established under Chapter 62, Health and Safety Code

1 ~~[the program established by the state to implement Title XXI,~~
2 ~~Social Security Act (42 U.S.C. Section 1397aa et seq.), as~~
3 ~~amended]; and~~

4 (3) is not eligible for the state Medicaid program.

5 (h) A child enrolled in dependent child coverage under this
6 section is subject to the same requirements and restrictions
7 relating to income eligibility, continuous coverage, and
8 enrollment, including applicable waiting periods, as a child
9 enrolled in the state child health plan under Chapter 62, Health and
10 Safety Code.

11 (b) The change in law made by this section applies only to a
12 child enrolled in dependent child coverage under the state
13 employees group benefits program on and after September 1, 2003.

14 SECTION 2.136. Section 31.03, Penal Code, is amended by
15 adding Subsection (j) to read as follows:

16 (j) With the consent of the appropriate local county or
17 district attorney, the attorney general has concurrent
18 jurisdiction with that consenting local prosecutor to prosecute an
19 offense under this section that involves the state Medicaid
20 program.

21 SECTION 2.137. Section 32.45, Penal Code, is amended by
22 adding Subsection (d) to read as follows:

23 (d) With the consent of the appropriate local county or
24 district attorney, the attorney general has concurrent
25 jurisdiction with that consenting local prosecutor to prosecute an
26 offense under this section that involves the state Medicaid
27 program.

1 SECTION 2.138. Section 32.46, Penal Code, is amended by
2 adding Subsection (e) to read as follows:

3 (e) With the consent of the appropriate local county or
4 district attorney, the attorney general has concurrent
5 jurisdiction with that consenting local prosecutor to prosecute an
6 offense under this section that involves the state Medicaid
7 program.

8 SECTION 2.139. Section 37.10, Penal Code, is amended by
9 adding Subsection (i) to read as follows:

10 (i) With the consent of the appropriate local county or
11 district attorney, the attorney general has concurrent
12 jurisdiction with that consenting local prosecutor to prosecute an
13 offense under this section that involves the state Medicaid
14 program.

15 SECTION 2.140. Section 57.046, Utilities Code, is amended
16 by adding Subsection (c) to read as follows:

17 (c) In addition to the purposes for which the qualifying
18 entities account may be used, the board may use money in the account
19 to award grants to the Health and Human Services Commission for
20 technology initiatives of the commission.

21 SECTION 2.141. Articles 59.01(1) and (2), Code of Criminal
22 Procedure, are amended to read as follows:

23 (1) "Attorney representing the state" means the
24 prosecutor with felony jurisdiction in the county in which a
25 forfeiture proceeding is held under this chapter or, in a
26 proceeding for forfeiture of contraband as defined under
27 Subdivision (2)(B)(iv) of this article, the city attorney of a

1 municipality if the property is seized in that municipality by a
2 peace officer employed by that municipality and the governing body
3 of the municipality has approved procedures for the city attorney
4 acting in a forfeiture proceeding. In a proceeding for forfeiture
5 of contraband as defined under Subdivision (2)(B)(vii) of this
6 article, the term includes the attorney general.

7 (2) "Contraband" means property of any nature,
8 including real, personal, tangible, or intangible, that is:

9 (A) used in the commission of:

10 (i) any first or second degree felony under
11 the Penal Code;

12 (ii) any felony under Section 15.031(b),
13 21.11, 38.04, 43.25, or 43.26 or Chapter 29, 30, 31, 32, 33, 33A, or
14 35, Penal Code; or

15 (iii) any felony under The Securities Act
16 (Article 581-1 et seq., Vernon's Texas Civil Statutes);

17 (B) used or intended to be used in the commission
18 of:

19 (i) any felony under Chapter 481, Health
20 and Safety Code (Texas Controlled Substances Act);

21 (ii) any felony under Chapter 483, Health
22 and Safety Code;

23 (iii) a felony under Chapter 153, Finance
24 Code;

25 (iv) any felony under Chapter 34, Penal
26 Code;

27 (v) a Class A misdemeanor under Subchapter

1 B, Chapter 365, Health and Safety Code, if the defendant has been
2 previously convicted twice of an offense under that subchapter;
3 [~~or~~]

4 (vi) any felony under Chapter 152, Finance
5 Code; or

6 (vii) any felony under Chapter 31, 32, or
7 37, Penal Code, that involves the state Medicaid program, or any
8 felony under Chapter 36, Human Resources Code;

9 (C) the proceeds gained from the commission of a
10 felony listed in Paragraph (A) or (B) of this subdivision or a crime
11 of violence; or

12 (D) acquired with proceeds gained from the
13 commission of a felony listed in Paragraph (A) or (B) of this
14 subdivision or a crime of violence.

15 SECTION 2.142. Article 59.06, Code of Criminal Procedure,
16 is amended by adding Subsection (p) to read as follows:

17 (p) Notwithstanding Subsection (a), and to the extent
18 necessary to protect the commission's ability to recover amounts
19 wrongfully obtained by the owner of the property and associated
20 damages and penalties to which the commission may otherwise be
21 entitled by law, the attorney representing the state shall transfer
22 to the Health and Human Services Commission all forfeited property
23 defined as contraband under Article 59.01(2)(B)(vii). If the
24 forfeited property consists of property other than money or
25 negotiable instruments, the attorney representing the state may, if
26 approved by the commission, sell the property and deliver to the
27 commission the proceeds from the sale, minus costs attributable to

1 the sale. The sale must be conducted in a manner that is reasonably
2 expected to result in receiving the fair market value for the
3 property.

4 SECTION 2.143. STUDY. (a) The Medicaid and Public
5 Assistance Fraud Oversight Task Force, with the participation of
6 the Texas Department of Health's bureau of vital statistics and
7 other agencies designated by the comptroller, shall study
8 procedures and documentation requirements used by the state in
9 confirming a person's identity for purposes of establishing
10 entitlement to Medicaid and other benefits provided through health
11 and human services programs.

12 (b) Not later than December 1, 2004, the Medicaid and Public
13 Assistance Fraud Oversight Task Force, with assistance from the
14 agencies participating in the study required by Subsection (a) of
15 this section, shall submit a report to the legislature containing
16 recommendations for improvements in the procedures and
17 documentation requirements described by Subsection (a) of this
18 section that would strengthen the state's ability to prevent fraud
19 and abuse in the Medicaid program and other health and human
20 services programs.

21 SECTION 2.144. STUDY: REVENUE ENHANCEMENT RELATED TO
22 MEDICAID VENDOR DRUG REBATE. (a) A task force is created to study
23 the prescription drug rebate system established and operated under
24 the medical assistance program and other related programs.

25 (b) The commission shall establish a task force, composed of
26 appropriate legislators, state agency personnel, and other
27 appropriate personnel to study the prescription drug rebate system

1 established and operated under the medical assistance program and
2 other related programs.

3 (c) The study must include:

4 (1) a background on the development and operation of
5 the federal vendor drug rebate and state supplemental rebate
6 system;

7 (2) a description of current and historical state
8 efforts to develop and implement alternatives to the federal vendor
9 drug rebate system;

10 (3) a review of any relevant case law or legal
11 precedents related to the vendor drug rebate system;

12 (4) an analysis of state implementation, including
13 attempted implementation, of an exemption of federal requirements,
14 including the federal Social Security Act, related to vendor drug
15 rebates, prior authorization provisions, and formulary; and

16 (5) feasibility of developing either an alternative
17 rebate system or other mechanism to enhance the state's share of
18 prescription drug rebates.

19 (d) The study must be completed by December 1, 2004, and
20 presented to the governor and the presiding officers of each house,
21 the House Committee on Appropriations, and the Senate Finance
22 Committee.

23 SECTION 2.145. LEGISLATIVE INTENT REGARDING PROVISION OF
24 HEALTH AND HUMAN SERVICE TRANSPORTATION THROUGH THE TEXAS
25 DEPARTMENT OF TRANSPORTATION. It is the intent of the legislature
26 that the provision of health and human service transportation
27 through the Texas Department of Transportation will improve the

1 delivery of transportation services to clients and enhance their
2 access to transportation services. Furthermore, it is the intent
3 of the legislature that these services be provided in a manner that
4 will generate efficiencies in operation, control costs, and permit
5 increased levels of service. The Texas Department of
6 Transportation shall encourage cooperation and coordination among
7 transportation providers, regional transportation brokers, and
8 actual and potential clients in an effort to achieve the stated
9 legislative goals.

10 SECTION 2.146. (a) A change in law made by this article to
11 Section 242.047, Health and Safety Code, that requires the Texas
12 Department of Health to accept an annual accreditation review from
13 the Joint Commission on Accreditation of Health Organizations for a
14 nursing home in satisfaction of the requirements for certification:

15 (1) applies only to a nursing home that participates
16 in the medical assistance program under Chapter 32, Human Resources
17 Code, before September 1, 2003; and

18 (2) may be implemented only as a pilot program.

19 (b) A pilot program operated in accordance with this section
20 expires September 1, 2007.

21 SECTION 2.147. (a) The Texas State Board of Pharmacy shall
22 adopt the rules required by Section 562.1085, Occupations Code, as
23 added by this Act, not later than December 1, 2003.

24 (b) Notwithstanding Section 562.1085, Occupations Code, as
25 added by this Act, a pharmacy is not required to accept unused drugs
26 from a health care facility before January 1, 2004.

27 SECTION 2.148. The Health and Human Services Commission

1 shall adopt the rules required by Sections 32.028(i) and (j), Human
2 Resources Code, as added by this Act, not later than December 1,
3 2003.

4 SECTION 2.149. TRANSFER OF MEDICAL TRANSPORTATION PROGRAM.

5 (a) On September 1, 2004, or on an earlier date specified by the
6 Health and Human Services Commission:

7 (1) all powers, duties, functions, activities,
8 obligations, rights, contracts, records, property, and
9 appropriations or other money of the Texas Department of Health
10 that are determined by the commissioner of health and human
11 services to be essential to the administration of the medical
12 transportation program are transferred to the Health and Human
13 Services Commission;

14 (2) a rule or form adopted by the Texas Department of
15 Health that relates to the medical transportation program is a rule
16 or form of the Health and Human Services Commission and remains in
17 effect until altered by the commission;

18 (3) a reference in law or an administrative rule to the
19 Texas Department of Health that relates to the medical
20 transportation program means the Health and Human Services
21 Commission;

22 (4) a license, permit, or certification in effect that
23 was issued by the Texas Department of Health and that relates to the
24 medical transportation program is continued in effect as a license,
25 permit, or certification of the Health and Human Services
26 Commission; and

27 (5) a complaint, investigation, or other proceeding

1 pending before the Texas Department of Health that relates to the
2 medical transportation program is transferred without change in
3 status to the Health and Human Services Commission.

4 (b) The Health and Human Services Commission shall take all
5 action necessary to provide for the transfer of the medical
6 transportation program to the commission as soon as possible after
7 the effective date of this section but not later than September 1,
8 2004.

9 SECTION 2.150. CONSOLIDATION OF CERTAIN DIVISIONS AND
10 ACTIVITIES. (a) Not later than March 1, 2004, the Health and Human
11 Services Commission shall consolidate the Medicaid post-payment
12 third-party recovery divisions or activities of the Texas
13 Department of Human Services, the Medicaid vendor drug program, and
14 the state's Medicaid claims administrator with the Medicaid
15 post-payment third-party recovery function.

16 (b) The Health and Human Services Commission shall use the
17 commission's Medicaid post-payment third-party recovery contractor
18 for the consolidated division.

19 (c) The Health and Human Services Commission shall update
20 its computer system to facilitate the consolidation.

21 SECTION 2.151. ABOLITION OF ADVISORY COMMITTEES. (a)
22 Notwithstanding any other provision of state law, each advisory
23 committee, as that term is defined by Section 2110.001, Government
24 Code, created before the effective date of this section that
25 advises the Health and Human Services Commission or a health and
26 human services agency is abolished on the effective date of this
27 section unless the committee:

1 (1) is required by federal law; or

2 (2) advises an agency with respect to certification or
3 licensing programs, the regulation of entities providing health and
4 human services, or the implementation of a duty prescribed under
5 this article, as determined by the commissioner of health and human
6 services.

7 (b) The commissioner of health and human services shall
8 certify which advisory committees are exempt from abolition under
9 Subsection (a) of this section and shall publish that certification
10 in the Texas Register.

11 (c) An advisory committee that is created on or after the
12 effective date of this section or that is exempt under Subsection
13 (b) of this section from abolition shall make recommendations to
14 the executive director of the health and human services agency the
15 advisory committee was created to advise and to the commissioner of
16 health and human services to assist with eliminating or minimizing
17 overlapping functions or required duties between the health and
18 human services agencies or between those agencies and the Health
19 and Human Services Commission.

20 (d) This section does not apply to the telemedicine advisory
21 committee established under Section 531.02172, Government Code, as
22 added by Chapters 661 and 959, Acts of the 77th Legislature, Regular
23 Session, 2001, and that committee continues in existence.

24 SECTION 2.152. Community mental health centers may
25 coordinate with local community health centers, federally
26 qualified health centers (FQHC), and/or disproportionate share
27 hospitals for the purpose of accessing local, state, and federal

1 programs that could result in lower cost pharmaceuticals. In
2 particular, community mental health centers may form a referral
3 relationship with community health centers, federally qualified
4 health centers (FQHC), disproportionate share hospitals, and/or
5 other eligible entities for the purpose of obtaining federal 340B
6 pricing for pharmaceuticals. Community mental health centers may
7 form a referral relationship with community health centers,
8 federally qualified health centers (FQHC), disproportionate share
9 hospitals, and/or other eligible entities for the purpose of taking
10 advantage of 340B or other lower cost drug programs regardless of
11 any statewide preferred drug list or vendor drug program which may
12 be adopted.

13 SECTION 2.153. CHILD HEALTH PLAN PROGRAM WAIVER. Not later
14 than October 1, 2003, the Health and Human Services Commission
15 shall request and actively pursue any necessary waivers from a
16 federal agency or any other appropriate entity to allow families
17 enrolled in the state Medicaid program to opt into the child health
18 plan program under Chapter 62, Health and Safety Code, while
19 retaining the appropriate federal match rate, the state's
20 entitlement to federal matching funds, and the child's entitlement
21 to Medicaid coverage. The waiver shall, on at least an annual
22 basis, allow families eligible for Medicaid who have previously
23 opted to enroll their children in the child health plan program
24 under Chapter 62, Health and Safety Code, to return those children
25 to the Medicaid program.

26 SECTION 2.154. STATE CHILD HEALTH PLAN AMENDMENT. (a) In
27 this section, "group plan" means the group health benefit plan

1 under the health insurance premium payment reimbursement program
2 established under Section 62.059, Health and Safety Code.

3 (b) As soon as possible after the effective date of this
4 section, the Health and Human Services Commission shall submit for
5 approval a plan amendment relating to the state child health plan
6 under 42 U.S.C. Section 1397ff, as amended, as necessary to include
7 the employers' share of required premiums for coverage of
8 individuals enrolled in the group plan as expenditures for the
9 purpose of determining the state children's health insurance
10 expenditures, as that term is defined by 42 U.S.C. Section
11 1397ee(d)(2)(B), as amended, for federal match funding for the
12 child health plan program provided under Chapter 62, Health and
13 Safety Code.

14 SECTION 2.155. STATE MEDICAID PLAN AMENDMENT. (a) In this
15 section, "group plan" means the group health benefit plan under the
16 health insurance premium payment reimbursement program for
17 Medicaid recipients established under Section 32.0422, Human
18 Resources Code.

19 (b) As soon as possible after the effective date of this
20 section, the Health and Human Services Commission shall submit an
21 amendment to the state Medicaid plan as necessary to allow this
22 state to include the employers' share of required premiums for
23 coverage of individuals enrolled in the group plan as expenditures
24 for the purpose of determining this state's Medicaid program
25 expenditures for federal match funding for the state Medicaid
26 program.

27 SECTION 2.156. REPEAL. (a) The following are repealed:

1 (1) Sections 62.055(b) and (c), 62.056, 62.057,
2 142.006(d), (e), and (f), 142.009(i), 142.0176, 242.0372,
3 252.206(d), and 252.207(b), Health and Safety Code; and

4 (2) Sections 32.027(b) and (e), Human Resources Code.

5 (b) An advisory committee established under Section 62.057,
6 Health and Safety Code, is abolished on the effective date of this
7 section.

8 SECTION 2.157. In the event of a conflict between a
9 provision of this Act and another Act passed by the 78th
10 Legislature, Regular Session, 2003, that becomes law, this Act
11 prevails and controls regardless of the relative dates of
12 enactment.

13 SECTION 2.158. FEDERAL AUTHORIZATION OR WAIVER. If before
14 implementing any provision of this Act a state agency determines
15 that a waiver or authorization from a federal agency is necessary
16 for implementation of that provision, the agency affected by the
17 provision shall request the waiver or authorization and may delay
18 implementing that provision until the waiver or authorization is
19 granted.

20 SECTION 2.159. Any funds that are used by the Texas
21 Department of Transportation to implement the transportation
22 services provided in Sections 2.127, 2.128, 2.129, 2.130, 2.131,
23 2.132, 2.133, and 2.134 of this Act shall be accounted for and
24 budgeted separately from other funds appropriated to the Texas
25 Department of Transportation for any other public transportation
26 program or budget strategy.

27 SECTION 2.160. Section 38.001, Education Code, is amended

1 by amending Subsection (c) and adding Subsections (c-1) and (f) to
2 read as follows:

3 (c) Immunization is not required for a person's admission to
4 any elementary or secondary school if the person applying for
5 admission:

6 (1) submits to the admitting official:

7 (A) an affidavit or a certificate signed by a
8 physician who is duly registered and licensed to practice medicine
9 in the United States, in which it is stated that, in the physician's
10 opinion, the immunization required poses a significant risk [~~would~~
11 ~~be injurious~~] to the health and well-being of the applicant or any
12 member of the applicant's family or household; or

13 (B) an affidavit signed by the applicant or, if a
14 minor, by the applicant's parent or guardian stating that the
15 applicant declines immunization for reasons of conscience,
16 including a religious belief [~~conflicts with the tenets and~~
17 ~~practice of a recognized church or religious denomination of which~~
18 ~~the applicant is an adherent or member, except that this exemption~~
19 ~~does not apply in times of emergency or epidemic declared by the~~
20 ~~commissioner of public health~~]; or

21 (2) is a member of the armed forces of the United
22 States and is on active duty.

23 (c-1) An affidavit submitted under Section (c)(1)(B) must
24 be on a form described by Section 161.0041, Health and Safety Code,
25 and must be submitted to the admitting official not later than the
26 90th day after the date the affidavit is notarized.

27 (f) A person who has not received the immunizations required

1 by this section for reasons of conscience, including because of the
2 person's religious beliefs, may be excluded from school in times of
3 emergency or epidemic declared by the commissioner of public
4 health.

5 SECTION 2.161. Section 51.933, Education Code, is amended
6 by amending Subsection (d) and adding Subsection (d-1) to read as
7 follows:

8 (d) No form of immunization is required for a person's
9 admission to an institution of higher education if the person
10 applying for admission:

11 (1) submits to the admitting official:

12 (A) an affidavit or a certificate signed by a
13 physician who is duly registered and licensed to practice medicine
14 within the United States in which it is stated that, in the
15 physician's opinion, the immunization required poses a significant
16 risk [~~would be injurious~~] to the health and well-being of the
17 applicant or any member of the applicant's family or household; or

18 (B) an affidavit signed by the applicant or, if a
19 minor, by the applicant's parent or guardian stating that the
20 applicant declines immunization for reasons of conscience,
21 including a religious belief [~~conflicts with the tenets and~~
22 ~~practice of a recognized church or religious denomination of which~~
23 ~~the applicant is an adherent or member~~]; or

24 (2) is a member of the armed forces of the United
25 States and is on active duty.

26 (d-1) An affidavit submitted under Section (d)(1)(B) must
27 be on a form described by Section 161.0041, Health and Safety Code,

1 and must be submitted to the admitting official not later than the
2 90th day after the date the affidavit is notarized.

3 SECTION 2.162. Section 161.004(d), Health and Safety Code,
4 is amended to read as follows:

5 (d) A child is exempt from an immunization required by this
6 section if:

7 (1) [~~immunization conflicts with the tenets of an~~
8 ~~organized religion to which~~] a parent, managing conservator, or
9 guardian states that the immunization is being declined for reasons
10 of conscience, including a religious belief [belongs]; or

11 (2) the immunization is medically contraindicated
12 based on the opinion of [~~an examination of the child by~~] a physician
13 licensed by any state in the United States who has examined the
14 child.

15 SECTION 2.163. Subchapter A, Chapter 161, Health and Safety
16 Code, is amended by adding Section 161.0041 to read as follows:

17 Sec. 161.0041. IMMUNIZATION EXEMPTION AFFIDAVIT FORM. (a)
18 A person claiming an exemption from a required immunization based
19 on reasons of conscience, including a religious belief, under
20 Section 161.004 of this code, Section 38.001 or 51.933, Education
21 Code, or Section 42.043, Human Resources Code, must complete an
22 affidavit on a form provided by the department stating the reason
23 for the exemption.

24 (b) The affidavit must be signed by the person claiming the
25 exemption or, if the person is a minor, the person's parent,
26 managing conservator, or guardian, and the affidavit must be
27 notarized.

1 (c) A person claiming an exemption from a required
2 immunization under this section may only obtain the affidavit form
3 by submitting a written request for the affidavit form to the
4 department.

5 (d) The department shall develop a blank affidavit form that
6 contains a seal or other security device to prevent reproduction of
7 the form. The affidavit form shall contain a statement indicating
8 that the person or, if a minor, the person's parent, managing
9 conservator, or guardian understands the benefits and risks of
10 immunizations and the benefits and risks of not being immunized.

11 (e) The department shall maintain a record of the total
12 number of affidavit forms sent out each year and shall report that
13 information to the legislature each year. The department may not
14 maintain a record of the names of individuals who request an
15 affidavit under this section.

16 SECTION 2.164. Section 42.043, Human Resources Code, is
17 amended by amending Subsection (d) and adding Subsection (d-1) to
18 read as follows:

19 (d) No immunization may be required for admission to a
20 facility regulated under this chapter if a person applying for a
21 child's admission submits one of the following affidavits:

22 (1) an affidavit signed by a licensed physician
23 stating that the immunization poses a significant risk [~~would be~~
24 ~~injurious~~] to the health and well-being of the child or a member of
25 the child's family or household; or

26 (2) an affidavit signed by the child's parent or
27 guardian stating that the applicant declines immunization for

1 reasons of conscience, including a religious belief [~~conflicts with~~
2 ~~the tenets and practices of a recognized religious organization of~~
3 ~~which the applicant is an adherent or a member~~].

4 (d-1) An affidavit submitted under Section (d)(2) must be on
5 a form described by Section 161.0041, Health and Safety Code, and
6 must be submitted not later than the 90th day after the date the
7 affidavit is notarized.

8 SECTION 2.165. (a) Chapter 51, Government Code, is amended
9 by adding Subchapter M to read as follows:

10 SUBCHAPTER M. ADDITIONAL FILING FEE FOR FAMILY PROTECTION

11 Sec. 51.961. FAMILY PROTECTION FEE. (a) The commissioners
12 court of a county may adopt a family protection fee in an amount not
13 to exceed \$15.

14 (b) Except as provided by Subsection (c), the district clerk
15 or county clerk shall collect the family protection fee at the time
16 a suit for dissolution of a marriage under Chapter 6, Family Code,
17 is filed. The fee is in addition to any other fee collected by the
18 district clerk or county clerk.

19 (c) The clerk may not collect a fee under this section from a
20 person who is protected by an order issued under:

21 (1) Subtitle B, Title 4, Family Code; or

22 (2) Article 17.292, Code of Criminal Procedure.

23 (d) The clerk shall pay a fee collected under this section
24 to the appropriate officer of the county in which the suit is filed
25 for deposit in the county treasury to the credit of the family
26 protection account. The account may be used by the commissioners
27 court of the county only to fund a service provider located in that

1 county or an adjacent county. The commissioners court may provide
 2 funding to a nonprofit organization that provides services
 3 described by Subsection (e).

4 (e) A service provider who receives funds under Subsection
 5 (d) may provide family violence prevention, intervention, mental
 6 health, counseling, legal, and marriage preservation services to
 7 families that are at risk of experiencing or that have experienced
 8 family violence or the abuse or neglect of a child.

9 (f) In this section, "family violence" has the meaning
 10 assigned by Section 71.004, Family Code.

11 (b) Subchapter M, Chapter 51, Government Code, as added by
 12 this section, applies only to a filing fee collected for a suit for
 13 the dissolution of a marriage under Chapter 6, Family Code, on or
 14 after the effective date of this section. A filing fee collected
 15 for a suit for the dissolution of a marriage under Chapter 6, Family
 16 Code, before the effective date of this section is governed by the
 17 law as it existed immediately before the effective date of this
 18 section, and that law is continued in effect for that purpose.

19 SECTION 2.166. (a) Chapter 531, Government Code, is
 20 amended by adding Subchapter L to read as follows:

21 SUBCHAPTER L. PROVISION OF SERVICES FOR CERTAIN CHILDREN

22 WITH MULTIAGENCY NEEDS

23 Sec. 531.421. DEFINITIONS. In this subchapter:

24 (1) "Children with severe emotional disturbances"
 25 includes:

26 (A) children who are at risk of incarceration or
 27 placement in a residential mental health facility;

1 (B) children for whom a court may appoint the
2 Department of Protective and Regulatory Services as managing
3 conservator;

4 (C) children who are students in a special
5 education program under Subchapter A, Chapter 29, Education Code;
6 and

7 (D) children who have a substance abuse disorder
8 or a developmental disability.

9 (2) "Community resource coordination group" means a
10 coordination group established under a memorandum of understanding
11 adopted under Section 531.055, as added by Chapter 114, Acts of the
12 77th Legislature, Regular Session, 2001.

13 (3) "Consortium" means the consortium that oversees
14 the Texas Integrated Funding Initiative under Subchapter G, Chapter
15 531, as added by Chapter 446, Acts of the 76th Legislature, Regular
16 Session, 1999.

17 (4) "Systems of care services" means a comprehensive
18 state system of mental health services and other necessary and
19 related services that is organized as a coordinated network to meet
20 the multiple and changing needs of children with severe emotional
21 disturbances and their families.

22 Sec. 531.422. EVALUATIONS BY COMMUNITY RESOURCE
23 COORDINATION GROUPS. (a) Each community resource coordination
24 group shall evaluate the provision of systems of care services in
25 the community that the group serves. Each evaluation must:

26 (1) describe and prioritize services needed by
27 children with severe emotional disturbances in the community;

1 (2) review and assess the systems of care services
2 that are available in the community to meet those needs;

3 (3) assess the integration of the provision of those
4 services; and

5 (4) identify any barriers to the effective provision
6 of those services.

7 (b) Each community resource coordination group shall create
8 a report that includes the evaluation in Subsection (a) and makes
9 related recommendations, including:

10 (1) suggested policy and statutory changes at agencies
11 that provide systems of care services; and

12 (2) recommendations for overcoming barriers to the
13 provision of systems of care services and improving the integration
14 of those services.

15 (c) Each community resource coordination group shall submit
16 the report described by Subsection (b) to the consortium. The
17 consortium shall provide a deadline to each group for submitting
18 the reports. The time frame for completing the reports must be
19 coordinated with any regional reviews by the commission of the
20 delivery of related services.

21 Sec. 531.423. SUMMARY REPORT BY TEXAS INTEGRATED FUNDING
22 INITIATIVE CONSORTIUM. (a) The consortium shall create a summary
23 report based on the evaluations in the reports submitted to the
24 consortium by community resource coordination groups under Section
25 531.422. The consortium's report must include recommendations for
26 policy and statutory changes at each agency that is involved in the
27 provision of systems of care services and the outcome expected from

1 implementing each recommendation.

2 (b) The consortium shall coordinate, where appropriate, the
3 recommendations in the report created under this section with
4 recommendations in the assessment developed under S.B. No. 491,
5 Acts of the 78th Legislature, Regular Session, 2003, and with the
6 continuum of care developed under S.B. No. 490, Acts of the 78th
7 Legislature, Regular Session, 2003.

8 (c) The consortium may include in the report created under
9 this section recommendations for the statewide expansion of sites
10 participating in the Texas Integrated Funding Initiative under
11 Subchapter G, Chapter 531, as added by Chapter 446, Acts of the 76th
12 Legislature, Regular Session, 1999, and the integration of services
13 provided at those sites with services provided by community
14 resource coordination groups.

15 (d) The consortium shall provide a copy of the report
16 created under this section to each agency for which the report makes
17 a recommendation and to other agencies as appropriate.

18 Sec. 531.424. AGENCY IMPLEMENTATION OF RECOMMENDATIONS. An
19 agency described by Section 531.423(a) shall, as appropriate, adopt
20 rules, policy changes, and memoranda of understanding with other
21 agencies to implement the recommendations in the report created
22 under Section 531.423.

23 (b) The consortium that oversees the Texas Integrated
24 Funding Initiative under Subchapter G, Chapter 531, Government
25 Code, as added by Chapter 446, Acts of the 76th Legislature, Regular
26 Session, 1999, in cooperation with the Health and Human Services
27 Commission and the Texas Department of Health, shall report to the

1 governor and the 79th Legislature not later than January 11, 2005,
2 on:

3 (1) recommendations in the report under Section
4 531.423, Government Code, as added by this section, including
5 recommendations for statutory changes; and

6 (2) agency implementation of recommendations under
7 Section 531.424, Government Code, as added by this section.

8 SECTION 2.167. Subdivisions (2) and (7), Section 81.003,
9 Health and Safety Code, are amended to read as follows:

10 (2) "Health authority" means:

11 (A) a physician appointed as a health authority
12 [such] under Chapter 121 (Local Public Health Reorganization Act)
13 or the health authority's designee; or

14 (B) a physician appointed as a regional director
15 under Chapter 121 (Local Public Health Reorganization Act) who
16 performs the duties of a health authority or the regional
17 director's designee.

18 (7) "Public health disaster" means:

19 (A) a declaration by the governor of a state of
20 disaster; and

21 (B) a determination by the commissioner that
22 there exists an immediate threat from a communicable disease that:

23 (i) poses a high risk of death or serious
24 long-term disability to a large number of people; and

25 (ii) creates a substantial risk of public
26 exposure because of the disease's high level of contagion or the
27 method by which the disease is transmitted [~~"Regional director"~~]

1 ~~means a physician appointed as such under Chapter 121 (Local Public~~
2 ~~Health Reorganization Act)].~~

3 SECTION 2.168. Section 81.004, Health and Safety Code, is
4 amended by adding Subsection (d) to read as follows:

5 (d) A designee of the commissioner may exercise a power
6 granted to or perform a duty imposed on the commissioner under this
7 chapter except as otherwise required by law.

8 SECTION 2.169. Subsection (d), Section 81.023, Health and
9 Safety Code, is transferred to Subchapter A, Chapter 81, Health and
10 Safety Code, redesignated as Section 81.011, Health and Safety
11 Code, and amended to read as follows:

12 Sec. 81.011. REQUEST FOR INFORMATION. [~~d~~] In times of
13 emergency or epidemic declared by the commissioner, the department
14 [~~board~~] is authorized to request information pertaining to names,
15 dates of birth, and most recent addresses of individuals from the
16 driver's license records of the Department of Public Safety for the
17 purpose of notification to individuals of the need to receive
18 certain immunizations or diagnostic, evaluation, or treatment
19 services for suspected communicable diseases.

20 SECTION 2.170. Section 81.041, Health and Safety Code, is
21 amended by adding Subsection (f) to read as follows:

22 (f) In a public health disaster, the commissioner may
23 require reports of communicable diseases or other health conditions
24 from providers without board rule or action. The commissioner
25 shall issue appropriate instructions relating to complying with the
26 reporting requirements of this section.

27 SECTION 2.171. Subsection (a), Section 81.042, Health and

1 Safety Code, is amended to read as follows:

2 (a) A report under Subsection (b), (c), or (d) shall be made
3 to the local health authority [~~or, if there is no local health~~
4 ~~authority, the regional director~~].

5 SECTION 2.172. Section 81.043, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 81.043. RECORDS AND REPORTS OF HEALTH AUTHORITY [~~AND~~
8 ~~REGIONAL DIRECTOR~~]. (a) Each health authority [~~or regional~~
9 ~~director~~] shall keep a record of each case of a reportable disease
10 that is reported to the authority [~~or director~~].

11 (b) A health authority [~~or regional director~~] shall report
12 reportable diseases to the department's central office at least as
13 frequently as the interval set by board rule.

14 SECTION 2.173. Section 81.046, Health and Safety Code, is
15 amended by amending Subsection (b) and adding Subsection (f) to
16 read as follows:

17 (b) Reports, records, and information relating to cases or
18 suspected cases of diseases or health conditions are not public
19 information under Chapter 552, Government Code, and may not be
20 released or made public on subpoena or otherwise except as provided
21 by Subsections (c), [~~and~~] (d), and (f).

22 (f) Reports, records, and information relating to cases or
23 suspected cases of diseases or health conditions may be released to
24 the extent necessary during a public health disaster to law
25 enforcement personnel solely for the purpose of protecting the
26 health or life of the person identified in the report, record, or
27 information. Only the minimum necessary information may be

1 released under this subsection, as determined by the health
2 authority or the department.

3 SECTION 2.174. Section 81.064, Health and Safety Code, is
4 amended by amending Subsection (a) and adding Subsection (c) to
5 read as follows:

6 (a) The department or [~~commissioner, the commissioner's~~
7 ~~designee,~~] a health authority [~~, or a health authority's designee~~]
8 may enter at reasonable times and inspect within reasonable limits
9 a public place in the performance of that person's duty to prevent
10 or control the entry into or spread in this state of communicable
11 disease by enforcing this chapter or the rules of the board adopted
12 under this chapter.

13 (c) Evidence gathered during an inspection by the
14 department or health authority under this section may not be used in
15 a criminal proceeding other than a proceeding to assess a criminal
16 penalty under this chapter.

17 SECTION 2.175. Section 81.065, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 81.065. RIGHT OF ENTRY. (a) For an investigation or
20 inspection, the commissioner, an employee of the department, or a
21 health authority has the right of entry on land or in a building,
22 vehicle, watercraft, or aircraft and the right of access to an
23 individual, animal, or object that is in isolation, detention,
24 restriction, or quarantine instituted by the commissioner, an
25 employee of the department, or a health authority or instituted
26 voluntarily on instructions of a private physician.

27 (b) Evidence gathered during an entry by the commissioner,

1 department, or health authority under this section may not be used
2 in a criminal proceeding other than a proceeding to assess a
3 criminal penalty under this chapter.

4 SECTION 2.176. Subsection (a), Section 81.066, Health and
5 Safety Code, is amended to read as follows:

6 (a) A person commits an offense if the person knowingly
7 conceals or attempts to conceal from the department [~~board~~], a
8 health authority, or a peace officer, during the course of an
9 investigation under this chapter, the fact that:

10 (1) the person has, has been exposed to, or is the
11 carrier of a communicable disease that is a threat to the public
12 health; or

13 (2) a minor child or incompetent adult of whom the
14 person is a parent, managing conservator, or guardian has, has been
15 exposed to, or is the carrier of a communicable disease that is a
16 threat to the public health.

17 SECTION 2.177. Subsection (a), Section 81.067, Health and
18 Safety Code, is amended to read as follows:

19 (a) A person commits an offense if the person knowingly
20 conceals, removes, or disposes of an infected or contaminated
21 animal, object, vehicle, watercraft, or aircraft that is the
22 subject of an investigation under this chapter by the department
23 [~~board~~], a health authority, or a peace officer.

24 SECTION 2.178. Section 81.068, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 81.068. REFUSING ENTRY OR INSPECTION; CRIMINAL
27 PENALTY. (a) A person commits an offense if the person knowingly

1 refuses or attempts to refuse entry to the department [~~board~~], a
2 health authority, or a peace officer on presentation of a valid
3 search warrant to investigate, inspect, or take samples on premises
4 controlled by the person or by an agent of the person acting on the
5 person's instruction.

6 (b) A person commits an offense if the person knowingly
7 refuses or attempts to refuse inspection under Section 81.064 or
8 entry or access under Section 81.065.

9 (c) An offense under this section is a Class A misdemeanor.

10 SECTION 2.179. Section 81.082, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 81.082. ADMINISTRATION OF CONTROL MEASURES. (a) A
13 health authority has supervisory authority and control over the
14 administration of communicable disease control measures in the
15 health authority's jurisdiction unless specifically preempted by
16 the department [~~board~~]. Control measures imposed by a health
17 authority must be consistent with, and at least as stringent as, the
18 control measure standards in rules adopted by the board.

19 (b) A communicable disease control measure imposed by a
20 health authority in the health authority's jurisdiction may be
21 amended, revised, or revoked by the department [~~board~~] if the
22 department [~~board~~] finds that the modification is necessary or
23 desirable in the administration of a regional or statewide public
24 health program or policy. A control measure imposed by the
25 department may not be modified or discontinued until the department
26 authorizes the action.

27 (c) The control measures may be imposed on an individual,

1 animal, place, or object, as appropriate.

2 (d) A declaration of a public health disaster may continue
3 for not more than 30 days. A public health disaster may be renewed
4 one time by the commissioner for an additional 30 days.

5 (e) The governor may terminate a declaration of a public
6 health disaster at any time.

7 (f) In this section, "control measures" includes:

- 8 (1) immunization;
- 9 (2) detention;
- 10 (3) restriction;
- 11 (4) disinfection;
- 12 (5) decontamination;
- 13 (6) isolation;
- 14 (7) quarantine;
- 15 (8) disinfestation;
- 16 (9) chemoprophylaxis;
- 17 (10) preventive therapy;
- 18 (11) prevention; and
- 19 (12) education.

20 SECTION 2.180. Subsection (e), Section 81.083, Health and
21 Safety Code, is amended to read as follows:

22 (e) An individual may be subject to court orders under
23 Subchapter G if the individual is infected or is reasonably
24 suspected of being infected with a communicable disease that
25 presents an immediate threat to the public health and:

- 26 (1) the individual, or the individual's parent, legal
27 guardian, or managing conservator if the individual is a minor,

1 does not comply with the written orders of the department or a
2 health authority under this section; or ~~and~~

3 (2) a public health disaster exists, regardless of
4 whether the department or health authority has issued a written
5 order and the individual has indicated that the individual will not
6 voluntarily comply with control measures ~~[is infected or is~~
7 ~~reasonably suspected of being infected with a communicable disease~~
8 ~~that presents an immediate threat to the public health]. .~~

9 SECTION 2.181. Section 81.084, Health and Safety Code, is
10 amended by amending Subsection (b) and adding Subsections (d-1) and
11 (k) to read as follows:

12 (b) The department or health authority shall send notice of
13 its action by registered or certified mail or by personal delivery
14 to the person who owns or controls the property. If the property is
15 land or a structure or an animal or other property on the land, the
16 department or health authority shall also post the notice on the
17 land and at a place convenient to the public in ~~[on]~~ the county
18 courthouse ~~[door]~~. If the property is infected or contaminated as a
19 result of a public health disaster, the department or health
20 authority is not required to provide notice under this subsection.

21 (d-1) In a public health disaster, the department or health
22 authority by written order may require a person who owns or controls
23 property to impose control measures that are technically feasible
24 to disinfect or decontaminate the property or, if technically
25 feasible control measures are not available, may order the person
26 who owns or controls the property:

27 (1) to destroy the property, other than land, in a

1 manner that disinfects or decontaminates the property to prevent
2 the spread of infection or contamination;

3 (2) if the property is land, to securely fence the
4 perimeter of the land or any part of the land that is infected or
5 contaminated; or

6 (3) to securely seal off an infected or contaminated
7 structure or other property on land to prevent entry into the
8 infected or contaminated area until the department or health
9 authority authorizes entry into the structure or property.

10 (k) In a public health disaster, the department or a health
11 authority may impose additional control measures the department or
12 health authority considers necessary and most appropriate to
13 arrest, control, and eradicate the threat to the public health.

14 SECTION 2.182. Section 81.085, Health and Safety Code, is
15 amended by amending Subsections (a), (b), (c), (e), (f), and (h),
16 and adding Subsection (i) to read as follows:

17 (a) If an outbreak of communicable disease occurs in this
18 state, the commissioner or one or more health authorities may
19 impose an area quarantine coextensive with the area affected. The
20 commissioner may impose an area quarantine, if the commissioner has
21 reasonable cause to believe that individuals or property in the
22 area may be infected or contaminated with a communicable disease,
23 for the period necessary to determine whether an outbreak of
24 communicable disease has occurred. A health authority may impose
25 the quarantine only within the boundaries of the health authority's
26 jurisdiction.

27 (b) A health authority may not impose an area quarantine

1 until the authority consults with [~~and obtains the approval of~~] the
2 department. A health authority that imposes an area quarantine
3 shall give written notice to and shall consult with [~~commissioner~~
4 ~~and of~~] the governing body of each county and municipality in the
5 health authority's jurisdiction that has territory in the affected
6 area as soon as practicable.

7 (c) The department may impose additional disease control
8 measures in a quarantine area that the department considers
9 necessary and most appropriate to arrest, control, and eradicate
10 the threat to the public health. Absent preemptive action by the
11 department [~~board~~] under this chapter or by the governor under
12 Chapter 418, Government Code (Texas Disaster Act of 1975), a health
13 authority may impose in a quarantine area under the authority's
14 jurisdiction additional disease control measures that the health
15 authority considers necessary and most appropriate to arrest,
16 control, and eradicate the threat to the public health.

17 (e) The department or health authority may use all
18 reasonable means of communication to inform persons in the
19 quarantine area of the department's [~~board's~~] or health authority's
20 orders and instructions during the period of area quarantine. The
21 department or health authority shall publish at least once each
22 week during the area quarantine period, in a newspaper of general
23 circulation in the area, a notice of the orders or instructions in
24 force with a brief explanation of their meaning and effect. Notice
25 by publication is sufficient to inform persons in the area of their
26 rights, duties, and obligations under the orders or instructions.

27 (f) The department [~~commissioner~~] or, with the department's

1 ~~[commissioner's]~~ consent, a health authority may terminate an area
2 quarantine.

3 (h) A person commits an offense if the person knowingly
4 fails or refuses to obey a rule, order, or instruction of the
5 department ~~[board]~~ or an order or instruction of a health authority
6 issued under a department ~~[board]~~ rule and published during an area
7 quarantine under this section. An offense under this subsection is
8 a felony of the third degree.

9 (i) On request of the department during a public health
10 disaster, an individual shall disclose the individual's
11 immunization information. If the individual does not have updated
12 or appropriate immunizations, the department may take appropriate
13 action during a quarantine to protect that individual and the
14 public from the communicable disease.

15 SECTION 2.183. Subsections (b) and (i), Section 81.086,
16 Health and Safety Code, are amended to read as follows:

17 (b) If the department or health authority has reasonable
18 cause to believe that a carrier or conveyance has departed from or
19 traveled through an area infected or contaminated with a
20 communicable disease, the department or health authority may order
21 the owner, operator, or authorized agent in control of the carrier
22 or conveyance to:

23 (1) stop the carrier or conveyance at a port of entry
24 or place of first landing or first arrival in this state; and

25 (2) provide ~~[a statement in a form approved by the~~
26 ~~board that includes information required by board rules, including]~~
27 information on passengers and cargo manifests~~[, and]~~ that includes

1 the details of:

2 (A) any illness suspected of being communicable
3 that occurred during the journey;

4 (B) any condition on board the carrier or
5 conveyance during the journey that may lead to the spread of
6 disease; and

7 (C) any control measures imposed on the carrier
8 or conveyance, its passengers or crew, or its cargo or any other
9 object on board during the journey.

10 (i) The department or health authority may require an
11 individual transported by carrier or conveyance who the department
12 or health authority has reasonable cause to believe has been
13 exposed to or is the carrier of a communicable disease to be
14 isolated from other travelers and to disembark with the
15 individual's personal effects and baggage at the first location
16 equipped with adequate investigative and disease control
17 facilities, whether the person is in transit through this state or
18 to an intermediate or ultimate destination in this state. The
19 department or health authority may investigate and, if necessary,
20 isolate or involuntarily hospitalize the individual until the
21 department or health authority approves the discharge as authorized
22 by Section 81.083 [~~81.084~~].

23 SECTION 2.184. Subsection (a), Section 81.088, Health and
24 Safety Code, is amended to read as follows:

25 (a) A person commits an offense if the person knowingly or
26 intentionally:

27 (1) removes, alters, or attempts to remove or alter an

1 object the person knows is a quarantine device, notice, or security
2 item in a manner that diminishes the [~~device's~~] effectiveness of
3 the device, notice, or item; or

4 (2) destroys an object the person knows is a
5 quarantine device, notice, or security item.

6 SECTION 2.185. Subsection (a), Section 81.089, Health and
7 Safety Code, is amended to read as follows:

8 (a) A person commits an offense if, before notifying the
9 department [~~board~~] or health authority at a port of entry or a place
10 of first landing or first arrival in this state, the person
11 knowingly or intentionally:

12 (1) transports or causes to be transported into this
13 state an object the person knows or suspects may be infected or
14 contaminated with a communicable disease that is a threat to the
15 public health;

16 (2) transports or causes to be transported into this
17 state an individual who the person knows has or is the carrier of a
18 communicable disease that is a threat to the public health; or

19 (3) transports or causes to be transported into this
20 state a person, animal, or object in a private or common carrier or
21 a private conveyance that the person knows is or suspects may be
22 infected or contaminated with a communicable disease that is a
23 threat to the public health.

24 SECTION 2.186. Subsection (d), Section 81.151, Health and
25 Safety Code, is amended to read as follows:

26 (d) A copy of written orders made under Section 81.083, if
27 applicable, and a medical evaluation must be filed with the

1 application, except that a copy of the written orders need not be
2 filed with an application for outpatient treatment.

3 SECTION 2.187. Subsection (c), Section 81.152, Health and
4 Safety Code, is amended to read as follows:

5 (c) Any application must contain the following information
6 according to the applicant's information and belief:

7 (1) the person's name and address;

8 (2) the person's county of residence in this state;

9 (3) a statement that the person is infected with or is
10 reasonably suspected of being infected with a communicable disease
11 that presents a threat to public health and that the person meets
12 the criteria of this chapter for court orders for the management of
13 a person with a communicable disease; and

14 (4) a statement, to be included only in an application
15 for inpatient treatment, that the person fails or refuses to comply
16 with written orders of the department or health authority under
17 Section 81.083, if applicable.

18 SECTION 2.188. Subsection (a), Section 81.162, Health and
19 Safety Code, is amended to read as follows:

20 (a) The judge or designated magistrate may issue a
21 protective custody order if the judge or magistrate determines:

22 (1) that the health authority or department has stated
23 its opinion and the detailed basis for its opinion that the person
24 is infected with or is reasonably suspected of being infected with a
25 communicable disease that presents an immediate threat to the
26 public health; and

27 (2) that the person fails or refuses to comply with the

1 written orders of the health authority or the department under
2 Section 81.083, if applicable.

3 SECTION 2.189. Section 161.011, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 161.011. PERMISSION REQUIRED. A person, including an
6 officer or agent of this state or of an instrumentality or political
7 subdivision of this state, may not enter a private residence to
8 conduct a health inspection without first receiving:

9 (1) permission obtained from a lawful adult occupant
10 of the residence; or

11 (2) an authorization to inspect the residence for a
12 specific public health purpose by a magistrate or by an order of a
13 court of competent jurisdiction on a showing of a probable
14 violation of a state health law, a control measure under Chapter 81,
15 or a health ordinance of a political subdivision.

16 SECTION 2.190. Subsection (d), Article 49.10, Code of
17 Criminal Procedure, is amended to read as follows:

18 (d) A justice of the peace may not order a person to perform
19 an autopsy on the body of a deceased person whose death was caused
20 by Asiatic cholera, bubonic plague, typhus fever, or smallpox. A
21 justice of the peace may not order a person to perform an autopsy on
22 the body of a deceased person whose death was caused by a
23 communicable disease during a public health disaster.

24 SECTION 2.191. Sections 10 and 10a, Article 49.25, Code of
25 Criminal Procedure, are amended to read as follows:

26 Sec. 10. DISINTERMENTS AND CREMATIONS. When a body upon
27 which an inquest ought to have been held has been interred, the

1 medical examiner may cause it to be disinterred for the purpose of
2 holding such inquest.

3 Before any body, upon which an inquest is authorized by the
4 provisions of this Article, can be lawfully cremated, an autopsy
5 shall be performed thereon as provided in this Article, or a
6 certificate that no autopsy was necessary shall be furnished by the
7 medical examiner. Before any dead body can be lawfully cremated,
8 the owner or operator of the crematory shall demand and be furnished
9 with a certificate, signed by the medical examiner of the county in
10 which the death occurred showing that an autopsy was performed on
11 said body or that no autopsy thereon was necessary. It shall be the
12 duty of the medical examiner to determine whether or not, from all
13 the circumstances surrounding the death, an autopsy is necessary
14 prior to issuing a certificate under the provisions of this
15 section. No autopsy shall be required by the medical examiner as a
16 prerequisite to cremation in case death is caused by the
17 pestilential diseases of Asiatic cholera, bubonic plague, typhus
18 fever, or smallpox. All certificates furnished to the owner or
19 operator of a crematory by any medical examiner, under the terms of
20 this Article, shall be preserved by such owner or operator of such
21 crematory for a period of two years from the date of the cremation
22 of said body. A medical examiner is not required to perform an
23 autopsy on the body of a deceased person whose death was caused by a
24 communicable disease during a public health disaster.

25 Sec. 10a. The body of a deceased person shall not be
26 cremated within 48 [~~forty-eight~~] hours after the time of death as
27 indicated on the regular death certificate, unless the death

1 certificate indicates death was caused by the pestilential diseases
2 of Asiatic cholera, bubonic plague, typhus fever, or smallpox, or
3 unless the time requirement is waived in writing by the county
4 medical examiner or, in counties not having a county medical
5 examiner, a justice of the peace. In a public health disaster, the
6 commissioner of public health may designate other communicable
7 diseases for which cremation within 48 hours of the time of death is
8 authorized.

9 SECTION 2.192. (a) Section 104.011(a), Health and Safety
10 Code, is amended to read as follows:

11 (a) The statewide health coordinating council is composed
12 of 17 members determined as follows:

13 (1) the commissioner of health and human services or a
14 representative designated by the commissioner;

15 (2) the presiding officer of the Texas Higher
16 Education Coordinating Board or a representative designated by the
17 presiding officer;

18 (3) the presiding officer of the department or a
19 representative designated by the presiding officer;

20 (4) ~~[the presiding officer of the Texas Health Care~~
21 ~~Information Council or a representative designated by the presiding~~
22 ~~officer,~~

23 [~~5~~] the presiding officer of the Texas Department of
24 Mental Health and Mental Retardation or a representative designated
25 by the presiding officer; and

26 (5) [~~6~~] the following members appointed by the
27 governor:

1 (A) three health care professionals from the
 2 allied health, dental, medical, mental health, [~~nursing~~] and
 3 pharmacy professions, no two of whom may be from the same
 4 profession;

5 (B) one registered nurse;

6 (C) two representatives of a university or
 7 health-related institution of higher education;

8 (D) [~~C~~] one representative of a junior or
 9 community college with a nursing program;

10 (E) [~~D~~] one hospital administrator;

11 (F) [~~E~~] one managed care administrator; and

12 (G) [~~F~~] four public members.

13 (b) The changes in law made by this section do not affect the
 14 entitlement of a member serving on the statewide health
 15 coordinating council immediately before the effective date of this
 16 section to continue to carry out the council's functions for the
 17 remainder of the member's term. Any vacancy that occurs after the
 18 effective date of this section shall be filled in a manner that
 19 complies with Section 104.011(a), Health and Safety Code, as
 20 amended by this section.

21 SECTION 2.193. Section 142.001, Health and Safety Code, is
 22 amended by amending Subdivisions (6), (13), and (22) and adding
 23 Subdivision (22-a) to read as follows:

24 (6) "Certified agency" means a home and community
 25 support services agency, or a portion of the agency, that:

26 (A) provides a home health service; and

27 (B) is certified by an official of the Department

1 of Health and Human Services as in compliance with conditions of
2 participation in Title XVIII, Social Security Act (42 U.S.C.
3 Section 1395 et seq.).

4 (13) "Home health service" means the provision of one
5 or more of the following health services required by an individual
6 in a residence or independent living environment:

7 (A) nursing, including blood pressure monitoring
8 and diabetes treatment;

9 (B) physical, occupational, speech, or
10 respiratory therapy;

11 (C) medical social service;

12 (D) intravenous therapy;

13 (E) dialysis;

14 (F) service provided by unlicensed personnel
15 under the delegation or supervision of a licensed health
16 professional;

17 (G) the furnishing of medical equipment and
18 supplies, excluding drugs and medicines; or

19 (H) nutritional counseling.

20 (22) "Personal assistance service" means routine
21 ongoing care or services required by an individual in a residence or
22 independent living environment that enable the individual to engage
23 in the activities of daily living or to perform the physical
24 functions required for independent living, including respite
25 services. The term includes:

26 (A) personal care;

27 (B) health-related services performed under

1 circumstances that are defined as not constituting the practice of
 2 professional nursing by the Board of Nurse Examiners through a
 3 memorandum of understanding with the department in accordance with
 4 Section 142.016; and

5 (C) health-related tasks provided by unlicensed
 6 personnel under the delegation of a registered nurse or that a
 7 registered nurse determines do not require delegation.

8 (22-a) "Personal care" means the provision of one or
 9 more of the following services required by an individual in a
 10 residence or independent living environment:

11 (A) bathing;

12 (B) dressing;

13 (C) grooming;

14 (D) feeding;

15 (E) exercising;

16 (F) toileting;

17 (G) positioning;

18 (H) assisting with self-administered
 19 medications;

20 (I) routine hair and skin care; and

21 (J) transfer or ambulation.

22 SECTION 2.194. Section 142.002, Health and Safety Code, is
 23 amended by adding Subsection (f) to read as follows:

24 (f) A person who is not licensed to provide personal
 25 assistance services under this chapter may not indicate or imply
 26 that the person is licensed to provide personal assistance services
 27 by the use of the words "personal assistance services" or in any

1 other manner.

2 SECTION 2.195. Section 142.0062(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) A home and community support services agency or its
5 employees who are registered nurses or licensed vocational nurses
6 may purchase, store, or transport for the purpose of administering
7 to the agency's employees, home health or hospice patients, or
8 patient family members under physician's standing orders the
9 following dangerous drugs:

10 (1) hepatitis B vaccine;

11 (2) influenza vaccine; [~~and~~]

12 (3) tuberculin purified protein derivative for
13 tuberculosis testing; and

14 (4) pneumococcal polysaccharide vaccine.

15 SECTION 2.196. Sections 142.016(a) and (b), Health and
16 Safety Code, are amended to read as follows:

17 (a) The Board of Nurse Examiners and the department shall
18 adopt a memorandum of understanding governing the circumstances
19 under which the provision of health-related tasks or services do
20 not constitute the practice of professional nursing. The agencies
21 periodically [~~annually~~] shall review and shall renew or modify the
22 memorandum as necessary.

23 (b) The Board of Nurse Examiners and the department shall
24 consult with an advisory committee in developing, modifying, or
25 renewing the memorandum of understanding. The advisory committee
26 shall be appointed by the Board of Nurse Examiners and the
27 department and at a minimum shall include:

1 (1) one representative from the Board of Nurse
2 Examiners and one representative from the department to serve as
3 cochairmen;

4 (2) one representative from the Texas Department of
5 Mental Health and Mental Retardation;

6 (3) [~~one representative from the Texas Department of~~
7 ~~Human Services,~~

8 [~~(4)~~] one representative from the Texas Nurses
9 Association;

10 (4) [~~(5)~~] one representative from the Texas
11 Association for Home Care, Incorporated, or its successor;

12 (5) [~~(6)~~] one representative from the Texas Hospice
13 Organization, Incorporated, or its successor;

14 (6) [~~(7)~~] one representative of the Texas Respite
15 Resource Network or its successor; and

16 (7) [~~(8)~~] two representatives of organizations such
17 as the Personal Assistance Task Force or the Disability Consortium
18 that advocate for clients in community-based settings.

19 SECTION 2.197. Sections 142.018(b) and (c), Health and
20 Safety Code, are amended to read as follows:

21 (b) A home and community support services agency that has
22 cause to believe that a person receiving services from the agency
23 has been abused, exploited, or neglected by an employee of the
24 agency shall report the information to:

25 (1) the department; and

26 (2) the Department of Protective and Regulatory
27 Services or other appropriate state agency as required by Section

1 48.051 [~~Sections 48.036 and 48.082~~], Human Resources Code.

2 (c) This section does not affect the duty or authority of
3 any state agency to conduct an investigation of alleged abuse,
4 exploitation, or neglect as provided by other law. An
5 investigation of alleged abuse, exploitation, or neglect may be
6 conducted without an on-site survey, as appropriate.

7 SECTION 2.198. Section 250.001(3), Health and Safety Code,
8 is amended to read as follows:

9 (3) "Facility" means:

10 (A) a nursing home, custodial care home, or other
11 institution licensed by the Texas Department of Human Services
12 under Chapter 242;

13 (B) an assisted living facility licensed by the
14 Texas Department of Human Services under Chapter 247;

15 (C) a home and community support services
16 [~~health~~] agency licensed under Chapter 142;

17 (D) an adult day care facility licensed by the
18 Texas Department of Human Services under Chapter 103, Human
19 Resources Code;

20 (E) a facility for persons with mental
21 retardation licensed under Chapter 252;

22 (F) [~~an unlicensed attendant care agency that~~
23 ~~contracts with the Texas Department of Human Services,~~

24 [~~(G)~~] an adult foster care provider that
25 contracts with the Texas Department of Human Services;

26 (G) [~~(H)~~] a facility that provides mental health
27 services and that is operated by or contracts with the Texas

1 Department of Mental Health and Mental Retardation; [~~ex~~]

2 (H) [~~(J)~~] a local mental health or mental
3 retardation authority designated under Section 533.035; or

4 (I) a person exempt from licensing under Section
5 142.003(a)(19).

6 SECTION 2.199. Section 431.116, Health and Safety Code, is
7 amended by adding Subsections (f)-(i) to read as follows:

8 (f) Notwithstanding any other state law, pricing
9 information disclosed by manufacturers or labelers under this
10 section may be provided by the department only to the Medicaid
11 vendor drug purchase program for its sole use. The Medicaid vendor
12 drug purchase program may use the information only as necessary to
13 administer its drug programs, including Medicaid drug programs.

14 (g) Notwithstanding any other state law, pricing
15 information disclosed by manufacturers or labelers under this
16 section is confidential and, except as necessary to permit the
17 attorney general to enforce state and federal laws, may not be
18 disclosed by the Health and Human Services Commission or any other
19 state agency in a form that discloses the identity of a specific
20 manufacturer or labeler or the prices charged by a specific
21 manufacturer or labeler for a specific drug.

22 (h) The attorney general shall treat information obtained
23 under this section in the same manner as information obtained by the
24 attorney general through a civil investigative demand under Section
25 36.054, Human Resources Code.

26 (i) Notwithstanding any other state law, the penalties for
27 unauthorized disclosure of confidential information under Chapter

1 552, Government Code, apply to unauthorized disclosure of
2 confidential information under this section.

3 SECTION 2.200. Section 534.003(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) The board of trustees of a community center established
6 by an organizational combination of local agencies is composed of
7 not fewer than five or more than 13 [~~nine~~] members.

8 SECTION 2.201. (a) Section 31.032(d), Human Resources
9 Code, is amended to read as follows:

10 (d) In determining whether an applicant is eligible for
11 assistance, the department shall exclude from the applicant's
12 available resources:

13 (1) \$1,000 [~~\$2,000~~] for the applicant's household,
14 including a household in which there is [~~or \$3,000 if there is~~] a
15 person with a disability or a person who is at least 60 years of age
16 [~~in the applicant's household~~]; and

17 (2) the fair market value of the applicant's ownership
18 interest in a motor vehicle, but not more than the amount determined
19 according to the following schedule:

20 (A) \$4,550 on or after September 1, 1995, but
21 before October 1, 1995;

22 (B) \$4,600 on or after October 1, 1995, but
23 before October 1, 1996;

24 (C) \$5,000 on or after October 1, 1996, but
25 before October 1, 1997; and

26 (D) \$5,000 plus or minus an amount to be
27 determined annually beginning on October 1, 1997, to reflect

1 changes in the new car component of the Consumer Price Index for All
2 Urban Consumers published by the Bureau of Labor Statistics.

3 (b) Section 31.032(d), Human Resources Code, as amended by
4 this section, applies to a person receiving financial assistance on
5 or after the effective date of this section, regardless of the date
6 on which eligibility for financial assistance was determined.

7 SECTION 2.202. (a) Subchapter B, Chapter 32, Human
8 Resources Code, is amended by adding Section 32.066 to read as
9 follows:

10 Sec. 32.066. CONSUMER-DIRECTED SERVICES PROGRAM. (a) In
11 this section:

12 (1) "Consumer" means a participant in the
13 consumer-directed services program established under this section
14 who receives a stipend under the program.

15 (2) "Home and community-based services" include:

16 (A) personal care services;

17 (B) a home modification and assistive device that
18 may increase the consumer's independence;

19 (C) respite services, as defined by Section
20 142.001, Health and Safety Code; and

21 (D) personal assistance services, as defined by
22 Section 142.001, Health and Safety Code.

23 (3) "Medical assistance waiver program" means:

24 (A) the community-based alternatives program;

25 (B) the community living assistance and support
26 services program;

27 (C) the deaf-blind/multiple disabilities

1 program;

2 (D) the consolidated waiver pilot program; or

3 (E) the medically dependent children program.

4 (b) The department by rule shall establish a
5 consumer-directed services program in which certain individuals
6 enrolled in a medical assistance waiver program are given a monthly
7 stipend to direct the delivery of home and community-based services
8 provided to the individual under the waiver program.

9 (c) The department shall work in conjunction with the Texas
10 Rehabilitation Commission, the comptroller, and any other
11 appropriate agency to develop the consumer-directed services
12 program.

13 (d) In establishing the consumer-directed services program,
14 the department shall:

15 (1) ensure that the amount of a consumer's stipend is
16 based on the assessed functional needs of a consumer and the
17 financial resources available to the medical assistance waiver
18 program providing services to the consumer;

19 (2) develop purchasing guidelines to assist consumers
20 in using the stipend to purchase necessary and cost-effective home
21 and community-based services;

22 (3) design the program in a manner in which a private
23 entity or local governmental entity may apply with the department
24 for approval to act as the fiscal intermediary for a consumer for
25 the limited purpose of:

26 (A) managing the consumer's stipend;

27 (B) computing federal and state employment

1 taxes;

2 (C) preparing and filing income tax forms and
3 reports; and

4 (D) distributing money to a service provider;

5 (4) ensure that a consumer is the employer of and
6 retains control over the selection, management, and dismissal of an
7 individual providing home and community-based services; and

8 (5) develop a system to monitor the program to ensure:

9 (A) adherence to existing applicable program
10 standards;

11 (B) appropriate use of funds; and

12 (C) consumer satisfaction with the delivery of
13 services.

14 (e) The Texas Rehabilitation Commission and comptroller
15 shall provide information to the department as necessary to
16 facilitate the development and implementation of the
17 consumer-directed services program.

18 (f) The department may not implement the consumer-directed
19 services program within the consolidated waiver pilot program
20 before January 2, 2004.

21 (g) The department, in consultation with the Centers for
22 Medicare and Medicaid Services, shall:

23 (1) determine which state or other government-funded
24 programs are appropriate for inclusion in the consumer-directed
25 services program; and

26 (2) provide for the inclusion of cost-sharing
27 provisions as practicable.

1 (h) Not later than February 1 of each year, the department
2 shall submit to the governor, the lieutenant governor, and the
3 clerks of the standing committees of the senate and house of
4 representatives with primary jurisdiction over long-term care
5 services a report on the effectiveness, including the
6 cost-effectiveness, of the consumer-directed services program.
7 The report must include recommendations for improvements to the
8 program.

9 (i) This section expires September 1, 2007.

10 (b) The state agency responsible for implementing the
11 consumer-directed services program required by Section 32.066,
12 Human Resources Code, as added by this section, shall request and
13 actively pursue any necessary waivers or authorizations from the
14 Centers for Medicare and Medicaid Services or other appropriate
15 entities to enable the agency to implement the program not later
16 than January 1, 2004. The agency may delay implementing the program
17 until the necessary waivers or authorizations are granted.

18 SECTION 2.203. Section 533.007, Government Code, is amended
19 by adding Subsections (g), (h), (i), (j), and (k) to read as
20 follows:

21 (g) To ensure appropriate access to an adequate provider
22 network, each managed care organization that contracts with the
23 commission to provide health care services to recipients in a
24 health care service region shall submit to the commission, in the
25 format and manner prescribed by the commission, a report detailing
26 the number, type, and scope of services provided by out-of-network
27 providers to recipients enrolled in a managed care plan provided by

1 the managed care organization. If, as determined by the
2 commission, a managed care organization exceeds maximum limits
3 established by the commission for out-of-network access to health
4 care services, or if, based on an investigation by the commission of
5 a provider complaint regarding reimbursement, the commission
6 determines that a managed care organization did not reimburse an
7 out-of-network provider based on a reasonable reimbursement
8 methodology, the commission shall initiate a corrective action plan
9 requiring the managed care organization to maintain an adequate
10 provider network, provide reimbursement to support that network,
11 and educate recipients enrolled in managed care plans provided by
12 the managed care organization regarding the proper use of the
13 provider network under the plan.

14 (h) The corrective action plan required by Subsection (g)
15 must include at least one of the following elements:

16 (1) a requirement that reimbursements paid by the
17 managed care organization to out-of-network providers for a health
18 care service provided to a recipient enrolled in a managed care plan
19 provided by the managed care organization equal the allowable rate
20 for the service, as determined under Sections 32.028 and 32.0281,
21 Human Resources Code, for all health care services provided during
22 the period:

23 (A) the managed care organization is not in
24 compliance with the utilization benchmarks determined by the
25 commission; or

26 (B) the managed care organization is not
27 reimbursing out-of-network providers based on a reasonable

1 methodology, as determined by the commission;

2 (2) an immediate freeze on the enrollment of
3 additional recipients in a managed care plan provided by the
4 managed care organization, to continue until the commission
5 determines that the provider network under the managed care plan
6 can adequately meet the needs of additional recipients; and

7 (3) other actions the commission determines are
8 necessary to ensure that recipients enrolled in a managed care plan
9 provided by the managed care organization have access to
10 appropriate health care services and that providers are properly
11 reimbursed for providing medically necessary health care services
12 to those recipients.

13 (i) Not later than the 60th day after the date a provider
14 files a complaint with the commission regarding reimbursement for
15 or overuse of out-of-network providers by a managed care
16 organization, the commission shall provide to the provider a report
17 regarding the conclusions of the commission's investigation. The
18 report must include:

19 (1) a description of the corrective action, if any,
20 required of the managed care organization that was the subject of
21 the complaint; and

22 (2) if applicable, a conclusion regarding the amount
23 of reimbursement owed to an out-of-network provider.

24 (j) If, after an investigation, the commission determines
25 that additional reimbursement is owed to a provider, the managed
26 care organization shall, not later than the 90th day after the date
27 the provider filed the complaint, pay the additional reimbursement

1 or provide to the provider a reimbursement payment plan under which
2 the managed care organization must pay the entire amount of the
3 additional reimbursement not later than the 120th day after the
4 date the provider filed the complaint. If the managed care
5 organization does not pay the entire amount of the additional
6 reimbursement on or before the 90th day after the date the provider
7 filed the complaint, the commission may require the managed care
8 organization to pay interest on the unpaid amount. If required by
9 the commission, interest accrues at a rate of 18 percent simple
10 interest per year on the unpaid amount from the 90th day after the
11 date the provider filed the complaint until the date the entire
12 amount of the additional reimbursement is paid.

13 (k) The commission shall pursue any appropriate remedy
14 authorized in the contract between the managed care organization
15 and the commission if the managed care organization fails to comply
16 with a corrective action plan under Subsection (g).

17 SECTION 2.204. Subchapter B, Chapter 32, Human Resources
18 Code, is amended by adding Section 32.067 to read as follows:

19 Sec. 32.067. DELIVERY OF COMPREHENSIVE CARE SERVICES TO
20 CERTAIN RECIPIENTS OF MEDICAL ASSISTANCE. (a) In this section,
21 "certified agency" and "home health service" have the meanings
22 assigned by Section 142.001, Health and Safety Code.

23 (b) The department shall assure that any agency licensed to
24 provide home health services under Chapter 142, Health and Safety
25 Code, and not only a certified agency licensed under that chapter,
26 may provide home health services to individuals enrolled in the
27 Texas Health Steps Comprehensive Care Program.

1 SECTION 2.205. The section heading to Section 403.1066,
2 Government Code, is amended to read as follows:

3 Sec. 403.1066. PERMANENT HOSPITAL FUND FOR CAPITAL
4 IMPROVEMENTS AND THE TEXAS CENTER FOR INFECTIOUS DISEASE [~~COMMUNITY~~
5 ~~HOSPITAL CAPITAL IMPROVEMENT FUND~~].

6 SECTION 2.206. Sections 403.1066(a) and (c), Government
7 Code, are amended to read as follows:

8 (a) The permanent hospital [~~community hospital capital~~
9 ~~improvement~~] fund for capital improvements and the Texas Center for
10 Infectious Disease is a dedicated account in the general revenue
11 fund. The fund is composed of:

12 (1) money transferred to the fund at the direction of
13 the legislature;

14 (2) payments of interest and principal on loans and
15 fees collected under this section;

16 (3) gifts and grants contributed to the fund; and

17 (4) the available earnings of the fund determined in
18 accordance with Section 403.1068.

19 (c) The available earnings of the fund may be appropriated
20 to the Texas Department of Health for the purpose of providing
21 services at the Texas Center for Infectious Disease and grants,
22 loans, or loan guarantees to public or nonprofit community
23 hospitals with 125 beds or fewer located in an urban area of the
24 state.

25 SECTION 2.207. (a) Section 32.024(w), Human Resources Code,
26 is amended to read as follows:

27 (w) The department shall set a personal needs allowance of

1 not less than \$45 [~~\$60~~] a month for a resident of a convalescent or
2 nursing home or related institution licensed under Chapter 242,
3 Health and Safety Code, personal care facility, ICF-MR facility, or
4 other similar long-term care facility who receives medical
5 assistance. The department may send the personal needs allowance
6 directly to a resident who receives Supplemental Security Income
7 (SSI) (42 U.S.C. Section 1381 et seq.). This subsection does not
8 apply to a resident who is participating in a medical assistance
9 waiver program administered by the department.

10 (b) Section 32.024(w), Human Resources Code, as amended by
11 this section, applies only to a personal needs allowance paid on or
12 after the effective date of this Act.

13 SECTION 2.208. Section 281.002, Health and Safety Code, is
14 amended by adding Subsection (c) to read as follows:

15 (c) A county with at least 190,000 inhabitants that has
16 within its boundaries a municipality that owns a hospital or
17 hospital system for indigent or needy persons that is operated by or
18 on behalf of the municipality may create a countywide hospital
19 district to assume ownership of the hospital or hospital system and
20 to furnish medical aid and hospital care to indigent and needy
21 persons residing in the district.

22 SECTION 2.209. Section 281.004, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 281.004. BALLOT PROPOSITIONS. (a) Except as provided
25 by Subsection (a-1) or (b), the ballot for an election under this
26 chapter shall be printed to provide for voting for or against the
27 proposition: "The creation of a hospital district and the levy of a

1 tax not to exceed 75 cents on each \$100 of the taxable value of
2 property taxable by the district."

3 (a-1) The ballot for an election under this chapter held in
4 a county with a population of more than 800,000 that is not
5 included in the boundaries of a hospital district before September
6 1, 2003, shall be printed to provide for voting for or against the
7 proposition: "The creation of a hospital district and the levy of a
8 tax not to exceed 25 cents on each \$100 of the taxable value of
9 property taxable by the district."

10 (b) If the county or a municipality in the county has any
11 outstanding bonds issued for hospital purposes, the ballot for an
12 election under this chapter shall contain the proposition
13 prescribed by Subsection (a) or (a-1), as appropriate, followed by
14 " [be printed to provide for voting for or against the proposition:
15 "The creation of a hospital district, the levy of a tax not to
16 exceed 75 cents on each \$100 of the taxable value of property
17 taxable by the district], and the assumption by the district of all
18 outstanding bonds previously issued for hospital purposes by
19 _____ County and by any municipality in the county."

20 SECTION 2.210. Section 281.021, Health and Safety Code, is
21 amended by adding Subsection (d) to read as follows:

22 (d) If a district is created under this chapter in a county
23 with a population of more than 800,000 that was not included in the
24 boundaries of a hospital district before September 1, 2003, the
25 district shall be governed by a nine-member board of hospital
26 managers, appointed as follows:

27 (1) the commissioners court of the county shall

1 appoint four members;

2 (2) the governing body of the municipality with the
3 largest population in the county shall appoint four members; and

4 (3) the commissioners court and the governing body of
5 the municipality described by Subdivision (2) shall jointly appoint
6 one member.

7 SECTION 2.211. Section 281.022, Health and Safety Code, is
8 amended by adding Subsection (c) to read as follows:

9 (c) The members of a board of hospital managers appointed
10 under Section 281.021(d) serve staggered four-year terms, with as
11 near as possible to one-fourth of the members' terms expiring each
12 year. The terms of the members appointed under that section are as
13 follows:

14 (1) the members appointed solely by the governing body
15 of the municipality with the largest population in the county shall
16 draw lots to determine which member serves a one-year term, which
17 member serves a two-year term, which member serves a three-year
18 term, and which member serves a four-year term;

19 (2) the members appointed solely by the commissioners
20 court of the county shall draw lots to determine which member serves
21 a one-year term, which member serves a two-year term, which member
22 serves a three-year term, and which member serves a four-year term;
23 and

24 (3) the member appointed jointly by the governing body
25 of the municipality described by Subdivision (1) and the
26 commissioners court serves a four-year term.

27 SECTION 2.212. Section 281.041, Health and Safety Code, is

1 amended by amending Subsections (a) and (b) and adding Subsections
2 (e) and (f) to read as follows:

3 (a) Except as provided by Subsection (e), on ~~[On]~~ the
4 creation of a district under this chapter and the appointment and
5 qualification of the district board, the county owning the hospital
6 or hospital system, ~~[or]~~ the county and municipality jointly
7 operating a hospital or hospital system, or the municipality owning
8 a hospital or hospital system shall execute and deliver to the
9 district board a written instrument conveying to the district the
10 title to land, buildings, and equipment jointly or separately owned
11 by the county and municipality and used to provide medical services
12 or hospital care, including geriatric care, to indigent or needy
13 persons of the county or municipality.

14 (b) On the creation of a district under this chapter and the
15 appointment and qualification of the district board, the county
16 owning the hospital or hospital system, ~~[or]~~ the county and
17 municipality jointly operating a hospital or hospital system, or
18 the municipality owning a hospital or hospital system shall, on the
19 receipt of a certificate executed by the board's chairman stating
20 that a depository for the district has been chosen and qualified,
21 transfer to the district:

22 (1) all joint or separate county and municipal funds
23 that are the proceeds of any bonds assumed by the district under
24 Section 281.044; and

25 (2) all unexpended joint or separate county and
26 municipal funds that have been established or appropriated by the
27 county or municipality to support and maintain the hospital

1 facilities for the year in which the district is created, to be used
2 by the district to operate and maintain those facilities for the
3 remainder of the year.

4 (e) A county or municipality transferring property or funds
5 under this section is not required to transfer to the district:

6 (1) a medical facility used primarily for the
7 treatment of inmates of a jail or any other correctional
8 facilities, including juvenile justice facilities;

9 (2) property owned by the municipality that is used in
10 connection with the provision of utility services, including
11 electricity, water, wastewater, and sewer services;

12 (3) any real property or other assets related to a
13 medical clinic facility on which construction has begun, but has
14 not been completed, by the date on which the board members have been
15 appointed and qualified to serve;

16 (4) a building and related land owned by the county or
17 municipality that are used for purposes related or unrelated to the
18 hospital or hospital system, except that:

19 (A) if the county or municipality retains
20 ownership of the building and related land, the county or
21 municipality shall lease the space used for hospital or hospital
22 system purposes to the district for an initial term of three years
23 unless a shorter term is otherwise agreed to by the district and the
24 transferring entity; or

25 (B) if the county or municipality transfers the
26 building and related land to the district, the district shall lease
27 to the transferring entity the space not used for hospital or

1 hospital system purposes for an initial term of three years unless a
2 shorter term is otherwise agreed to by the district and the
3 transferring entity;

4 (5) any or all of the public health services and
5 related facilities of the county or municipality, other than a
6 hospital or hospital district, unless the transfer of the public
7 health services or a related facility to the district is mutually
8 agreed to by the district and the transferring entity; or

9 (6) an ambulance service, emergency medical service,
10 search and rescue service, or medical transport service that is
11 owned or operated by the county or municipality, unless the
12 transfer of all or part of the service and related buildings and
13 equipment to the district is mutually agreed to by the district and
14 the transferring entity.

15 (f) A transfer of an asset under this section, including a
16 federally qualified health center, that would violate federal or
17 state law unless a waiver or other authorization or approval is
18 granted by a federal or state agency may not occur until the
19 required waiver, authorization, or approval is obtained. A
20 facility designated as a federally qualified health center under 42
21 U.S.C. Section 1396d(1)(2)(B), as amended, may not be transferred
22 to the district until the district board has confirmed that the
23 transfer will not jeopardize the federal designation of that
24 facility.

25 SECTION 2.213. Section 281.043, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 281.043. ASSUMPTION OF CONTRACT OBLIGATIONS. On the

1 creation of the district, the district assumes, without prejudice
2 to the rights of third parties, any outstanding contract
3 obligations legally incurred by the county or municipality, or
4 both, for the construction, support, [~~ex~~] maintenance, or operation
5 of hospital facilities and the provision of health care services or
6 hospital care, including mental health care, to indigent residents
7 of the county or municipality before the creation of the district.

8 SECTION 2.214. Subchapter C, Chapter 281, Health and Safety
9 Code, is amended by adding Section 281.0461 to read as follows:

10 Sec. 281.0461. STUDY. (a) This section applies only to a
11 district created in a county with a population of more than 800,000
12 that was not included in the boundaries of a hospital district
13 before September 1, 2003.

14 (b) The board shall contract with an independent and
15 disinterested person or entity to conduct a study to:

16 (1) examine the necessity of increased indigent,
17 pediatric, trauma, and mental health care in the geographical area
18 served by the district over the 5-year, 15-year, and 30-year
19 periods following the date of the district's creation;

20 (2) examine the necessity of an increased number of
21 health care specialists and nurses to adequately serve the district
22 over the 5-year, 15-year, and 30-year periods following the date of
23 the district's creation; and

24 (3) determine whether additional education and
25 training programs will be required to address the issues studied
26 under this section.

27 SECTION 2.215. The heading to Subchapter G, Chapter 281,

1 Health and Safety Code, is amended to read as follows:

2 SUBCHAPTER G. TAXES [~~TO PAY BONDS~~]

3 SECTION 2.216. Section 281.121(b), Health and Safety Code,
4 is amended to read as follows:

5 (b) The tax amount:

6 (1) must be sufficient to create an interest and
7 sinking fund to pay the principal of and interest on the bonds as
8 they mature; and

9 (2) may not exceed 75 cents on each \$100 of the taxable
10 value of property taxable by the district, or the rate authorized in
11 the election to create the district.

12 SECTION 2.217. Subchapter G, Chapter 281, Health and Safety
13 Code, is amended by adding Sections 281.122 and 281.123 to read as
14 follows:

15 Sec. 281.122. REDUCTION IN AD VALOREM TAX RATE BY
16 GOVERNMENTAL ENTITY. (a) This section applies only to a district
17 created in a county with a population of more than 800,000 that was
18 not included in the boundaries of a hospital district before
19 September 1, 2003.

20 (b) The commissioners court of the county and the governing
21 body of the municipality with the largest population in the county,
22 in determining the ad valorem tax rate of the county or
23 municipality, as appropriate, for the first year in which the
24 district imposes ad valorem taxes on property in the district,
25 shall:

26 (1) take into account the decrease in the amount the
27 county or municipality will spend for health care purposes in that

1 year because the district is providing health care services
2 previously provided or paid for by the county or municipality; and

3 (2) reduce the ad valorem tax rate adopted for the
4 county or municipality, as appropriate, in accordance with the
5 amount of the decrease.

6 (c) The commissioners court of the county and the governing
7 body of the municipality with the largest population in the county
8 shall retain an independent auditor to verify that the ad valorem
9 tax rate of the county or municipality, as appropriate, has been
10 reduced as required by Subsection (b).

11 Sec. 281.123. SALES AND USE TAX PROHIBITED FOR CERTAIN
12 DISTRICTS. (a) This section applies only to a district created in
13 a county with a population of more than 800,000 that was not
14 included in the boundaries of a hospital district before September
15 1, 2003.

16 (b) The board may not impose a sales and use tax under
17 Subchapter E, Chapter 285, or any other law.

18 SECTION 2.218. EFFECTIVE DATE. Except as otherwise
19 provided by this article, this article takes effect September 1,
20 2003.

David Neuhorst

President of the Senate

John C. Calder

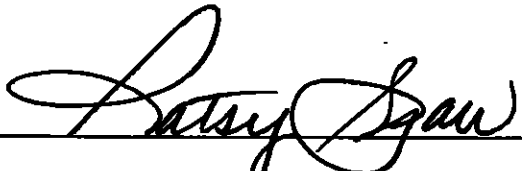
Speaker of the House

I certify that H.B. No. 2292 was passed by the House on April 24, 2003, by the following vote: Yeas 74, Nays 31, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2292 on May 29, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2292 on June 1, 2003, by the following vote: Yeas 87, Nays 58, 1 present, not voting; and that the House adopted H.C.R. No. 305 authorizing certain corrections in H.B. No. 2292 on June 2, 2003, by a non-record vote.

Robert Harvey

Chief Clerk of the House

I certify that H.B. No. 2292 was passed by the Senate, with amendments, on May 28, 2003, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2292 on June 1, 2003, by a viva-voce vote; and that the Senate adopted H.C.R. No. 305 authorizing certain corrections in H.B. No. 2292 on June 2, 2003, by a viva-voce vote.

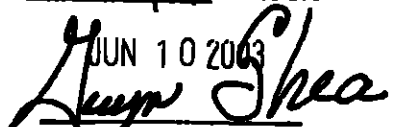

Secretary of the Senate

APPROVED: 10 JUN '03

Date


Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
1:40 pm O'CLOCK

JUN 10 2003

Secretary of State