

## BILL ANALYSIS

Senate Research Center

H.B. 2292  
By: Wohlgemuth (Nelson)  
Finance  
5/24/2003  
Committee Substitute

### **DIGEST AND PURPOSE**

To achieve the cost savings and revenue necessary to finance certain health and human services, C.S.H.B. 2292 implements changes in health and human service policy necessary to ensure that Texas continues to serve its citizens who are most in need of health and human service assistance. This bill also reorganizes and consolidates the health and human service agencies, requires additional rebates for drug manufacturers purchasing drugs under health and human service programs, increases fraud detection and recovery, reforms the regulatory burden on providers of health and human services, and consolidates certain transportation services and enacts many other measures that are necessary to deal with the current budget crisis.

### **RULEMAKING AUTHORITY** *(NEED TO UPDATE AND REVIEW AFTER ADDING AMENDMENTS)*

Rulemaking authority is expressly granted to the executive commissioner of health and human services in SECTION 1.03 (Section 531.0055, Government Code), SECTION 1.06 (Section 531.0163, Government Code), SECTION 1.08 (Sections 531.409, Government Code), SECTION 1.09 (Sections 1001.028, 1001.051, 1001.052, 1001.053, 1001.054, 1001.056 and 1001.075, Health and Safety Code), SECTION 1.11 (Section 40.002, Human Resources Code), SECTION 1.12 (Section 40.027, Human Resources Code), SECTION 1.13 (Sections 117.028, 117.051, 117.052, 117.053, 117.054, 117.056, 117.073, Human Resources Code), SECTION 1.13A (Sections 161.028, 161.051, 161.052, 161.053, 161.054, 161.056, and 161.073, Human Resources Code), SECTION 2.04 (Section 531.0335, Government Code), and SECTION 2.24 (Section 231.113, Government Code) of this bill. Rulemaking authority is transferred to the executive commissioner of health and human services in SECTION 1.03 (Section 531.0055, Government Code).

Rulemaking authority is transferred to the executive commissioner of health and human services in SECTION 1.19 (Transfers to the Department of State Health Services), SECTION 1.20. (Transfers to the Department of Family and Protective Services), SECTION 1.21. (Transfers to the Department of Aging and Disability Services), and SECTION 1.21A. (Transfers to the Department of Assistive and Rehabilitative Services).

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 1.07 (Section 531.0224, Government Code), SECTION 2.04 (Section 531.063, Government Code), SECTION 2.09 (Section 531.068, Government Code), SECTION 2.14 (Section 531.073, Government Code), SECTION 2.15 (Section 531.074, Government Code), SECTION 2.18 (Section 531.102, Government Code), SECTION 2.25 (Section 531.114, Government Code), SECTION 2.82 (Section 31.015, Human Resources Code), SECTION 2.86 (Section 32.024 Human Resources Code), SECTION 2.87 (Section 32.025, Human Resources Code), and SECTION 2.88 (Section 32.026, Human Resources Code), SECTION 2.91 (Section 32.028, Human Resources Code), SECTION 2.92 (Section 32.0291, Human Resources Code), SECTION 2.94 (Section 32.0321, Human Resources Code), and SECTION 2.96 (Section 32.0462, Human Resources Code) of this bill. Rulemaking authority is transferred to HHSC in SECTION 1.18 (Transfers to the Health and Human Services Commission) of this bill

Rulemaking authority is expressly granted to the Texas Board of Health in SECTION 2.75

(Section 773.071, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Human Services in SECTION 2.78 (Section 31.0031, Human Resources Code), and SECTION 2.79 (Section 31.0032, Human Resources Code).

Rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 2.83 (Section 302.0038, Labor Code), to the Interagency Council on Early Childhood Intervention in SECTION 2.103 (Section 73.0051, Human Resources Code), and to the Texas State Board of Pharmacy in SECTION 2.115 (Section 562.1085, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1.01. (a) Amends Section 531.001(3), Government Code, is amended by redefining “commissioner” as “executive commissioner.”

(b) Reenacts Section 531.001(4), Government Code, as amended by Chapters 53, 957, and 1420, Acts of the 77th Legislature, Regular Session, 2001, and amends it to add the Department of Aging and Disability Services, the Department of State Health Services and the Department of Assistive and Rehabilitative Services to the definition of “health and human services agencies,” and to rename and reference the Department of Family and Protective Services rather than the Department of Protective and Regulatory Services.

(c) Reenacts Section 531.001(4), Government Code, as amended by Chapters 53, 957, and 1420, Acts of the 77th Legislature, Regular Session, 2001, and amends it to redefine “health and human services agencies” effective on the date the agencies listed in Section 1.26 of this article are abolished as provided by that section.

(d) Provides that a reference in law to the commissioner of health and human services means the executive commissioner of the Health and Human Services Commission.

SECTION 1.02. Amends Section 531.004, Government Code, to continue the Health and Human Services Commission (HHSC) until September 1, 2009, rather than 2007.

SECTION 1.02A. Amends Section 531.005, Government Code, as follows:

Sec. 531.005. New heading: EXECUTIVE COMMISSIONER. (a) Provides that HHSC is governed by an executive commissioner of health and human services, rather than a commissioner of health and human services, appointed by the governor with the advice and consent of the senate.

(b) Requires the executive commissioner of health and human services to be appointed without regard to race, color, disability, sex, religion, age, or national origin.

SECTION 1.03. Amends Section 531.0055, Government Code, as follows:

Sec. 531.0055. New heading: EXECUTIVE COMMISSIONER: GENERAL RESPONSIBILITY FOR HEALTH AND HUMAN SERVICES AGENCIES. (a) Redefines “agency director.” Deletes definition of “policymaking body.”

(b) Requires HHSC to take certain actions.

(c) Deletes existing text relating to the implementation of HHSC’s duties under Subsection (b) and existing text relating to certain sections as added by Chapter 1045, Acts of the 75th Legislature, Regular Session, 1997. Makes a nonsubstantive change.

(d) Requires HHSC to plan and implement an efficient and effective centralized system of administrative support services for health and human services agencies. Provides that the performance of administrative support services for health and human services agencies is the responsibility of HHSC. Provides that the term "administrative support services" includes, but is not limited to, strategic planning and evaluation, audit, legal, human resources, information resources, purchasing, contract management, financial management, and accounting services.

(e) Requires the executive commissioner of health and human services, notwithstanding any other law, to adopt rules and policies for the operation of and provision of health and human services by the health and human services agencies. Requires the executive commissioner of health and human services, in addition and as necessary to perform the functions described by Subsections (b), (c), and (d) in implementation of applicable policies established for an agency by the executive commissioner of health and human services, rather than each agency's policymaking body, to perform certain functions.

(f) Provides that the operational authority and responsibility of the executive commissioner of health and human services for purposes of Subsection (e) at each health and human services agency includes authority over and responsibility for certain actions, policies, and systems.

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

(h) Makes conforming changes.

(i) Provides that the agency director acts on behalf of the executive commissioner of health and human services in performing the delegated function and reports to the executive commissioner of health and human services regarding the delegated function and any matter affecting agency programs and operations.

(j) Requires, rather than authorizes, the executive commissioner of health and human services to adopt rules to implement the executive commissioner's authority under this section.

(k) Requires the executive commissioner of health and human services and each agency director to enter into a memorandum of understanding in the manner prescribed by Section 531.0163 that clearly defines certain responsibilities of the agency director and the executive commissioner of health and human services.

(l) Provides that the executive commissioner of health and human services, rather than a policymaking body, has the authority to adopt policies and rules governing the delivery of services to persons who are served by each health and human services agency and the rights and duties of persons who are served or regulated by each agency, notwithstanding any other law. Deletes existing text relating to requiring the commissioner of health and human services and each policymaking body to enter into a memorandum of understanding that clearly defines the policymaking authority of the policymaking body and the operational authority of the commissioner of health and human services.

SECTION 1.04. Amends Section 531.0056, Government Code, as follows:

Sec. 531.0056. New heading: APPOINTMENT OF AGENCY DIRECTOR BY

**EXECUTIVE COMMISSIONER.** (a) Requires the executive commissioner of health and human services, with the approval of the governor, to appoint an agency director for each health and human services agency. Deletes existing text relating to this section only applying to an agency director employed by the commissioner of health and human services.

(b) Requires the agency director to serve at the pleasure of the executive commissioner of health and human services. Deletes existing text relating to authorizing an agency director employed by the commissioner of health and human services to be employed only with the concurrence of the agency's policymaking body and the approval of the governor.

(c) Requires the memorandum of understanding required by that section to clearly define the responsibilities of the agency director, in addition to the requirements of Section 531.0055(k)(1). Deletes existing text relating to requiring the commissioner of health and human services and agency director to enter into a memorandum of understanding and authorizes establishing certain terms and conditions of employment.

(d) and (e) Make conforming changes.

(f) Requires the executive commissioner of health and human services to submit the evaluation to the governor not later than January 1 of each even-numbered year. Deletes existing text relating to the commissioner of health and human services submitting any recommendation regarding employment of the agency director to the policymaking body.

Deletes existing Subsections (g) and (h).

**SECTION 1.05.** Amends Section 531.008, Government Code, as follows:

(a)-(b) Make conforming changes.

(c) Requires the executive commissioner of health and human services to establish certain divisions and offices within HHSC.

**SECTION 1.06.** Amends Subchapter A, Chapter 531, Government Code, by adding Sections 531.0161, 531.0162, and 531.0163, as follows:

**Sec. 531.0161. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE PROCEDURES.** (a) and (b) Apply standard Sunset language regarding negotiated rulemaking and alternative dispute procedures.

**Sec. 531.0162. USE OF TECHNOLOGY.** (a) Applies standard Sunset language regarding the use of technology.

(b) Requires HHSC to develop and implement a policy described by Subsection (a) in relation to HHSC's functions.

**Sec. 531.0163. MEMORANDUM OF UNDERSTANDING.** (a) Requires the memorandum of understanding under Section 531.0055(k) to be adopted by the executive commissioner of health and human services, by rule, in accordance with the procedures prescribed by Subchapter B, Chapter 2001, for adopting rules, except that the requirements of Section 2001.033(a)(1)(A) or (C) do not apply with respect to certain parts of the memorandum of understanding.

(b) Authorizes the memorandum of understanding to be amended only by following the procedures prescribed under Subsection (a).

SECTION 1.07. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.0224, as follows:

Sec. 531.0224. PLANNING AND POLICY DIRECTION OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM. Requires HHSC to take certain actions, including adopting rules and standards governing the financial assistance program under Chapter 31, Human Resources Code (Financial Assistance and Service Programs), in consultation with the policy councils of the agencies that operate the program, including rules for determining eligibility for and the amount and duration of an earned income disregard.

SECTION 1.08. Amends Chapter 531, Government Code, by adding Subchapter K, as follows:

#### SUBCHAPTER K. HEALTH AND HUMAN SERVICES COUNCIL

Sec. 531.401. DEFINITION. Defines "council."

Sec. 531.402. HEALTH AND HUMAN SERVICES COUNCIL. (a) Provides that the Health and Human Services Council (HHS council) is created to assist the executive commissioner of health and human services in developing rules and policies for HHSC.

(b) Provides that the HHS council is composed of nine members of the public appointed by the governor with the advice and consent of the senate. Requires a person, to be eligible for appointment to the HHS council, to have demonstrated an interest in and knowledge of problems and available services related to the child health plan program, the financial assistance program under Chapter 31, Human Resources Code, the medical assistance program under Chapter 32 (Medical Assistance Programs), Human Resources Code, or the nutritional assistance programs under Chapter 33 (Nutritional Assistance Programs), Human Resources Code.

(c) Requires the HHS council to study and make recommendations to the executive commissioner of health and human services regarding the management and operation of HHSC, including policies and rules governing the delivery of services to persons who are served by HHSC and the rights and duties of persons who are served or regulated by HHSC.

(d) Provides that Chapter 551 (Open Meetings), Government Code, applies to the HHS council.

(e) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the HHS council.

(f) Provides that a majority of the members of the HHS council constitute a quorum for the transaction of business.

Sec. 531.403. APPOINTMENTS. Applies standard Sunset language regarding appointments.

Sec. 531.404. TRAINING PROGRAM FOR COUNCIL MEMBERS. Applies standard Sunset language regarding a training program for HHS council members.

Sec. 531.405. TERMS. Sets forth the terms for HHS council members.

Sec. 531.406. VACANCY. Requires the governor by appointment to fill the unexpired term of a vacancy on the HHS council.

Sec. 531.407. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. Applies standard Sunset language regarding the presiding officer, other officers, and meetings.

Sec. 531.408. REIMBURSEMENT FOR EXPENSES. Applies standard Sunset language regarding reimbursement for expenses of HHS council members.

Sec. 531.409. PUBLIC INTEREST INFORMATION AND COMPLAINTS. Applies standard Sunset language regarding public interest information and complaints.

Sec. 531.410. PUBLIC ACCESS AND TESTIMONY. Applies standard Sunset language regarding public access and testimony.

Sec. 531.411. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. Applies standard Sunset language regarding the delineation of policymaking and management responsibilities.

SECTION 1.09. Amends the Health and Safety Code by adding Title 12, as follows:

## TITLE 12. HEALTH AND MENTAL HEALTH

### CHAPTER 1001. DEPARTMENT OF STATE HEALTH SERVICES

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1001.001. DEFINITIONS. Defines “commission,” “commissioner,” “council,” “department,” and “executive commissioner.”

Sec. 1001.002. AGENCY. Provides that the Department of State Health Services (DSHS) is an agency of the state.

Sec. 1001.003. SUNSET PROVISION. Continues the Department of State Health Services until September 1, 2009.

[Reserves Sections 1001.004-1001.020 for expansion.]

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 1001.021. STATE HEALTH SERVICES COUNCIL. (a) Provides that the State Health Services Council (SHS council) is created to assist the executive commissioner of health and human services in developing rules and policies for DSHS.

(b) Sets forth the composition of and eligibility for the SHS council.

(c) Requires the SHS council to study and make recommendations to the executive commissioner of health and human services regarding the management and operation of DSHS, including policies and rules governing the delivery of services to persons who are served by the department and the rights and duties of persons who are served or regulated by DSHS.

(d) Provides that Chapter 551 (Open Meetings), Government Code, applies to the SHS council.

(e) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the SHS council.

(f) Provides that a majority of the members of the SHS council constitute a quorum for the transaction of business.

Sec. 1001.022. APPOINTMENTS. Applies standard Sunset language regarding appointments.

Sec. 1001.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. Applies standard Sunset language regarding a training program for SHS council members.

Sec. 1001.024. TERMS. Sets forth the terms of SHS council members.

Sec. 1001.025. VACANCY. Requires the governor by appointment to fill the unexpired term of a vacancy on the SHS council.

Sec. 1001.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. Applies standard Sunset language regarding the presiding officer, other officers, and meetings.

Sec. 1001.027. REIMBURSEMENT FOR EXPENSES. Applies standard Sunset language regarding reimbursement for expenses of SHS council members.

Sec. 1001.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS. Applies standard Sunset language regarding public interest information and complaints.

Sec. 1001.029. PUBLIC ACCESS AND TESTIMONY. Applies standard Sunset language regarding public access and testimony.

(c) Requires the executive commissioner of health and human services to consider fully all written and oral submissions about a proposed rule.

Sec. 1001.030. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. Applies standard Sunset language regarding the delineation of policymaking and management responsibilities.

Sec. 1001.031. ANNUAL REPORT. (a) Requires the commissioner of state health services to file annually with the governor, the presiding officer of each house of the legislature, and the executive commissioner of health and human services a complete and detailed written report accounting for all funds received and disbursed by DSHS during the preceding fiscal year.

(b) Requires the annual report to be in the form and be reported in the time provided by the General Appropriations Act.

Sec. 1001.032. OFFICES. Requires DSHS to maintain its central office in Austin. Authorizes DSHS to maintain offices in other areas of the state as necessary.

[Reserves Sections 1001.033-1001.050 for expansion.]

## SUBCHAPTER C. PERSONNEL

Sec. 1001.051. COMMISSIONER. (a) Requires the executive commissioner of health and human services to appoint with the approval of the governor a commissioner of the Department of State Health Services (DSHS commissioner). Provides that the DSHS commissioner is to be selected according to education, training, experience, and demonstrated ability.

(b) Provides that the DSHS commissioner serves at the pleasure of the executive commissioner of health and human services.

(c) Requires the DSHS commissioner, subject to the control of the executive commissioner of health and human services, to act as DSHS's chief administrative officer and as a liaison between DSHS and HHSC.

(d) Requires the DSHS commissioner to administer this chapter under operational policies established by the executive commissioner of health and human services and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the DSHS commissioner and the executive commissioner of health and human services, as adopted by rule.

Sec. 1001.052. PERSONNEL. Applies standard Sunset language regarding personnel.

Sec. 1001.053. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. Applies standard Sunset language regarding information about qualifications and standards of conduct.

Sec. 1001.054. MERIT PAY. Applies standard Sunset language regarding merit pay.

Sec. 1001.055. CAREER LADDER. Applies standard Sunset language regarding a career ladder.

Sec. 1001.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. Applies standard Sunset language regarding an equal employment and opportunity policy.

Sec. 1001.057. STATE EMPLOYEE INCENTIVE PROGRAM. Applies standard Sunset language regarding a state employee incentive program.

[Reserves Sections 1001.058-1001.070 for expansion.]

#### SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

Sec. 1001.071. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO HEALTH CARE. Provides that DSHS is responsible for administering certain human services programs regarding the public health.

Sec. 1001.072. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO MENTAL HEALTH. Provides that DSHS is responsible for administering certain human services programs regarding mental health.

Sec. 1001.073. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO SUBSTANCE ABUSE. Provides that DSHS is responsible for administering certain human services programs regarding substance abuse.

Sec. 1001.074. INFORMATION REGARDING COMPLAINTS. (a) Requires DHS to maintain a file on each written complaint filed with DSHS. Requires the file to include certain information.



(b) Requires DSHS to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the executive commissioner of health and human services' and DSHS's policies and procedures relating to complaint investigation and resolution.

(c) Requires DSHS, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec. 1001.075. RULES. Authorizes the executive commissioner of health and human services to adopt rules reasonably necessary for DSHS to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the DSHS commissioner and the executive commissioner of health and human services, as adopted by rule.

SECTION 1.10. Amends Section 40.001, Human Resources Code, by adding Subdivisions (2-a) and (4-a) to define "council" and "executive commissioner."

SECTION 1.11. Amends Section 40.002, Human Resources Code, as follows:

Sec. 40.002. New heading: DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; GENERAL DUTIES OF DEPARTMENT. (a) Provides that the Department of Family and Protective Services (DFPS), rather than the Department of Protective and Regulatory Services (DPRS), is composed of the council, rather than board, the commissioner, rather than the executive director, an administrative staff, and other officers and employees necessary to efficiently carry out the purposes of this chapter.

(b) Requires DFPS, notwithstanding any other law, to perform certain tasks.

(c) Provides that DFPS is the state agency designated to cooperate with the federal government in the administration of programs under certain federal guidelines.

(d) Requires DFPS to cooperate with the United States Department of Health and Human Services and other federal and state agencies in a reasonable manner and in conformity with the provisions of federal law and this subtitle to the extent necessary to qualify for federal assistance in the delivery of services.

(e) Authorizes the executive commissioner of health and human services, rather than DFPS, if DFPS determines that a provision of state law governing DFPS conflicts with a provision of federal law, to adopt policies and rules necessary to allow the state to receive and spend federal matching funds to the fullest extent possible in accordance with the federal statutes, this subtitle, and the state constitution and within the limits of appropriated funds.

SECTION 1.12. Amends Sections 40.004, 40.021, 40.022, 40.0226, 40.024, 40.025, 40.026, and 40.027, Human Resources Code, as follows:

Sec. 40.004. New heading: PUBLIC INTEREST INFORMATION AND PUBLIC ACCESS. (a)-(d) Applies standard Sunset language regarding public interest information and public access.

Sec. 40.021. New heading: FAMILY AND PROTECTIVE SERVICES COUNCIL. (a)

Provides that the Family and Protective Services Council (FPS council), rather than the board, is created to assist the executive commissioner of health and human services in developing rules and policies for DFPS. Deletes existing language relating to the composition and appointment of the board and the designation of the presiding officer of the board by the governor.

(b) Sets forth the composition of and eligibility for FPS council members. Deletes existing language relating to the eligibility requirements for appointment to the board and the requirement for appointment of certain members to represent the public.

(c) Requires the FPS council to study and make recommendations to the executive commissioner of health and human services regarding the management and operation of DFPS, including policies and rules governing the delivery of services to persons who are served by DFPS and the rights and duties of persons who are served or regulated by DFPS.

(d) Provides that Chapter 551 (Open Meetings), Government Code, applies to the FPS council.

(e) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the FPS council. Deletes requirement for the board to be appointed without regard to race, color, disability, sex, religion, age, or national origin.

(f) Provides that a majority of the members of the FPS council constitute a quorum for the transaction of business.

Sec. 40.022. New heading: APPOINTMENTS. (a) and (b) Applies standard Sunset language regarding appointments to the FPS council. Deletes existing language making persons ineligible for appointment under certain conditions.

Sec. 40.0226. New heading: TRAINING PROGRAM FOR COUNCIL MEMBERS. Applies standard Sunset language regarding a training program for FPS council members.

Sec. 40.024. New heading: TERMS; VACANCY. (a) Provides that members of the FPS council, rather than board, serve for staggered six-year terms, with the terms of three members, rather than two members, expiring February 1 of each odd-numbered year.

(b) Prohibits a member of the FPS council from serving more than two consecutive full terms as a member.

(c) Requires the governor by appointment to fill the unexpired term of a vacancy on the FPS council.

Sec. 40.025. New heading: REIMBURSEMENT FOR EXPENSES. Applies standard Sunset language regarding reimbursement for expenses of FPS council members.

Sec. 40.026. New heading: PRESIDING OFFICER; OTHER OFFICERS. Applies standard Sunset language regarding the presiding officer, officer, and other officers.

Sec. 40.027. New heading: COMMISSIONER. (a) Requires the executive commissioner of health and human services, to appoint a Department of Family and Protective Services commissioner (DFPS commissioner), who is to be selected according to education, training, experience, and demonstrated ability.

(b) Provides that the DFPS commissioner serves at the pleasure of the executive commissioner of health and human services.

(c) Requires the DFPS commissioner, subject to the control of the executive commissioner of health and human services, to act as the DFPS's chief administrative officer and as a liaison between DFPS and HHSC.

(d) Requires the DFPS commissioner to administer this chapter and other laws relating to DFPS under operational policies established by the executive commissioner of health and human services and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the DFPS commissioner and the executive commissioner of health and human services, as adopted by rule.

SECTION 1.13. Amends Title 7, Human Resources Code, by adding Chapter 117, as follows:

## CHAPTER 117. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 117.001. DEFINITIONS. Defines “commission,” “commissioner,” “council,” “department,” and “executive commissioner.”

Sec. 117.002. AGENCY. Provides that the Department of Assistive and Rehabilitative Services (DARS) is an agency of the state.

Sec. 117.003. SUNSET PROVISION. Applies standard Sunset language to continue DARS until September 1, 2009.

[Reserves Sections 117.004-117.020 for expansion.]

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 117.021. ASSISTIVE AND REHABILITATIVE SERVICES COUNCIL. (a) Provides that the Assistive and Rehabilitative Services Council (ARS council) is created to assist the executive commissioner of health and human services in developing rules and policies for DARS.

(b) and (c) Applies standard Sunset language regarding the composition of the ARS council and the eligibility of ARS council members.

(d) Provides that Chapter 551, Government Code, applies to the ARS council.

(e) Provides that Chapter 2110, Government Code, does not apply to the ARS council.

(f) Provides that a majority of the members of the ARS council constitute a quorum for the transaction of business.

Sec. 117.022. APPOINTMENTS. Updates standard Sunset language relating to appointments to the ARS council.

Sec. 117.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. Updates standard Sunset language relating to a training program for ARS council members.

Sec. 117.024. TERMS. Sets forth the terms of ARS council members.

Sec. 117.025. VACANCY. Requires the governor by appointment to fill the unexpired term of a vacancy on the ARS council.

Sec. 117.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. Applies standard Sunset language regarding the presiding officer, other officers, and meetings.

Sec. 117.027. REIMBURSEMENT FOR EXPENSES. Applies standard Sunset language relating to a reimbursement for expenses to an ARS council member.

Sec. 117.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS. Updates standard Sunset language requiring information to be maintained on complaints.

Sec. 117.029. PUBLIC ACCESS AND TESTIMONY. Updates standard Sunset language providing for public testimony at meetings under the jurisdiction of DARS.

Sec. 117.030. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. Updates standard Sunset language regarding the delineation of policymaking and management responsibilities.

Sec. 117.031. ANNUAL REPORT. (a) Requires the commissioner of assistive and rehabilitative services to file annually with the governor, the presiding officer of each house of the legislature, and the executive commissioner of health and human services a complete and detailed written report accounting for all funds received and disbursed by DARS during the preceding fiscal year.

(b) Requires the annual report to be in the form and be reported in the time provided by the General Appropriations Act.

Sec. 117.032. OFFICES. Requires DARS to maintain its central office in Austin. Authorizes DARS to maintain offices in other areas of the state as necessary.

[Reserves Sections 117.033-117.050 for expansion.]

#### SUBCHAPTER C. PERSONNEL

Sec. 117.051. COMMISSIONER. (a) Requires the executive commissioner of health and human services to appoint with the approval of the governor a commissioner of the Department of Assistive and Rehabilitative Services (ARS commissioner). Provides that the ARS commissioner is to be selected according to education, training, experience, and demonstrated ability.

(b) Provides that the ARS commissioner serves at the pleasure of the executive commissioner of health and human services.

(c) Requires the ARS commissioner, subject to the control of the executive commissioner of health and human services, to act as DARS's chief administrative officer and as a liaison between DARS and HHSC.

(d) Requires the ARS commissioner to administer this chapter under operational policies established by the executive commissioner of health and human services and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the ARS commissioner and the executive commissioner of health and human services, as adopted by rule.

Sec. 117.052. PERSONNEL. (a) Authorizes DARS to employ, compensate, and prescribe the duties of personnel necessary and suitable to administer this chapter.

(b) Requires the executive commissioner of health and human services to prepare and by rule to adopt personnel standards.

(c) Authorizes a personnel position to be filled only by an individual selected and appointed on a nonpartisan merit basis.

(d) Requires the executive commissioner of health and human services, with the advice of the ARS council, to develop and DARS to implement policies that clearly define the responsibilities of the staff of DARS.

Sec. 117.053. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. Applies standard Sunset language regarding information about qualifications and standards of conduct.

Sec. 117.054. MERIT PAY. Applies standard Sunset language regarding merit pay.

Sec. 117.055. CAREER LADDER. Applies standard Sunset language regarding a career ladder.

Sec. 117.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. Updates standard Sunset language regarding an equal employment opportunity program.

Sec. 117.057. STATE EMPLOYEE INCENTIVE PROGRAM. Applies standard Sunset language regarding a state employee incentive program.

[Reserves Sections 117.058-117.070 for expansion.]

#### SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

Sec. 117.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. Provides that DARS is responsible for administering human services programs to provide early childhood intervention services and rehabilitation and related services to persons with disabilities other than developmental delay or mental retardation and to persons who are blind, deaf, or hard of hearing.

Sec. 117.072. INFORMATION REGARDING COMPLAINTS. Updates standard language requiring information to be maintained on complaints.

Sec. 117.073. RULES. Authorizes the executive commissioner of health and human services to adopt rules reasonably necessary for DARS to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the ARS commissioner and the executive commissioner of health and human services, as adopted by rule.

SECTION 1.13A. Amends the Human Resources Code by adding Title 11, as follows:

#### TITLE 11. COMMUNITY-BASED AND LONG-TERM CARE SERVICES

#### CHAPTER 161. DEPARTMENT OF AGING AND DISABILITY SERVICES

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. DEFINITIONS. Defines “commission,” “commissioner,” “council,”

“department,” and “executive commissioner.”

Sec. 161.002. AGENCY. Provides that the Department of Aging and Disability Services (DADS) is an agency of the state.

Sec. 161.003. SUNSET PROVISION. Applies standard Sunset language to continue DADS until September 1, 2009.

[Reserves Sections 161.004-161.020 for expansion.]

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 161.021. AGING AND DISABILITY SERVICES COUNCIL. (a) Provides that the Aging and Disability Services Council (ADS council) is created to assist the executive commissioner of health and human services in developing rules and policies for DADS.

(b) and (c) Applies standard Sunset language regarding the composition of and eligibility of ADS council members.

(d) Provides that Chapter 551, Government Code, applies to the ADS council.

(e) Provides that Chapter 2110, Government Code, does not apply to the ADS council.

(f) Provides that a majority of the members of the ADS council constitute a quorum for the transaction of business.

Sec. 161.022. APPOINTMENTS. Updates standard Sunset language relating to appointments to the ADS council.

Sec. 161.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. Updates standard Sunset language relating to a training program for ADS council members.

Sec. 161.024. TERMS. Sets forth the terms of ADS council members.

Sec. 161.025. VACANCY. Requires the governor by appointment to fill the unexpired term of a vacancy on the ADS council.

Sec. 161.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) - (c) Apply standard Sunset language regarding the presiding officer, other officers, and meetings.

Sec. 161.027. REIMBURSEMENT FOR EXPENSES. Applies standard Sunset language relating to a reimbursement for expenses to an ADS council member.

Sec. 161.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS. Updates standard Sunset language requiring information to be maintained on complaints.

Sec. 161.029. PUBLIC ACCESS AND TESTIMONY. Updates standard Sunset language providing for public testimony at meetings under the jurisdiction of DADS.

Sec. 161.030. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. Updates standard Sunset language regarding the delineation of policymaking and management responsibilities.

Sec. 161.031. ANNUAL REPORT. (a) Requires the commissioner of aging and disability

services to file annually with the governor, the presiding officer of each house of the legislature, and the executive commissioner of health and human services a complete and detailed written report accounting for all funds received and disbursed by DADS during the preceding fiscal year.

(b) Requires the annual report to be in the form and be reported in the time provided by the General Appropriations Act.

Sec. 161.032. OFFICES. Requires DADS to maintain its central office in Austin. Authorizes DADS to maintain offices in other areas of the state as necessary.

[Reserves Sections 161.033-161.050 for expansion.]

### SUBCHAPTER C. PERSONNEL

Sec. 161.051. COMMISSIONER. (a) Requires the executive commissioner of health and human services to appoint with the approval of the governor a commissioner of the Department of Aging and Disability Services (ADS commissioner). Provides that the ADS commissioner is to be selected according to education, training, experience, and demonstrated ability.

(b) Provides that the ADS commissioner serves at the pleasure of the executive commissioner of health and human services.

(c) Requires the ADS commissioner, subject to the control of the executive commissioner of health and human services, to act as DADS's chief administrative officer and as a liaison between DADS and HHSC.

(d) Requires the ADS commissioner to administer this chapter under operational policies established by the executive commissioner of health and human services and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the ADS commissioner and the executive commissioner of health and human services, as adopted by rule.

Sec. 161.052. PERSONNEL. (a) Authorizes DADS to employ, compensate, and prescribe the duties of personnel necessary and suitable to administer this chapter.

(b) Requires the executive commissioner of health and human services to prepare and by rule adopt personnel standards.

(c) Authorizes a personnel position to be filled only by an individual selected and appointed on a nonpartisan merit basis.

(d) Requires the executive commissioner of health and human services, with the advice of the ADS council, to develop and the department to implement policies that clearly define the responsibilities of the staff of the department.

Sec. 161.053. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. Applies standard Sunset language regarding information about qualifications and standards of conduct.

Sec. 161.054. MERIT PAY. Applies standard Sunset language regarding merit pay.

Sec. 161.055. CAREER LADDER. Applies standard Sunset language regarding a career ladder.

Sec. 161.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. Updates standard Sunset language requiring the executive commissioner of health and human services to develop an equal employment opportunity program.

Sec. 161.057. STATE EMPLOYEE INCENTIVE PROGRAM. Applies standard Sunset language regarding a state employee incentive program.

[Reserves Sections 161.058-161.070 for expansion.]

#### SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. Provides that DADS is responsible for administering human services programs for the aging and disabled, including certain services.

Sec. 161.072. INFORMATION REGARDING COMPLAINTS. Updates standard Sunset language requiring information to be maintained on complaints.

Sec. 161.073. RULES. Authorizes the executive commissioner of health and human services to adopt rules reasonably necessary for DADS to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the ADS commissioner and the executive commissioner of health and human services, as adopted by rule.

SECTION 1.14. APPOINTMENT OF COMMISSIONERS. (a) Requires the executive commissioner of health and human services, as soon as possible, to appoint the commissioner of state health services, the commissioner of family and protective services, the commissioner of assistive and rehabilitative services, and the commissioner of aging and disability services.

(b) Requires the executive commissioner of health and human services to make the appointments of the commissioners required by this section so that the ethnic diversity of this state is reflected in those appointments.

SECTION 1.15. APPOINTMENTS OF COUNCIL MEMBERS. (a) Requires the governor, as soon as possible, to appoint the members of the State Health Services Council in accordance with Chapter 1001, Health and Safety Code, as added by this article. Provides that in making the initial appointments, the governor must designate three members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 1, 2009.

(b) Requires the governor, as soon as possible, to appoint the members of the Family and Protective Services Council in accordance with Chapter 40, Human Resources Code, as amended by this article. Provides that in making the initial appointments, the governor must designate three members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 1, 2009.

(c) Requires the governor, as soon as possible, to appoint the members of the Assistive and Rehabilitative Services Council in accordance with Chapter 117, Human Resources Code, as added by this article. Provides that in making the initial appointments, the governor must designate three members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 1, 2009.

(d) Requires the governor, as soon as possible, to appoint the members of the Aging and Disability Services Council in accordance with Chapter 161, Human Resources Code, as added by this article. Provides that in making the initial appointments, the governor must



designate three members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 1, 2009.

(e) Requires the governor to appoint the members of the Health and Human Services Council in accordance with Chapter 531, Government Code, as amended by this article. Provides that in making the initial appointments, the governor must designate three members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 1, 2009.

**SECTION 1.16. LIMITATION ON ACTIVITIES.** Authorizes a state agency created under this article to perform, before the date specified in the transition plan required under Section 1.23 of this article, only those powers, duties, functions, programs, and activities that relate to preparing for the transfer of powers, duties, functions, programs, and activities to that agency in accordance with this article. Prohibits a state agency created under this article from operating all or any part of a health and human services program before the date specified in the transition plan required under Section 1.23 of this article.

**SECTION 1.17. INITIAL COUNCIL MEETINGS.** Requires the presiding officer of the council for each state agency created under this article to call the initial meeting of the applicable council as soon as possible after the council members are appointed.

**SECTION 1.18. TRANSFERS TO THE HEALTH AND HUMAN SERVICES COMMISSION.**

(a) Provides that on the date specified in the transition plan required under Section 1.23 of this Article, certain powers, duties, functions, programs, and activities are transferred to HHSC.

(b) Provides that on the date specified by Subsection (a) of this section all obligations and contracts of, all property and records in the custody of a state agency or entity, and all complaints, investigations, or contested cases that are pending before a state agency or entity abolished by Section 1.26 of this article or the governing body of the agency or entity and that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section are transferred without change in status to HHSC.

(c) Provides that a rule or form adopted by a state agency or entity abolished by Section 1.26 of this article that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is a rule or form of HHSC and remains in effect until altered by HHSC.

(d) Provides that a reference in law to a state agency or entity abolished by Section 1.26 of this article, or to the governing body of the agency or entity, that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section means HHSC.

(e) Provides that a license, permit, or certification in effect that was issued by a state agency or entity abolished by Section 1.26 of this article and that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is continued in effect as a license, permit, or certification of HHSC.

(f) Provides that all powers, duties, functions, programs, and activities relating to audits, including internal audits, transferred to HHSC under Subsection (a)(1) of this section, and all powers, duties, functions, programs, and activities relating to the Texas Department of Human Services office of inspector general transferred to HHSC under Subsection (a)(2)(D) of this section, are required to be assumed by the HHSC's office of inspector general. Provides that notwithstanding any other provision of law, a reference in law to the Texas Department of Human Services office of inspector general means the HHSC's office of inspector general.

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

(b) - (e) Make conforming changes relating to the transfers to the Department of State Health Services.

SECTION 1.20. TRANSFERS TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. (a) On the date specified in the transition plan required under Section 1.23 of this article, certain powers, duties, functions, programs, and activities, other than those related to rulemaking or policymaking or administrative support services such as strategic planning and evaluation, audit, legal, human resources, information resources, accounting, purchasing, financial management, and contract management services, are transferred to the Department of Family and Protective Services.

(b) - (e) Make conforming changes relating to the transfers to the Department of Family and Protective Services.

SECTION 1.21. TRANSFERS TO THE DEPARTMENT OF AGING AND DISABILITY SERVICES. (a) Provides that on the date specified in the transition plan required under Section 1.23 of this article, certain powers, duties, functions, programs, and activities, other than those related to rulemaking or policymaking or administrative support services such as strategic planning and evaluation, audit, legal, human resources, information resources, accounting, purchasing, financial management, and contract management services, are transferred to the Department of Aging and Disability Services.

(b) - (e) Make conforming changes relating to the transfers to the Department of Aging and Disability Services.

SECTION 1.21A. TRANSFERS TO THE DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES. (a) Provides that on the date specified in the transition plan required under Section 1.23 of this article, certain powers, duties, functions, programs, and activities, other than those related to rulemaking or policymaking or administrative support services such as strategic planning and evaluation, audit, legal, human resources, information resources, accounting, purchasing, financial management, and contract management services, are transferred to the Department of Assistive and Rehabilitative Services.

(b) - (e) Make conforming changes relating to the transfers to the Department of Assistive and Rehabilitative Services.

SECTION 1.22. FACILITATION OF TRANSFERS BY HEALTH AND HUMAN SERVICES TRANSITION COUNCIL. (a) Provides that the Health and Human Services Transition Council (HHS transition council) is created to facilitate the transfer of powers, duties, functions, programs, and activities among the state's health and human services agencies and HHSC as provided by this article with a minimal negative effect on the delivery of those services in this state.

(b) Provides that the HHS transition council is composed of 10 certain members.

(c) Provides that the executive commissioner of health and human services serves as presiding officer. Requires the members of the HHS transition council to elect any other necessary officers.

- (d) Requires the HHS transition council to meet at the call of the presiding officer.
- (e) Provides that a member of the HHS transition council serves at the will of the appointing official.
- (f) Prohibits a member of the HHS transition council from receiving compensation for serving on the HHS transition council but entitles the member to reimbursement for travel expenses incurred by the member while conducting the business of the HHS transition council as provided by the General Appropriations Act.
- (g) Requires the HHS transition council, with assistance from HHSC and the health and human services agencies, to advise the executive commissioner of health and human services concerning certain matters.
- (h) Requires the HHS transition council to fully consider all written and oral submissions made on any matter or issue under the HHS transition council's jurisdiction.
- (i) Provides that Chapter 551, Government Code, applies to the HHS transition council.
- (j) Provides that the HHS transition council is abolished December 31, 2004.

**SECTION 1.23. TRANSITION PLAN.** (a) Provides that the transfer of powers, duties, functions, programs, and activities under Sections 1.18, 1.19, 1.20, 1.21, and 1.21A of this article to HHSC, the Department of State Health Services, the Department of Family and Protective Services, the Department of Aging and Disability Services, and the Department of Assistive and Rehabilitative Services, respectively, must be accomplished in accordance with a schedule included in a transition plan developed by the executive commissioner of health and human services and submitted to the governor and the Legislative Budget Board (LBB) not later than December 1, 2003. Requires the executive commissioner of health and human services to provide to the governor and the LBB transition plan status reports and updates on at least a quarterly basis following submission of the initial transition plan. Requires the transition plan to be made available to the public.

- (b) Requires HHSC not later than November 1, 2003, to hold a public hearing and accept public comment regarding the transition plan required to be developed by the executive commissioner of health and human services under Subsection (a) of this section.
- (c) Requires the executive commissioner of health and human services in developing the transition plan, to hold public hearings in various geographic areas in this state before submitting the plan to the governor and the LBB as required by this section.

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

**SECTION 1.25. WORK PLAN FOR HEALTH AND HUMAN SERVICES AGENCIES.** (a) Requires HHSC, the Department of Family and Protective Services, and each health and human services agency created under this article to implement the powers, duties, functions, programs, and activities assigned to the agency under this article in accordance with a work plan designed by HHSC to ensure that the transfer and provision of health and human services in this state are accomplished in a careful and deliberative manner.

- (b) Requires a work plan designed by HHSC under this section to include certain phases.

SECTION 1.26. ABOLITION OF STATE AGENCIES AND ENTITIES. (a) Provides for the abolition of certain state agencies and entities on the date on which their respective powers, duties, functions, programs, and activities are transferred under this article.

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

SECTION 1.27. Provides that a reference in law to the Department of Protective and Regulatory Services means the Department of Family and Protective Services.

SECTION 1.28. REPEAL. Repealer:

(1) Sections 531.0057 (Authority Over Rulemaking at Health and Human Services Agency), 531.034 (Review of Agency Rulemaking), and 531.0345 (Coordination on Inpatient Mental Health Issues; Commission Review), Government Code;

(2) Sections 40.0225 (Restrictions on Board Members and Employees) and 40.023 (Removal from Board), Human Resources Code; and

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

SECTION 1.29. EFFECTIVE DATE. (a) Effective date: September 1, 2003, except as provided by Subsection (b) of this section.

(b) Provides that the Department of State Health Services, the Department of Assistive and Rehabilitative Services, and the Department of Aging and Disability Services are created on the date the executive commissioner appoints the commissioner of the respective agency.

## ARTICLE 2. ADMINISTRATION, OPERATION, AND FINANCING OF HEALTH AND HUMAN SERVICES PROGRAMS AND PROVISION OF HEALTH AND HUMAN SERVICES

SECTION 2.01. Amends Section 531.001, Government Code, by adding Subdivision (1-a) to define "child health plan program."

SECTION 2.02. (a) Amends Subchapter A, Chapter 531, Government Code, by adding Section 531.017, as follows:

Sec. 531.017. PURCHASING DIVISION. (a) Requires HHSC to establish a purchasing division for the management of administrative activities related to the purchasing functions of HHSC and the health and human services agencies.

(b) Requires the purchasing division to seek to achieve targeted cost reductions, increase process efficiencies, improve technological support and customer services, and enhance purchasing support for each health and human services agency; and if cost-effective, contract with private entities to perform purchasing functions for HHSC and the health and human services agencies.

(b) Requires HHSC, not later than January 1, 2004, to develop and implement a plan to consolidate the purchasing functions of HHSC and health and human services agencies in a purchasing division under Section 531.017, Government Code, as added by this section.

SECTION 2.03. Amends Section 531.021, Government Code, by adding Subsections (c), (d), and (e), as follows:

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

(d) Authorizes HHSC in adopting rules and standards required by Subsection (b)(2), to provide for payment of fees, charges, and rates in accordance with certain formulas, procedures, or methodologies prescribed by HHSC's rules; applicable state or federal law, policies, rules, regulations, or guidelines; economic conditions that substantially and materially affect provider participation in the Medicaid program, as determined by the executive commissioner of health and human services; or available levels of appropriated state and federal funds.

(e) Authorizes HHSC notwithstanding any other provision of Chapter 32, Human Resources Code, Chapter 533, or this chapter, to adjust the fees, charges, and rates paid to Medicaid providers as necessary to achieve the objectives of the Medicaid program in a manner consistent with the considerations described by Subsection (d).

SECTION 2.04. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.0335, as follows:

**Sec. 531.0335. PROHIBITION ON PUNITIVE ACTION FOR FAILURE TO IMMUNIZE.** (a) Defines "person responsible for a child's care, custody, or welfare" and "punitive action."

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

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

SECTION 2.05. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.0392, as follows:

**Sec. 531.0392. RECOVERY OF CERTAIN THIRD-PARTY REIMBURSEMENTS UNDER MEDICAID.** (a) Defines "dually eligible individual."

(b) Requires HHSC to obtain Medicaid reimbursement from each fiscal intermediary who makes a payment to a service provider on behalf of the Medicare program, including a reimbursement for a payment made to a home health services provider or nursing facility for services rendered to a dually eligible individual.

SECTION 2.06. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.063, as follows:

Sec. 531.063. CALL CENTER. (a) Requires HHSC, by rule, to establish a call center for purposes of determining and certifying or recertifying a person's eligibility and need for services related to the programs listed under Section 531.008(c), if cost-effective.

(b) Requires HHSC to contract with at least one but not more than four private entities for the operation of a call center required by this section unless HHSC determines that contracting for the operation of the center would not be cost-effective.

(c) Requires each call center required by this section to be located in this state. Provides that this subsection does not prohibit a call center located in this state from processing overflow calls through a center located in another state.

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

(e) Requires HHSC to develop consumer service and performance standards for the operation of a call center required by this section. Requires the standards to address a certain aspects of a call center.

(f) Requires HHSC to make available to the public the standards developed under Subsection (e).

(g) Requires HHSC to develop:

- (1) mechanisms for measuring consumer service satisfaction; and
- (2) performance measures to evaluate whether the call center meets the standards developed under Subsection (e).

(h) Authorizes HHSC to inspect a call center and analyze its consumer service performance through use of a consumer service evaluator who poses as a consumer of the call center.

(i) Requires the executive commissioner of health and human services, notwithstanding Subsection (a), to develop and implement policies that provide an applicant for services related to the programs listed under Section 531.008(c) with an opportunity to appear in person to establish initial eligibility or to comply with periodic eligibility recertification requirements if the applicant requests a personal interview. Requires HHSC, in implementing the policies, to maintain sufficient offices in each of HHSC's service areas to serve applicants for whom telephone, electronic, or mail communication is a barrier to enrollment. Provides that this subsection does not affect a law or rule that requires an applicant to appear in person to establish initial eligibility or to comply with periodic eligibility recertification requirements.

SECTION 2.07. (a) Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.065, as follows:

Sec. 531.065. CONSOLIDATION AND COORDINATION OF HEALTH INSURANCE PREMIUM PAYMENT REIMBURSEMENT PROGRAMS. (a) Requires HHSC to develop and implement a plan to consolidate and coordinate the administration of the health insurance premium payment reimbursement programs prescribed by Section 62.059, Health and Safety Code, and Section 32.0422, Human Resources Code.

(b) Authorizes HHSC, if cost-effective, to contract with a private entity to assist

HHSC in developing and implementing a plan required by this section.

(b) Repealer: Section 62.059(i) (relating to the Health Insurance Premium Payment Reimbursement Program for Children Eligible for Child Health Plan), Health and Safety Code, and Section 32.0422(m) (relating to the Health Insurance Premium Payment Reimbursement Program for Medical Assistance Recipients), Human Resources Code.

(c) Requires HHSC, not later than January 1, 2004, to develop and implement a plan to consolidate and coordinate the administration of health insurance premium payment reimbursement programs as required by Section 531.065, Government Code, as added by this section.

SECTION 2.08. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.067, as follows:

Sec. 531.067. PUBLIC ASSISTANCE HEALTH BENEFIT REVIEW AND DESIGN COMMITTEE. (a) Requires HHSC to appoint a Public Assistance Health Benefit Review and Design Committee (committee). Provides that the committee consists of nine representatives of health care providers participating in the Medicaid program or the child health plan program, or both. Requires the committee membership to include at least three representatives from each program.

(b) Requires the executive commissioner of health and human services to designate one member to serve as presiding officer for a term of two years.

(c) Requires the committee to meet at the call of the presiding officer.

(d) Requires the committee to review and provide recommendations to HHSC regarding health benefits and coverages provided under the state Medicaid program, the child health plan program, and any other income-based health care program administered by HHSC or a health and human services agency. Requires the committee, in performing its duties under this subsection, to review benefits provided under each of the programs and review procedures for addressing high utilization of benefits by recipients.

(e) Requires HHSC to provide administrative support and resources as necessary for the committee to perform its duties under this section.

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

(g) Authorizes HHSC, in performing the duties under this section, to design and implement a program to improve and monitor clinical and functional outcomes of a recipient of services under the state child health plan or medical assistance program. Authorizes the program to use financial, clinical, and other criteriabased on pharmacy, medical services, and other claims data related to the child health plan or the state medical assistance program. Requires HHSC to report to the committee on the fiscal impact, including any savings associated with the strategies utilized under this section.

SECTION 2.09. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.068, as follows:

Sec. 531.068. MEDICAID OR OTHER HEALTH BENEFIT COVERAGE. Provides that in adopting rules or standards governing the state Medicaid program or rules or standards for the development or implementation of health benefit coverage for a

program administered by HHSC or a health and human services agency, HHSC and each health and human services agency, as appropriate, may take into consideration any recommendation made with respect to health benefits provided under their respective programs or the state Medicaid program by the Public Assistance Health Benefit Review and Design Committee established under Section 531.067.

SECTION 2.10. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.069, as follows:

Sec. 531.069. PERIODIC REVIEW OF VENDOR DRUG PROGRAM. (a) Requires HHSC to periodically review all purchases made under the vendor drug program to determine the cost-effectiveness of including a component for prescription drug benefits in any capitation rate paid by the state under a Medicaid managed care program or the child health plan program.

(b) Requires HHSC, in making the determination required by Subsection (a), to consider the value of any prescription drug rebates received by the state.

SECTION 2.11. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.070, as follows:

Sec. 531.070. SUPPLEMENTAL REBATES. (a) Defines "labeler," "manufacturer," and "wholesaler."

(b) Defines, for purposes of this section, "supplemental rebates."

(c) Authorizes HHSC to enter into a written agreement with a manufacturer to accept certain program benefits in lieu of supplemental rebates, as such term is defined herein, only if certain conditions exist.

(d) Provides that for the purposes of this section, a program benefit may mean disease management programs authorized under this title, drug product donation programs, drug utilization control programs, prescriber and beneficiary counseling and education, fraud and abuse initiatives, and other services or administrative investments with guaranteed savings to a program operated by a health and human services agency.

(e) Requires such program investments, other than as required to satisfy the provisions of this section, to be deemed an alternative to, and not the equivalent of, supplemental rebates and to be treated in the state's submissions to the federal government (including, as appropriate, waiver requests and quarterly Medicaid claims) so as to maximize the availability of federal matching payments.

(f) Provides that agreements by HHSC to accept program benefits as defined by this section: may not prohibit HHSC from entering into similar agreements related to different drug classes with other entities; shall be limited to a time period expressly determined by HHSC; and may only cover products that have received approval by the Federal Drug Administration at the time of the agreement, and new products approved after the agreement may be incorporated only under an amendment to the agreement.

(g) Authorizes HHSC, for the purposes of this section, to consider a monetary contribution or donation to the arrangements described in Subsection (c) for the purpose of offsetting expenditures to other state health care programs, but which funding shall not be used to offset expenditures for covered outpatient drugs as defined by 42 U.S.C. Section 1396r-8(k)(2) under the vendor drug program.



Prohibits an arrangement under this subsection from yielding less than the amount the state would have benefitted under a supplemental rebate. Authorizes HHSC to consider an arrangement under this section as satisfying the requirements related to Section 531.072(b).

(h) Requires HHSC, subject to Subsection (i), to negotiate with manufacturers and labelers, including generic manufacturers and labelers, to obtain supplemental rebates for prescription drugs sold in this state under certain programs.

(i) Authorizes HHSC to by contract authorize a private entity to negotiate with manufacturers and labelers on behalf of HHSC.

(j) Authorizes a manufacturer or labeler that sells prescription drugs in this state to voluntarily negotiate with HHSC and enter into an agreement to provide supplemental rebates for prescription drugs provided under certain programs.

(k) Requires HHSC, in negotiating terms for a supplemental rebate amount, to consider certain factors.

(l) Requires HHSC to provide a written report to the legislature and the governor each year. Requires the report to contain certain information.

(m) Requires HHSC in negotiating terms for a supplemental rebate, to utilize the average manufacturer price (AMP), as defined in Section 1396r-8(k)(1) of the Omnibus Budget Reconciliation Act of 1990, as the cost basis for the product.

(b) Requires HHSC, not later than January 1, 2004, to implement Section 531.070, Government Code, as added by this section.

SECTION 2.12. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.071, as follows:

Sec. 531.071. CONFIDENTIALITY OF INFORMATION REGARDING DRUG REBATES, PRICING, AND NEGOTIATIONS. (a) Provides that notwithstanding any other state law, information obtained or maintained by HHSC regarding prescription drug rebate negotiations or a supplemental medical assistance or other rebate agreement, including trade secrets, rebate amount, rebate percentage, and manufacturer or labeler pricing, is confidential and not subject to disclosure under Chapter 552, Government Code.

(b) Provides that information that is confidential under Subsection (a) includes information described by Subsection (a) that is obtained or maintained by HHSC in connection with the Medicaid vendor drug program, the child health plan program, the kidney health care program, the children with special health care needs program, or another state program administered by HHSC or another health and human services agency.

(c) Provides that general information about the aggregate costs of different classes of drugs is not confidential under Subsection (a).

SECTION 2.13. (a) Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.072, as follows:

Sec. 531.072. PREFERRED DRUG LISTS. (a) Requires HHSC, in a manner that complies with applicable state and federal law, to adopt preferred drug lists for the Medicaid vendor drug program and for prescription drugs purchased through the child

health plan program. Authorizes HHSC to adopt preferred drug lists for community mental health centers and state mental health hospitals.

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

(c) Requires HHSC, in making a decision regarding the placement of a drug on each of the preferred drug lists, to consider certain factors.

(d) Requires HHSC to provide for the distribution of current copies of the preferred drug lists to all appropriate health care providers in this state by posting the list on the Internet. Requires HHSC, in addition, to mail copies of the lists to any health care provider on request of that provider.

(e) Defines "labeler" and "manufacturer" for purposes of this subsection. Requires HHSC to ensure that: a manufacturer or labeler may submit written evidence supporting the inclusion of a drug on the preferred drug lists before a supplemental agreement is reached with HHSC; and any drug that has been approved or has had any of its particular uses approved by the United States Food and Drug Administration under a priority review classification will be reviewed by the Pharmaceutical and Therapeutics Committee (PT committee) at the next regularly scheduled meeting of the PT committee. Requires HHSC, on receiving notice from a manufacturer or labeler of the availability of a new product, to the extent possible, to schedule a review for the product at the next regularly scheduled meeting of the PT committee.

(f) Authorizes a recipient of drug benefits under the Medicaid vendor drug program to appeal a denial of prior authorization under Section 531.073 of a covered drug or covered dosage through the Medicaid fair hearing process.

(b) Requires HHSC, not later than March 1, 2004, to adopt the preferred drug lists as required by Section 531.072, Government Code, as added by this section.

SECTION 2.14. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.073, as follows:

Sec. 531.073. PRIOR AUTHORIZATION FOR CERTAIN PRESCRIPTION DRUGS.

(a) Requires HHSC, in its rules and standards governing the Medicaid vendor drug program and the child health plan program, to require prior authorization for the reimbursement of a drug that is not included in the appropriate preferred drug list adopted under Section 531.072, except for any drug exempted from prior authorization requirements by federal law. Authorizes HHSC to require prior authorization for the reimbursement of a drug provided through a community mental health center or state mental health hospital if HHSC adopts preferred drug lists under Section 531.072 that apply to those facilities and the drug is not included in the appropriate list. Requires HHSC to require that the prior authorization be obtained by the prescribing physician.

(a-1) Requires HHSC to delay requiring a prior authorization for drugs that are used to treat patients with life-threatening and chronic illnesses and that require complex medical management strategies until HHSC has completed a study evaluating the impact of a requirement of prior authorization on recipients. Requires HHSC to report its findings from the study to the 79th Legislature or a subsequent legislature of this state.

(b) Requires HHSC to establish procedures for the prior authorization

requirement under the Medicaid vendor drug program to ensure that the requirements of 42 U.S.C. Section 1396r-8(d)(5) and its subsequent amendments are met. Specifically, requires the procedures to ensure that: a prior authorization requirement is not imposed for a drug before the drug has been considered at a meeting of the PT committee established under Section 531.074; there will be a response to a request for prior authorization by telephone or other telecommunications device within 24 hours after receipt of a request for prior authorization; and a 72-hour supply of the drug prescribed will be provided in an emergency or if HHSC does not provide a response within the time required by Subdivision (2).

(c) Requires HHSC to ensure that a prescription drug prescribed before implementation of a prior authorization requirement for that drug for a recipient under the child health plan program, the Medicaid program, or another state program administered by HHSC for a person who becomes eligible under the child health plan program, the Medicaid program, or another state program administered by HHSC or a health and human services agency is not subject to any requirement for prior authorization under this section unless the recipient has exhausted all the prescription, including any authorized refills, or a period prescribed by HHSC has expired, whichever occurs first.

(d) Requires HHSC to implement procedures to ensure that a recipient under the child health plan program, the Medicaid program, or another state program administered by HHSC or a person who becomes eligible under the child health plan program, the Medicaid program, or another state program administered by HHSC or a health and human services agency receives continuity of care in relation to certain prescriptions identified by HHSC.

(e) Authorizes HHSC to by contract authorize a private entity to administer the prior authorization requirements imposed by this section on behalf of HHSC.

(f) Prohibits a private entity or a provider participating in the child health plan program, the Medicaid program, or another state program administered by HHSC or a health and human services agency from receiving a direct or indirect inducement, bonus, or other financial incentive based on the denial or administrative delay of a medically appropriate drug therapy, decreased usage of a particular drug or class of drugs, or a reduction in the number of recipients receiving drug therapy.

(g) Requires HHSC to ensure that the prior authorization requirements are implemented in a manner that minimizes the cost to the state and any administrative burden placed on providers.

SECTION 2.15. (a) Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.074, as follows:

Sec. 531.074. PHARMACEUTICAL AND THERAPEUTICS COMMITTEE. (a) Provides that the PT committee is established for the purposes of developing recommendations for preferred drug lists adopted by HHSC under Section 531.072.

(b) Provides that the PT committee consists of certain members appointed by the governor.

(c) Requires the governor in making appointments to the PT committee under Subsection (b), to ensure that the PT committee includes physicians and

pharmacists who meet certain requirements.

(d) Provides that a member of the PT committee is appointed for a two-year term and may serve more than one term.

(e) Requires the governor to appoint a physician to be the presiding officer of the PT committee. Provides that the presiding officer serves at the pleasure of the governor.

(f) Requires the PT committee to meet at least monthly during the six-month period following establishment of the PT committee to enable the PT committee to develop recommendations for the initial preferred drug lists. Requires the PT committee, after that period, to meet at least quarterly and at other times at the call of the presiding officer or a majority of the PT committee members.

(g) Prohibits a member of the PT committee from receiving compensation for serving on the PT committee but entitles the member to reimbursement for reasonable and necessary travel expenses incurred by the member while conducting the business of the PT committee, as provided by the General Appropriations Act.

(h) Requires the PT committee, in developing its recommendations for the preferred drug lists, to consider the clinical efficacy, safety, cost-effectiveness, and any program benefit associated with a product.

(i) Requires HHSC to adopt rules governing the operation of the PT committee, including rules governing the procedures used by the PT committee for providing notice of a meeting and rules prohibiting the PT committee from discussing confidential information described by Section 531.071 in a public meeting. Requires the PT committee to comply with the rules adopted under this subsection.

(j) Requires the PT committee, to the extent feasible, to review all drug classes included in the preferred drug lists adopted under Section 531.072 at least once every 12 months and authorizes the PT committee to recommend inclusions to and exclusions from the list to ensure that the list provides for cost-effective medically appropriate drug therapies for Medicaid recipients and children receiving health benefits coverage under the child health plan program, and any other affected individuals.

(k) Requires HHSC to provide administrative support and resources as necessary for the PT committee to perform its duties.

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

(b) Requires the governor, not later than November 1, 2003, to appoint members to the PT committee established under Section 531.074, Government Code, as added by this section.

(c) Requires the PT committee established under Section 531.074, Government Code, as added by this section, not later than January 1, 2004, to submit recommendations for the preferred drug lists the PT committee is required to develop under that section to HHSC.

SECTION 2.16. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.075, as follows:

Sec. 531.075. PRIOR AUTHORIZATION FOR HIGH-COST MEDICAL SERVICES.

Authorizes HHSC to evaluate and implement, as appropriate, procedures, policies, and methodologies to require prior authorization for high-cost medical services and procedures and to contract with qualified service providers or organizations to perform those functions. Requires any such program to recognize any prohibitions in federal law on limits in the amount, duration, or scope of medically necessary services for children on Medicaid.

SECTION 2.17. (a) Amends Section 531.101, Government Code, as follows:

Sec. 531.101. AWARD FOR REPORTING MEDICAID FRAUD, ABUSE, OR OVERCHARGES. (a) Authorizes HHSC to grant an award to an individual who reports activity that constitutes fraud or abuse of funds in the state Medicaid program or reports overcharges in the program if HHSC determines that the disclosure results in the recovery of an administrative penalty imposed under Section 32.039, Human Resources Code. Prohibits HHSC from granting an award to an individual in connection with a report if HHSC or the attorney general had independent knowledge of the activity reported by the individual. Deletes text regarding overcharge or in the termination of the fraudulent activity or abuse of funds.

(b) Prohibits the award from exceeding five percent of the amount of the administrative penalty imposed under Section 32.039, Human Resources Code, rather than requiring it to be equal to not less than 10 percent of the savings to this state, that resulted from the individual's disclosure. Requires HHSC, in determining the amount of the award, to consider how important the disclosure is in ensuring the fiscal integrity of the program. Authorizes HHSC to also consider whether the individual participated in the fraud, abuse, or overcharge. Deletes existing text to Subsections (c) and (d) and redesignates Subsection (e) as (c).

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

SECTION 2.18. (a) Amends Section 531.102, Government Code, as follows:

Sec. 531.102. New heading: OFFICE OF INSPECTOR GENERAL. (a) Provides that HHSC, through HHSC's office of inspector general (office) rather than through investigations and enforcement, is responsible for the investigation of fraud and abuse in the provision of health and human services and the enforcement of state law relating to the provision of those services. Authorizes HHSC to obtain any information or technology necessary to enable the office to meet its responsibilities under this subchapter or other law.

(a-1) Requires the governor to appoint an inspector general to serve as director of the office. Provides that the inspector general serves a one-year term that expires on February 1.

(b) Requires HHSC, in consultation with the inspector general, to set clear objectives, priorities, and performance standards for the office that emphasize: coordinating investigative efforts to aggressively recover money; allocating resources to cases that have the strongest supportive evidence and the greatest potential for recovery of money; and maximizing opportunities for referral of cases to the office of the attorney general in accordance with Section 531.103.

(c) Requires HHSC to train office staff to enable the staff to pursue priority Medicaid and other health and human services rather than welfare fraud and abuse

cases as necessary.

(d) Authorizes HHSC to require employees of health and human services agencies to provide assistance to the office, rather than to HHSC, in connection with the office's, rather than HHSC's, duties relating to the investigation of fraud and abuse in the provision of health and human services. The office is entitled to access to any information maintained by a health and human services agency, including internal records, relevant to the functions of the office.

(e) Requires HHSC, in consultation with the inspector general, by rule to set specific claims criteria that, when met, require the office to begin an investigation.

(f)(1) Requires the office, if HHSC receives a complaint of Medicaid fraud or abuse from any source, to conduct an integrity review to determine whether there is sufficient basis to warrant a full investigation. Requires an integrity review to begin not later than the 30th day after the date HHSC receives a complaint or has reason to believe that fraud or abuse has occurred. Requires an integrity review to be completed not later than the 90th day after it began.

(2) Requires the office to take certain action, as appropriate, if the findings of an integrity review give the office reason to believe that an incident of fraud or abuse involving possible criminal conduct has occurred in the Medicaid program, not later than the 30th day after the completion of the integrity review under certain conditions.

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

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

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

(4) Requires HHSC to adopt rules that allow a provider subject to a hold on payment under Subdivision (2), other than a hold requested by the state's Medicaid fraud control unit, to seek an informal resolution of the issues identified by the office in the notice provided under that subdivision. Provides that a provider must seek an informal resolution under this subdivision not later than the deadline prescribed by Subdivision (3), and that a provider's decision to seek an informal resolution under this subdivision does not extend the time by which the provider must request an expedited administrative hearing under Subdivision (3). Requires a hearing

initiated under Subdivision (3) to be stayed at the office's request until the informal resolution process is completed.

(5) Requires the office to, in consultation with the state's Medicaid fraud control unit, establish guidelines under which holds on payment or program exclusions: may permissively be imposed on a provider or are required to automatically be imposed on a provider.

(h) Authorizes the office, in addition to performing functions and duties otherwise provided by law, to take certain actions.

(i) Provides that notwithstanding any other provision of law, a reference in law or rule to HHSC's office of investigations and enforcement means the office of inspector general established under this section.

(b) Requires the governor, as soon as possible after the effective date of this section, to appoint a person to serve as inspector general in accordance with Section 531.102, Government Code, as amended by this section. Provides that the initial term of the person appointed in accordance with this subsection expires February 1, 2005.

SECTION 2.19. Amends Subchapter C, Chapter 531, Government Code, by adding Section 531.1021 as follows:

Sec. 531.1021. SUBPOENAS. (a) Authorizes the office of inspector general to request that the executive commissioner of health and human services or the executive commissioner's designee approve the issuance by the office of a subpoena in connection with an investigation conducted by the office. Authorizes the office, if the request is approved, to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) Authorizes a subpoena to be served personally or by certified mail.

(c) Authorizes the office, if a person fails to comply with a subpoena, acting through the attorney general, to file suit to enforce the subpoena in a district court in this state.

(d) Requires the court, on finding that good cause exists for issuing the subpoena, to order the person to comply with the subpoena. Authorizes the court to punish a person who fails to obey the court order.

(e) Requires the office to pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the office may charge for copies of its records.

(f) Provides that the reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103.

(g) Provides that all information and materials subpoenaed or compiled by the office in connection with an investigation are confidential and not subject to disclosure under Chapter 552, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the office or its employees or agents involved in the investigation conducted by the office, except that this information may be disclosed to the office of the attorney general and law enforcement agencies.

SECTION 2.20. (a) Amends Section 531.103, Government Code, as follows:

Sec. 531.103. INTERAGENCY COORDINATION. (a) Requires HHSC, acting through its office of inspector general, and the office of the attorney general to enter into a memorandum of understanding to develop and implement joint written procedures for processing cases of suspected fraud, waste, or abuse, as those terms are defined by state or federal law, or other violations of state or federal law under the state Medicaid program or other program administered by HHSC or a health and human services agency, including the financial assistance program under Chapter 31, Human Resources Code, a nutritional assistance program under Chapter 33, Human Resources Code, and the child health plan program. Requires the memorandum of understanding to require certain actions from certain entities.

(b) Provides that an exchange of information under this section between the office of the attorney general and HHSC, the office of inspector general, or a health and human services agency does not affect whether the information is subject to disclosure under Chapter 552. Makes conforming changes.

(c) Requires HHSC and the office of the attorney general to jointly prepare and submit a semiannual report to the governor, lieutenant governor, speaker of the house of representatives, and comptroller concerning the activities of those agencies in detecting and preventing fraud, waste, and abuse under the state Medicaid program or other program administered by HHSC or a health and human services agency. Makes a conforming changes.

(d) No change to this subsection.

(e) Requires the memorandum of understanding required by this section, in addition to the provisions required by Subsection (a), to also ensure that no barriers to direct fraud referrals to the office of the attorney general's Medicaid fraud control unit or unreasonable impediments to communication between Medicaid agency employees and the Medicaid fraud control unit are imposed, and to include procedures to facilitate the referral of cases directly to the office of the attorney general. Deletes existing text relating to requiring HHSC to refer a case of suspected fraud, waste, or abuse under the state Medicaid program to certain persons under certain conditions and the subsequent actions to be taken.

(f) Authorizes a district attorney, county attorney, city attorney, or private collection agency to collect and retain costs associated with a case referred to the attorney or agency in accordance with procedures adopted under this section and 20 percent of the amount of the penalty, restitution, or other reimbursement payment collected.

(b) Requires the office of the attorney general and HHSC to amend the memorandum of understanding required by Section 531.103, Government Code, as necessary to comply with that section, as amended by this section, not later than December 1, 2003.

SECTION 2.21. Amends Section 531.104(b), Government Code, to require the memorandum of understanding to specify the type, scope, and format of the investigative support provided to the attorney general under this section. Deletes language stating that the commission is not required to provide investigative support in more than 100 open investigations in a fiscal year.

SECTION 2.22. (a) Amends Subchapter C, Chapter 531, Government Code, by adding Section 531.1063, as follows:

Sec. 531.1063. MEDICAID FRAUD PILOT PROGRAM. (a) Requires HHSC, with cooperation from the Texas Department of Human Services (TDHS), to develop and implement a front-end Medicaid fraud reduction pilot program in one or more counties in



this state to address provider fraud and appropriate cases of third-party and recipient fraud.

(b) Requires the program to be designed to reduce the number of fraud cases arising from authentication fraud and abuse; the total amount of Medicaid expenditures; and the number of fraudulent participants.

(c) Requires the program to include: participant smart cards and biometric readers that reside at the point of contact with Medicaid providers, recipients, participating pharmacies, hospitals, and appropriate third-party participants; a secure finger-imaging system that is HIPAA compliant and the use of any existing state database of fingerprint images developed in connection with the financial assistance program under Chapter 31, Human Resources Code, with fingerprint images collected as part of the program to only be placed on the smart card; and a monitoring system.

(d) Authorizes HHSC, in implementing the program, to exempt recipients who are children or who are elderly or disabled and obtain a fingerprint image from a parent or caretaker of a recipient who is a child, regardless of whether the parent or caretaker is a recipient.

(e) Requires HHSC to ensure that the procedures for obtaining fingerprint images of participating recipients and parents and caretakers who are not recipients are designed in a flexible manner that gives consideration to transportation barriers and work schedules of those individuals.

(f) Requires the program and all associated hardware and software to easily integrate into participant settings and be initially tested in a physician environment in this state and determined to be successful in authenticating recipients, providers, and provider staff members before the program is implemented throughout the program area, to ensure reliability.

(g) Authorizes HHSC to extend the program to additional counties if it determines that expansion would be cost-effective.

(b) Requires HHSC to begin implementation of the program required by Section 531.1063, Government Code, as added by this section, not later than January 1, 2004.

(c) Requires HHSC to report to certain persons regarding the program required by Section 531.1063, Government Code, as added by this section, not later than February 1, 2005. Requires the report to include an identification and evaluation of the benefits of the program and recommendations regarding expanding the program statewide.

SECTION 2.23. Amends Section 531.107(b), Government Code, to include a representative of the Texas Department of Health (TDH), appointed by the commissioner of public health, to the task force.

SECTION 2.24. (a) Amends Subchapter C, Chapter 531, Government Code, by adding Section 531.113, as follows:

Sec. 531.113. MANAGED CARE ORGANIZATIONS: SPECIAL INVESTIGATIVE UNITS OR CONTRACTS. (a) Requires each managed care organization that provides or arranges for the provision of health care services to an individual under a government-funded program, including the Medicaid program and the child health plan program, to perform certain functions.

(b) Requires each managed care organization subject to this section to adopt a plan to prevent and reduce fraud and abuse and annually file that plan with

HHSC's office of inspector general for approval. Requires the plan to include certain information.

(c) Requires the managed care organization to file with HHSC's office of inspector general certain information, if a managed care organization contracts for the investigation of fraudulent claims and other types of program abuse by recipients and service providers under Subsection (a)(2).

(d) Authorizes HHSC's office of inspector general to review the records of a managed care organization to determine compliance with this section.

(e) Requires the executive commissioner of health and human services to adopt rules as necessary to accomplish the purposes of this section.

(b) Requires a managed care organization subject to Section 531.113, Government Code, as added by this section, to comply with the requirements of that section not later than September 1, 2004.

SECTION 2.25. (a) Amends Subchapter C, Chapter 531, Government Code, by adding Section 531.114, as follows:

Sec. 531.114. FINANCIAL ASSISTANCE FRAUD. (a) Prohibits a person from intentionally making a statement that the person knows is false or misleading, misrepresenting, concealing, or withholding a fact, or knowingly misrepresenting a statement as being true, for purposes of establishing or maintaining the eligibility of a person and the person's family for financial assistance under Chapter 31, Human Resources Code, or for purposes of increasing or preventing a reduction in the amount of that assistance.

(b) Requires HHSC to take certain actions, if after an investigation it determines that a person violated Subsection (a).

(c) Provides that if a person waives the right to a hearing or if a hearing officer at an administrative hearing held under this section determines that a person violated Subsection (a), the person is ineligible to receive financial assistance as provided by Subsection (d). Authorizes a person who a hearing officer determines violated Subsection (a) to appeal that determination by filing a petition in the district court in the county in which the violation occurred not later than the 30th day after the date the hearing officer made the determination.

(d) Provides that a person determined under Subsection (c) to have violated Subsection (a) is not eligible for financial assistance: before the first anniversary of the date of that determination, if the person has no previous violations; and permanently, if the person was previously determined to have committed a violation.

(e) Provides that if a person is convicted of a state or federal offense for conduct described by Subsection (a), or if the person is granted deferred adjudication or placed on community supervision for that conduct, the person is permanently disqualified from receiving financial assistance.

(f) Provides that this section does not affect the eligibility for financial assistance of any other member of the household of a person ineligible as a result of Subsection (d) or (e).

(g) Requires HHSC to adopt rules as necessary to implement this section.

(b) Makes application of Section 531.114, Government Code, as added by this section, prospective.

SECTION 2.26. Amends Subchapter C, Chapter 531, Government Code, by adding Section 531.115, as follows:

Sec. 531.115. FEDERAL FELONY MATCH. Requires HHSC to develop and implement a system to cross-reference data collected for the programs listed under Section 531.008(c) with the list of fugitive felons maintained by the federal government.

SECTION 2.27. Amends Subchapter C, Chapter 531, Government Code, by adding Section 531.116, as follows:

Sec. 531.116. COMPLIANCE WITH LAW PROHIBITING SOLICITATION. Provides that a provider who furnishes services under the Medicaid program or child health plan program is subject to Chapter 102, Occupations Code, and the provider's compliance with that chapter is a condition of the provider's eligibility to participate as a provider under those programs.

SECTION 2.28. Amends Subchapter A, Chapter 533, Government Code, by adding Section 533.0025, as follows:

Sec. 533.0025. DELIVERY OF SERVICES. (a) Provides that in this section, "medical assistance" has the meaning assigned by Section 32.003, Human Resources Code.

(b) Requires HHSC, except as otherwise provided by this section and notwithstanding any other law, to provide medical assistance for acute care through the most cost-effective model of Medicaid managed care as determined by HHSC. Authorizes HHSC to provide medical assistance for acute care in a certain part of this state or to a certain population of recipients using certain health care models, if HHSC determines that it is more cost-effective.

(c) Requires the executive commissioner of health and human services to consider certain information in determining whether a model or arrangement described by Subsection (b) is more cost-effective.

(d) Requires HHSC, if it determines that it is not more cost-effective to use a Medicaid managed care model to provide certain types of medical assistance for acute care in a certain area or to certain medical assistance recipients as prescribed by this section, to provide medical assistance for acute care through a traditional fee-for-service arrangement.

SECTION 2.29. Amends Subchapter A, Chapter 533, Government Code, by adding Section 533.0132, as follows:

Sec. 533.0132. STATE TAXES. Requires HHSC to ensure that any experience rebate or profit sharing for managed care organizations is calculated by treating premium, maintenance, and other taxes under the Insurance Code and any other taxes payable to this state as allowable expenses for purposes of determining the amount of the experience rebate or profit sharing.

SECTION 2.30. Amends Sections 403.105(a) and (c), Government Code, as follows:

(a) Provides that the permanent fund for health and tobacco education and enforcement, rather than the permanent fund for tobacco education and enforcement, is a dedicated account in the general revenue fund.

(c) Includes the provision of coordinated essential public health services administered by TDH as a service for which available earnings of the fund may be appropriated to TDH. Makes conforming changes.

SECTION 2.31. Amends the heading to Section 403.105, Government Code, to read as follows:

Sec. 403.105. PERMANENT FUND FOR HEALTH AND TOBACCO EDUCATION AND ENFORCEMENT.

SECTION 2.32. Amends Section 403.1055(c), Government Code, to include among the purposes for which available earnings of the fund may be appropriated to the Interagency Council on Early Childhood Intervention to provide intervention services for children with developmental delay or who have a high probability of developing developmental delay and the families of those children.

SECTION 2.33. (a) Provides that effective September 1, 2003, Section 466.408(b), Government Code, is amended to require that if a claim is not made for lottery prize money on or before the 180th day after the date on which the winner was selected, the prize money to be used, in order of priority, for: \$20 million in prize money each year to be deposited to the credit of the TDH's state-owned multicategorical teaching hospital account, which is an account in the general revenue fund; \$5 million in prize money each year to be used by HHSC to support the provision of inpatient hospital services in hospitals located in the 15 counties that comprise the Texas-Mexico border area, with payment for those services to be not less than the amount established under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) cost reimbursement methodology for the hospital providing the services; and all remaining prize money subject to this section to be deposited in the tertiary care facility account and may be appropriated only for purposes specified in Chapter 46 or 61, Health and Safety Code. Deletes existing text relating to deposit of such funds to the credit of the TDH state-owned multicategorical teaching hospital account or the tertiary care facility account.

(b) Effective September 1, 2005, Section 466.408(b), Government Code, is reenacted as follows:

(b) Requires the prize money to be deposited to the credit of the TDH state-owned multicategorical teaching hospital account or the tertiary care facility account in a certain manner if a claim is not made for prize money on or before the 180th day after the date on which the winner was selected.

(c) Provides that it is the intent of the legislature that HHSC, to the extent possible, is required to take all action necessary to provide the highest level of possible financial support to providing community care services and support for the aging, as appropriate to reflect the legislature's priority for those programs reflected in the General Appropriations Act.

SECTION 2.34. Amends the heading to Subchapter C, Chapter 531, Government Code, to read as follows:

SUBCHAPTER C. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES  
FRAUD, ABUSE, OR OVERCHARGES

SECTION 2.35. Amends Subchapter C, Chapter 531, Government Code, by adding Section 531.1011, as follows:

Sec. 531.1011. DEFINITIONS. Defines "fraud," "hold on payment," "practitioner," "program exclusion," and "provider."

SECTION 2.36. (a) Amends Subchapter B, Chapter 12, Health and Safety Code, by adding Sections 12.0111 and 12.0112, as follows:

Sec. 12.0111. LICENSING FEES. (a) Provides that this section applies in relation to each licensing program administered by TDH or administered by a regulatory board or other agency that is under the jurisdiction of TDH or administratively attached to TDH. Provides that in this section and Section 12.0112, "license" includes a permit, certificate, or registration.

(b) Requires TDH to charge a fee for issuing or renewing a license that is in an amount designed to allow TDH to recover from its license holders all of TDH's direct and indirect costs in administering and enforcing the applicable licensing program, notwithstanding other law.

(c) Requires each regulatory board or other agency that is under the jurisdiction of TDH or administratively attached to TDH and that issues licenses to charge a fee for issuing or renewing a license that is in an amount designed to allow TDH and the regulatory board or agency to recover from the license holders all of the direct and indirect costs to TDH and to the regulatory board or agency in administering and enforcing the applicable licensing program, notwithstanding other law.

(d) Provides that this section does not apply to a person regulated under Chapter 773.

Sec. 12.0112. TERM OF LICENSE. (a) Provides that, notwithstanding other law and except as provided by Subsection (b), the term of each license issued by TDH, or by a regulatory board or other agency that is under the jurisdiction of TDH or administratively attached to TDH, is two years. Authorizes TDH, the regulatory board, or agency to provide for staggering the issuance and renewal of licenses.

(b) Provides that this section does not apply to a license issued for a youth camp under Chapter 141.

(b) Provides that Section 12.0111, Health and Safety Code, as added by this section, applies only to a license, permit, certificate, or registration issued or renewed by TDH, or by a regulatory board or other agency that is under the jurisdiction of TDH or administratively attached to TDH, on or after January 1, 2004.

(c) Provides that Section 12.0112, Health and Safety Code, as added by this section, applies only to a license, permit, certificate, or registration that is issued or renewed on or after January 1, 2005.

SECTION 2.37. Amends Sections 62.055(a), (d), and (e), Health and Safety Code, as follows:

(a) Deletes "another entity, including the Texas Healthy Kids Corporation under Subchapter F, Chapter 109, to obtain health benefit plan coverage for children who are eligible for coverage under the state child health plan" as an entity HHSC is authorized to contract with in administering the child health plan.

(d) and (e) Make conforming changes.

SECTION 2.38. (a) Amends Subchapter B, Chapter 62, Health and Safety Code, by adding Section 62.0582, as follows:

Sec. 62.0582. **THIRD-PARTY BILLING VENDORS.** (a) Prohibits a third-party billing vendor from submitting a claim with HHSC for payment on behalf of a health plan provider under the program unless the vendor has entered into a contract with HHSC authorizing that activity.

(b) Requires to the extent practical, that the contract contain provisions comparable to the provisions contained in contracts between HHSC and health plan providers, with an emphasis on provisions designed to prevent fraud or abuse under the program. Requires, at a minimum, the contract to require the third-party billing vendor to follow certain requirements.

(c) Requires HHSC to send a remittance notice directly to the provider referenced in the claim, on receipt of a claim submitted by a third-party billing vendor. Requires the notice to include detailed information regarding the claim submitted on behalf of the provider.

(d) Requires HHSC to take all action necessary, including any modifications of HHSC's claims processing system, to enable the commission to identify and verify a third-party billing vendor submitting a claim for payment under the program, including identification and verification of any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim.

(e) Requires HHSC to audit each third-party billing vendor subject to this section at least annually to prevent fraud and abuse under the program.

(b) Provides that Section 62.0582, Health and Safety Code, as added by this section, takes effect January 1, 2006.

SECTION 2.39. Amends Section 62.002(4), Health and Safety Code, to redefine "net family income."

SECTION 2.40. Amends Sections 62.101(b) and (c), Health and Safety Code, as follows:

(b) Requires HHSC to establish income eligibility levels consistent with Title XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, and subject to the availability of appropriated money, so that a child who is younger than 19 years of age and whose net family income is at or below 165, rather than 200, percent of the federal poverty level is eligible for health benefits coverage under the program, unless different income eligibility levels are prescribed by the General Appropriations Act.

(c) Requires the executive commissioner of health and human services to take certain actions, in the event that appropriated money is insufficient to sustain enrollment at the authorized eligibility level or enrollment exceeds the number of children authorized to be enrolled in the child health plan under the General Appropriations Act.

SECTION 2.41. Amends Section 62.1015(b), Health and Safety Code, to provide that a child enrolled in the child health plan under this section is subject to the same requirements and restrictions relating to income eligibility, continuous coverage, and enrollment, including applicable waiting periods, as any other child enrolled in the child health plan.

SECTION 2.42. Amends Section 62.102, Health and Safety Code, as follows:

Sec. 62.102. **CONTINUOUS COVERAGE.** Requires HHSC to provide that an individual who is determined to be eligible for coverage under the child health plan

remains eligible for those benefits until the earlier of the end of a period, not to exceed 180 days, rather than 12 months, following the date of the eligibility determination or the individual's 19th birthday.

SECTION 2.43. Amends Section 62.151, Health and Safety Code, by amending Subsection (b) and adding Subsections (e) and (f), as follows:

(b) Requires HHSC in developing the covered benefits to consider the health care needs of healthy children and children with special health care needs. Deletes language relating to required benefits under the child health plan benefits package that are actuarially equivalent, as determined in accordance with 3142 U.S.C. Section 1397cc, to the basic plan for active state employees offered through health maintenance organizations under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas 2 Insurance Code), as determined by HHSC, and are at least the covered benefits described by the recommended benefits package described for a state-designed child health plan by the Texas House of Representatives Committee on Public Health "CHIP" Interim Report to the Seventy-Sixth Texas Legislature dated December, 1998, and the Senate Interim Committee on Children's Health Insurance Report to the Seventy-Sixth Texas Legislature dated December 1, 1998.

(e) Requires HHSC, in developing the covered benefits, to seek input from the Public Assistance Health Benefit Review and Design Committee established under Section 531.067, Government Code.

(f) Authorizes HHSC, if it determines the policy to be cost-effective, to ensure that an enrolled child does not, unless authorized by HHSC in consultation with the child's attending physician or advanced practice nurse, receive under the child health plan more than four different outpatient brand-name prescription drugs during a month or more than a 34-day supply of a brand-name prescription drug at any one time.

SECTION 2.44. Amends Section 62.153, Health and Safety Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Provides that subject to Subsection (d), cost-sharing provisions adopted under this section shall ensure that families with higher levels of income are required to pay progressively higher percentages of the cost of the plan.

(d) Authorizes cost-sharing provisions adopted under this section to be determined based on the maximum level authorized under federal law.

SECTION 2.45. (a) Amends the heading to Section 62.154, Health and Safety Code, to read as follows:

Sec. 62.154. WAITING PERIOD; CROWD OUT.

(b) Amends Sections 62.154(a), (b), and (d), Health and Safety Code, as follows:

(a) Makes a nonsubstantive change.

(b) Provides that a child is not subject to a waiting period adopted under Subsection (a) if the child has access to group-based health benefits plan coverage and is required to participate in the health insurance premium payment reimbursement program administered by HHSC. Makes conforming changes.

(d) Requires the waiting period required by Subsection (a) to extend for a period of 90 days after the first day of the month in which the applicant is enrolled under

the child health plan, rather than was covered under a health benefits plan. Deletes language requiring that a child who was covered by a health benefits plan at any time during the 90 days before the date of application for coverage under the child health plan, other than a child who was covered under a health benefits plan provided under Chapter 109, be subject to the waiting period under Subsection (a).

SECTION 2.46. Amends Sections 62.155(c) and (d), Health and Safety Code, as follows:

(c) Authorizes HHSC to give preference to a person who provides similar coverage under the Medicaid program in selecting a health plan provider and requires HHSC to provide for a choice of at least, two health plan providers in each service, rather than metropolitan area. Deletes a reference to the Texas Healthy Kids Corporation.

(d) Makes conforming changes.

SECTION 2.47. Amends Subchapter D, Chapter 62, Health and Safety Code, by adding Section 62.158, as follows:

Sec. 62.158. STATE TAXES. Requires HHSC to ensure that any experience rebate or profit-sharing for health plan providers under the child health plan is calculated by treating premium, maintenance, and other taxes under the Insurance Code and any other taxes payable to this state as allowable expenses for purposes of determining the amount of the experience rebate or profit-sharing.

SECTION 2.48. Amends Section 142.003(a), Health and Safety Code, to include in the list of persons that need not be licensed under this chapter a person who provides services under a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended, and that is funded wholly or partly by the Texas Department of Mental Health and Mental Retardation (MHMR) and monitored by MHMR or by a designated local authority in accordance with standards adopted by MHMR.

SECTION 2.49. Amends Section 142.009(j), Health and Safety Code, to remove Subsection (i) as an exception.

SECTION 2.50. (a) Amends Section 242.047, Health and Safety Code, as follows:

Sec. 242.047. New heading: ACCREDITATION REVIEW TO SATISFY INSPECTION OR CERTIFICATION REQUIREMENTS. (a) Requires the Texas Department of Human Services (DHS) to accept an annual accreditation review from the Joint Commission on Accreditation of Health Organizations (JCAHO) for a nursing home instead of an inspection for renewal of a license under Section 242.033 and in satisfaction of the requirements for certification by DHS for participation in the medical assistance program under Chapter 32, Human Resources Code, and the federal Medicare program, but only if certain conditions apply, including that DHS has determined whether a waiver or authorization from a federal agency is necessary under federal law, including for federal funding purposes, before the department accepts an annual accreditation review from JCAHO for certain purposes and obtained any necessary federal waivers or authorizations.

(b) Requires DHS to coordinate its licensing and certification activities with JCAHO.

(c) Requires DHS and JCAHO to sign a memorandum of agreement to implement this section. Requires the memorandum to provide that if all parties to the memorandum do not agree in the development, interpretation, and implementation of the memorandum, any area of dispute is to be resolved by the



Texas Board of Human Services.

(d) Provides that except as specifically provided by this section, this section does not limit DHS in performing any duties and inspections authorized by this chapter or under any contract relating to the medical assistance program under Chapter 32, Human Resources Code, and Titles XVIII and XIX of the Social Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.), including authority to take appropriate action relating to an institution, such as closing the institution.

(e) Provides that this section does not require a nursing home to obtain accreditation from JCAHO.

(b) Requires DHS, not later than October 1, 2003, to take certain actions.

(c) Requires DHS, not later than December 1, 2003, to report its progress under Subsection (b) of this section to the governor and to the presiding officer of each house of the legislature.

SECTION 2.51. (a) Amends Section 242.063(d), Health and Safety Code, to require, rather than authorize, a suit for a temporary restraining order or other injunctive relief to be brought in the county in which the alleged violation occurs. Deletes text relating to Chapter 15, Civil Practice and Remedies Code, or Section 65.023, Civil Practice and Remedies Code as providing exceptions to this subchapter. Deletes existing text relating to requiring a suit for a temporary restraining order or other injunctive relief to be brought in Travis County.

(b) Repealer: Section 242.063(e) (Injunction), Health and Safety Code.

(c) Makes application of the changes in law made by this section to Section 242.063(d), Health and Safety Code, prospective.

SECTION 2.52. Amends Section 242.065(b), Health and Safety Code, to require the trier of fact to consider certain information, in determining the amount of a penalty to be awarded under this section. Deletes text requiring the trier of fact to consider the nature, circumstances, extent, and gravity of the violation and the hazard or potential hazard created by the violation to the health or safety of a resident.

SECTION 2.53. (a) Amends Section 242.070, Health and Safety Code, as follows:

Sec. 242.070. APPLICATION OF OTHER LAW. Prohibits DHS from assessing more than one monetary penalty under this chapter and Chapter 32, Human Resources Code, for a violation arising out of the same act or failure to act, except as provided by Section 242.0665(c). Authorizes DHS to assess the greater of a monetary penalty under this chapter or, rather than and, a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

(b) Makes application of the change in law made by this section to Section 242.070, Health and Safety Code, prospective.

SECTION 2.54. Amends Section 242.601(a), Health and Safety Code, to require an institution to establish medication administration procedures. Deletes existing text relating to establishing medication administration procedures to ensure certain conditions are met.

SECTION 2.55. Amends Section 242.603(a), Health and Safety Code, to require an institution to store medications under appropriate conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Deletes existing text relating to storage locations,

procedures, and security requirements for poisons, medications used externally, and medications taken internally.

SECTION 2.56. (a) Amends Section 245.004(a), Health and Safety Code, to provide that the office of a physician licensed under Subtitle B, Title 3, Occupations Code, need not be licensed under this chapter unless the office is used for the purpose of performing more than 50, rather than 300, abortions in any 12-month period.

(b) Requires an office of a physician required by Section 245.004(a), Health and Safety Code, as amended by this section, to be licensed under Chapter 245, Health and Safety Code, to obtain that license not later than January 1, 2004.

SECTION 2.57. Amends Section 252.202(a), Health and Safety Code, to provide that a quality assurance fee is imposed on each facility for which a license fee must be paid under Section 252.034, on each facility owned by a community mental health and mental retardation center, as described by Subchapter A, Chapter 534, and on each facility owned by MHMR. Provides that the fee is a certain amount, payable monthly, and is in addition to other fees imposed under this chapter.

SECTION 2.58. Amends Section 252.203, Health and Safety Code, to delete text relating to certain beds on hold from the formula for determining the number of patient days per calendar day for a facility.

SECTION 2.59. Amends Section 252.204(b), Health and Safety Code, to require each facility to take certain actions by certain dates.

SECTION 2.60. Amends Sections 252.207(a) and (c), Health and Safety Code, as follows:

(a) Authorizes, rather than requires HHSC, subject to legislative appropriation and state and federal law, to use money in the quality assurance fund, together with any federal money available to match that money to offset expenses incurred to administer the quality assurance fee under this chapter, to increase reimbursement rates paid under the Medicaid program to facilities or waiver programs for persons with mental retardation operated in accordance with 42 U.S.C. Section 1396n(c) and its subsequent amendments, or for any other health and human services purpose approved by the governor and LBB. Deletes text referring to “allowable” expenses “under the Medicaid program” and approval by the governor and LBB being “subject to Section 252.206(d).”

(c) Requires HHSC, if money in the quality assurance fund is used to increase a reimbursement rate in the Medicaid program, to ensure that the reimbursement methodology used to set that rate describes how the money in the fund will be used to increase the rate and provides incentives to increase direct care staffing and direct care wages and benefits. Deletes existing text relating to the formula devised under Subsection (b).

SECTION 2.61. Amends Section 253.008, Health and Safety Code, as follows:

Sec. 253.008. VERIFICATION OF EMPLOYABILITY. (a) Requires an agency licensed under Chapter 142, or a person exempt from licensing under Section 142.003(a)(19), before hiring an employee, to search the employee misconduct registry under this chapter and the nurse aide registry maintained under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the applicant for employment, rather than the person, is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an individual receiving services from an agency licensed under Chapter 142 or from a person exempt from licensing under Section 142.003(a)(19). Makes conforming changes.

(b) Makes conforming and nonsubstantive changes.

SECTION 2.62. Amends Section 253.009(a), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 2.63. (a) Amends Chapter 285, Health and Safety Code, by adding Subchapter M, as follows:

**SUBCHAPTER M. PROVISION OF SERVICES**

Sec. 285.201. **PROVISION OF MEDICAL AND HOSPITAL CARE.** Provides that as authorized by 8 U.S.C. Section 1621(d), this chapter affirmatively establishes eligibility for a person who would otherwise be ineligible under 8 U.S.C. Section 1621(a), provided that only local funds are utilized for the provision of nonemergency public health benefits. Provides that a person is not considered a resident of a governmental entity or hospital district if the person attempted to establish residence solely to obtain health care assistance.

(b) This sections effective date: upon passage or September 1, 2003.

SECTION 2.64. Amends Section 431.021(w), Health and Safety Code, to provide that the act of or the causing of the acceptance by a person, except as provided under Subchapter M of this chapter and Section 562.1085, Occupations Code, of an unused prescription or drug, in whole or in part, for the purpose of resale, after the prescription or drug has been originally dispensed, or sold is unlawful and prohibited.

SECTION 2.65. (a) Amends Section 461.018(b), Health and Safety Code, to require that the Texas Commission on Alcohol and Drug Abuse's program include establishing and maintaining a list of webpages and toll-free "800" telephone numbers of nonprofit entities that provide crisis counseling and referral services to families experiencing difficulty as a result of problem or compulsive gambling, rather than establishing and maintaining a toll-free "800" telephone number to provide such services.

(b) Repealer: Section 466.251(b) (Tickets), Government Code, and Section 2001.417(b) (Toll-Free Help), Occupations Code.

SECTION 2.66. Amends Section 533.034, Health and Safety Code, as follows:

Sec. 533.034. **AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES.**

(a) Creates this subsection from existing text.

(b) Authorizes MHMR to adopt a schedule of initial and annual renewal compliance fees for persons that provide services under a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended, and that is funded wholly or partly by MHMR and monitored by MHMR or by a designated local authority in accordance with standards adopted by MHMR. Provides that this subsection expires September 1, 2005.

SECTION 2.67. Amends Subchapter B, Chapter 533, Health and Safety Code, by adding Section 533.0354, as follows:

Sec. 533.0354. **DISEASE MANAGEMENT PRACTICES AND JAIL DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES.** (a) Requires a local mental health authority to provide assessment services, crisis services, and intensive and comprehensive services using disease management practices for adults with bipolar

disorder, schizophrenia, or clinically severe depression and for children with serious emotional illnesses. Requires the local mental health authority to engage an individual with certain treatment services that meet certain conditions.

(b) Requires MHMR to require each local mental health authority to incorporate jail diversion strategies into the authority's disease management practices for managing adults with schizophrenia and bipolar disorder to reduce the involvement of those client populations with the criminal justice system.

(c) Requires MHMR to enter into performance contracts between MHMR and each local mental health authority for the fiscal years ending August 31, 2004, and August 31, 2005, that specify measurable outcomes related to their success in using disease management practices to meet the needs of the target populations.

(d) Requires MHMR to study the implementation of disease management practices, including the jail diversion measures, and to submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report on the progress in implementing disease management practices and jail diversion measures by local mental health authorities. Requires the report to be delivered not later than December 31, 2004, and to include specific information on certain items.

(e) Authorizes MHMR to use the fiscal year ending August 31, 2004, as a transition period for implementing the requirements of Subsections (a)-(c).

SECTION 2.68. (a) Amends Subchapter B, Chapter 533, Health and Safety Code, by adding Section 533.049, as follows:

Sec. 533.049. PRIVATIZATION OF STATE SCHOOL. (a) Authorizes MHMR, after August 31, 2004, and before September 1, 2005, to contract with a private service provider to operate a state school under certain circumstances.

(b) Requires MHMR, on or before April 1, 2004, to report to the commissioner of health and human services whether MHMR has received a proposal by a private service provider to operate a state school. Requires the report to include an evaluation of the private service provider's qualifications, experience, and financial strength, a determination of whether the provider can operate the state school under the same standard of care as MHMR, and an analysis of the projected savings under a proposed contract with the provider. Requires the savings analysis to include all MHMR costs to operate the state school, including costs, such as employee benefits, that are not appropriated to MHMR.

(c) Requires MHMR, the Governor's Office of Budget and Planning, and the LBB to identify sources of funding to be transferred to MHMR to fund the contract, if MHMR contracts with a private service provider to operate a state school.

(d) Authorizes MHMR to renew a contract under this section. Provides that the conditions listed in Subsections (a)(1)-(3) apply to the renewal of the contract.

(b) Provides that Section 533.049, Health and Safety Code, as added by this section, takes effect September 1, 2004.

SECTION 2.69. (a) Amends Subchapter B, Chapter 533, Health and Safety Code, by adding Section 533.050, as follows:

Sec. 533.050. PRIVATIZATION OF STATE MENTAL HOSPITAL. (a) Authorizes

MHMR, after August 31, 2004, and before September 1, 2005, to contract with a private service provider to operate a state mental hospital owned by MHMR under certain conditions.

(b) Requires MHMR, on or before April 1, 2004, to report to the commissioner of health and human services whether MHMR has received a proposal by a private service provider to operate a state mental hospital. Requires the report to include an evaluation of the private service provider's qualifications, experience, and financial strength, a determination of whether the provider can operate the hospital under the same standard of care as MHMR, and an analysis of the projected savings under a proposed contract with the provider. Requires the savings analysis to include all MHMR costs to operate the hospital, including costs, such as employee benefits, that are not appropriated to MHMR.

(c) Requires, if MHMR contracts with a private service provider to operate a state mental hospital, MHMR, the Governor's Office of Budget and Planning, and the LBB to identify sources of funding to be transferred to MHMR to fund the contract.

(d) Authorizes MHMR to renew a contract under this section. Provides that the conditions listed in Subsections (a)(1)-(3) apply to the renewal of the contract.

(b) Provides that Section 533.050, Health and Safety Code, as added by this section, takes effect September 1, 2004.

SECTION 2.70. (a) Amends Subchapter C, Chapter 533, Health and Safety Code, by adding Sections 533.061 and 533.0611, as follows:

Sec. 533.061. **REQUIRED CONTRACT PROVISIONS.** (a) Requires MHMR to include in a contract with an intermediate care facility for the mentally retarded (ICF-MR) program provider a provision stating that the contract terminates if MHMR imposes a vendor hold on payments made to the facility under the medical assistance program under Chapter 32, Human Resources Code, three times during an 18-month period.

(b) Requires MHMR to ensure that each provision of a contract with an ICF-MR program provider is consistent with MHMR and DHS rules that govern the program.

Sec. 533.0611. **SANCTIONS.** Requires MHMR to immediately impose the vendor hold or terminate the contract, as appropriate, without conducting a further investigation or providing the program provider an opportunity to take corrective action, if DHS recommends that a vendor hold be imposed on payments made to an ICF-MR program provider or that the contract with the ICF-MR program provider be terminated.

(b) Provides that a rule adopted by MHMR before September 1, 2003, relating to the imposition of a vendor hold on payments made to an ICF-MR program provider or the cancellation of a contract with an ICF-MR program provider after the imposition of vendor holds, is repealed on September 1, 2003.

(c) Makes application of this Act prospective for Section 533.061, Health and Safety Code, as added by this section.

SECTION 2.71. Amends Section 533.084, Health and Safety Code, by adding Subsections (b-1) and (b-2), as follows:

(b-1) Provides that, notwithstanding Subsection (b) or any other law, the proceeds from

the disposal of any surplus real property by MHMR that occurs before September 1, 2005, are not required to be deposited to the credit of MHMR in the Texas capital trust fund established under Chapter 2201, Government Code, and may be appropriated for any general governmental purpose.

(b-2) Provides that Subsection (b-1) and this subsection expire September 1, 2005.

SECTION 2.72. Amends Subchapter D, Chapter 533, Health and Safety Code, by adding Section 533.0844, as follows:

Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT. (a) Provides that the mental health community services account is an account in the general revenue fund to be appropriated only for the provision of mental health services by or under contract with MHMR.

(b) Requires MHMR to deposit to the credit of the mental health community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

(c) Requires interest earned on the mental health community services account to be credited to the account. Provides that the account is exempt from the application of Section 403.095 (Use of Dedicated Revenue), Government Code.

SECTION 2.73. Amends Subchapter D, Chapter 533, Health and Safety Code, by adding Section 533.0846, as follows:

Sec. 533.0846. MENTAL RETARDATION COMMUNITY SERVICES ACCOUNT. (a) Provides that the mental retardation community services account is an account in the general revenue fund to be appropriated only for the provision of mental retardation services by or under contract with MHMR.

(b) Requires MHMR to deposit to the credit of the mental retardation community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

(c) Requires that interest earned on the mental retardation community services account be credited to the account. Provides that the account is exempt from the application of Section 403.095, Government Code.

SECTION 2.74. Amends Section 572.0025(f), Health and Safety Code, as follows:

(f) Provides that a prospective voluntary patient may not be formally accepted for treatment in a facility unless: the facility has a physician's order admitting the prospective patient, which order may be issued orally, electronically, or in writing, signed by the physician, provided that, in the case of an oral order or an electronically transmitted unsigned order, a signed original is presented to the mental health facility within 24 hours of the initial order. Requires the order to be from an admitting physician who has, either in person or through the use of audiovisual or other telecommunications technology, rather than in-person, conducted a physical and psychiatric examination within 72 hours of the admission; or an admitting physician who has consulted with a physician who has, either in person or through the use of audiovisual or other telecommunications technology, rather than in-person, conducted an examination within 72 hours of the admission; and that the facility administrator or a person designated by the administrator has agreed to accept the prospective patient and has signed a statement to that effect.

SECTION 2.75. (a) Amends Section 773.050(c), Health and Safety Code, to require each out-of-

state application for certification to be accompanied by a nonrefundable fee of not more than \$120, rather than \$100, and requires each out-of-country application for certification to be accompanied by a nonrefundable fee of not more than \$180, rather than \$150.

(b) Amends Section 773.052(a), Health and Safety Code, to authorize the board to adopt a fee of not more than \$30, rather than \$25, for filing an application for a variance.

(c) Amends Sections 773.054(c) and (d), Health and Safety Code, as follows:

(c) Requires each application under Subsection (a)(3) to be accompanied by a nonrefundable fee of not more than \$30, rather than \$25, for a program instructor or examiner or \$60, rather than \$50 for a course coordinator.

(d) Requires each application under Subsection (a)(2) to be accompanied by a nonrefundable fee of not more than \$30, rather than \$25, for a basic course or training program or \$60, rather than \$50, for an advanced course or training program.

(d) Amends Sections 773.055(a), (d), and (e), Health and Safety Code, as follows:

(a) Requires a nonrefundable fee to accompany each application for emergency medical services personnel certification. Prohibits the fee from exceeding certain amounts.

(d) Requires that a fee of not more than \$30, rather than \$25, to accompany each application for reexamination.

(e) Requires TDH to charge a fee of not more than \$10, rather than \$5, to replace a lost certificate.

(e) Amends Section 773.056(b), Health and Safety Code, to require TDH to charge a fee of not more than \$10, rather than \$5, to replace a lost or stolen certificate.

(f) Amends Section 773.057(b), Health and Safety Code, to require a nonrefundable application and vehicle fee determined by the board to accompany each application. Provides that the application fee may not exceed \$500, rather than \$150, for each application and the vehicle fee may not exceed \$180 for each emergency medical services vehicle operated by the provider.

(g) Amends Section 773.0572, Health and Safety Code, as follows:

Sec. 773.0572. PROVISIONAL LICENSES. Requires a nonrefundable fee of not more than \$30, rather than \$25, to accompany each application for a provisional license.

(h) Amends Section 773.0611(c), Health and Safety Code, to require an emergency medical services provider to pay to TDH a nonrefundable fee of not more than \$30, rather than \$25, if reinspection is necessary to determine compliance with this chapter and the rules adopted under this chapter.

(i) Amends Section 773.065(c), Health and Safety Code, to prohibit the penalty from exceeding \$7,500, rather than \$1,000, for each violation.

(j) Amends Subchapter C, Chapter 773, Health and Safety Code, by adding Section 773.071, as follows:

Sec. 773.071. FEES. (a) Requires the board, by rule and to the extent feasible, to set the fees under this subchapter in amounts necessary for the department to recover the cost of administering this subchapter.

(b) Provides that Subsection (a) does not apply to fees for which Section 773.059 prescribes the method for determining the amount of the fees.

(k) Amends Sections 773.116(b) and (d), Health and Safety Code, as follows:

(b) Prohibits the board from setting the amount of the fee schedule for initial or continuing designation as a trauma facility according to the number of beds in the health care facility from exceeding certain amounts.

(d) Requires the board, to the extent feasible, to set by rule the fee in an amount necessary for TDH to recover the cost directly related to designating trauma facilities under this subchapter. Deletes text prohibiting the fee from exceeding a certain amount.

(l) Repealer: Section 773.116(c), (Fees), Health and Safety Code.

(m) Provides that the changes in law made by this section relating to administrative penalties apply only to a violation that occurs on or after the effective date of this section. For the purposes of this subsection, an offense is committed before the effective date of this section if any element of the offense occurs before that date. A violation that occurred before the effective date of this section is covered by the law in effect when the violation occurred, and the former law is continued in effect for that purpose.

(n) Provides that the changes in law made by this section relating to fees imposed under Chapter 773, Health and Safety Code, apply only to fees for an application filed or an inspection conducted on or after the effective date of this section. A fee for an application filed or an inspection conducted before the effective date of this section is covered by the law in effect when the application was filed or the inspection was conducted, and the former law is continued in effect for that purpose.

SECTION 2.76. Amends Chapter 22, Human Resources Code, by adding Section 22.040, as follows:

Sec. 22.040. THIRD-PARTY INFORMATION. Authorizes DHS, notwithstanding any other provision of this code, to use information obtained from a third party to verify the assets and resources of a person for purposes of determining the person's eligibility and need for medical assistance, financial assistance, or nutritional assistance. Provides that third-party information includes information obtained from certain sources.

SECTION 2.77. (a) Amends Section 31.0031, Human Resources Code, by amending Subsection (g) and adding Subsection (h), as follows:

(g) Defines "payee" and makes a nonsubstantive change.

(h) Requires DHS to require each payee to sign a bill of responsibilities that defines the responsibilities of the state and of the payee. Requires the responsibility agreement to require that a payee comply with the requirements of Subsections (d)(1), (2), (5), (6), and (7).



(b) Requires DHS, beginning September 1, 2003, to require each payee of financial assistance under Chapter 31, Human Resources Code, to enter into a responsibility agreement that complies with the requirements of Section 31.0031, Human Resources Code, as amended by this section, to continue receiving that assistance. Requires each payee of financial assistance under Chapter 31, Human Resources Code, who received that assistance on behalf of a dependent child before September 1, 2003, to enter into a responsibility agreement that complies with the requirements of Section 31.0031, Human Resources Code, as amended by this section, not later than the date of the first eligibility review that occurs after September 1, 2003. Prohibits DHS from enforcing the terms of the new agreement until the payee has an opportunity to enter into the agreement.

SECTION 2.78. Amends Section 31.0031(c), Human Resources Code, to require DHS to adopt rules governing sanctions and penalties under this section to or for a person who fails to cooperate, rather than comply, with each applicable requirement of the responsibility agreement prescribed by this section; and the family of a person who fails to cooperate with each applicable requirement of the responsibility agreement.

SECTION 2.79. (a) Amends Sections 31.0032, 31.0033, and 31.0034, Human Resources Code, as follows:

Sec. 31.0032. New heading: PAYMENT OF ASSISTANCE AFTER PERFORMANCE.

(a) Requires DHS, except as provided by Section 231.115, Family Code, if after an investigation DHS or the Title IV-D agency determines that a person is not cooperating, rather than complying, with a requirement of the responsibility agreement required under Section 31.0031, to immediately apply a sanction terminating the total amount of financial assistance provided under this chapter to or for the person and the person's family, rather than apply appropriate sanctions or penalties regarding the assistance provided to or for that person under this chapter. Deletes text referencing Chapter 911, Acts of the 75th Legislature, Regular Session, 1997.

(a-1) Requires DHS to apply a sanction or penalty imposed under Subsection (a) for a period ending when the person demonstrates cooperation with the requirement of the responsibility agreement for which the sanction was imposed or for a one-month period, whichever is longer.

(b) Requires DHS to immediately notify the caretaker relative, second parent, or payee receiving the financial assistance if DHS will not make the financial assistance payment for a one-month period because of a person's failure to cooperate with the requirements of the responsibility agreement during that month.

(c) Authorizes HHSC, or any health and human services agency, as defined by Section 531.001, Government Code, to deny medical assistance for an individual, to the extent allowed by federal law, who is eligible for financial assistance but to whom that assistance is not paid because of the individual's failure to cooperate. Prohibits medical assistance to the person's family from being denied for the individual's failure to cooperate. Provides that this subsection prohibits the denial of medical assistance to persons receiving assistance under this chapter under the age of 19, pregnant adults, and any other person who may not be denied medical assistance under federal law.

(d) Creates this subsection from existing text to provide that this section does not prohibit the Texas Workforce Commission (TWC), HHSC, or any health and human services agency, as defined by Section 531.001, Government Code, rather than DHS, from providing medical assistance, child care, or any other social or support services for an individual who is eligible for financial assistance but to

whom that assistance is not paid because of the individual's failure to cooperate.

(e) Requires DHS by rule to establish procedures to determine whether a person has cooperated with the requirements of the responsibility agreement during each one-month period.

Sec. 31.0033. New heading: GOOD CAUSE HEARING FOR FAILURE TO COOPERATE. (a) Authorizes, if TDHS or Title IV-D agency determines that a person has failed to cooperate with the requirements of the responsibility agreement under Section 31.0031 during a one-month period, a person determined to have failed to cooperate or, if different, the person receiving the financial assistance to request a hearing to show good cause for failure to cooperate not later than the 13th day after the date on which notice is received under Section 31.0032. Prohibits DHS, if the person determined to have failed to cooperate or, if different, the person receiving the financial assistance requests a hearing to show good cause not later than the 13th day after the date on which notice is received under Section 31.0032, from withholding or reducing the payment of financial assistance until the 31st day after DHS receives the request, provided DHS completes the hearing before the 31st day, or the date the hearing is completed. Authorizes, on a showing of good cause for failure to cooperate, a person to receive a financial assistance payment for the month in which the person failed to cooperate.

(b) No change from existing text.

(c) Prohibits DHS, if DHS finds that good cause for the person's failure to cooperate was not shown at a hearing, from making a financial assistance payment in any amount to the person for the person or the person's family for the month in which the person failed to cooperate.

(d) Replaces "noncompliance" with "failure to cooperate."

(e) Provides that, except as provided by a waiver or modification granted under Section 31.0322, a person has good cause for failing or refusing to cooperate with the requirement of the responsibility agreement under Section 31.0031(d)(1) only if the person's cooperation would be harmful to the physical, mental, or emotional health of the person or the person's dependent child or the person's noncooperation resulted from other circumstances the person could not control.

Sec. 31.0034. ANNUAL REPORT. Includes in the information to be included in DHS's annual report the number of persons who were eligible to receive financial assistance under this chapter for each one-month period but to whom that financial assistance was not paid because the person failed to cooperate with the requirements of the responsibility agreement under Section 31.0031. Removes reference to "sanctions" and replaces "comply" with "cooperate." Makes nonsubstantive changes.

(b) Amends Subchapter A, Chapter 31, Human Resources Code, by adding Section 31.00331, as follows:

Sec. 31.00331. ADDITIONAL PENALTY FOR FAILURE TO COOPERATE. (a) Provides that a person who fails to cooperate with the responsibility agreement for two consecutive months becomes ineligible for financial assistance for the person or the person's family. Authorizes the person to reapply for financial assistance, but requires the person to cooperate with the requirements of the responsibility agreement for a one-month period before receiving an assistance payment for that month.

(c) Provides that changes in law made by this section apply to a person receiving

financial assistance under Chapter 31, Human Resources Code, on or after the effective date of this section, regardless of the date on which eligibility for financial assistance was determined.

SECTION 2.80. Amends Subchapter A, Chapter 31, Human Resources Code, by adding Section 31.0038, as follows:

Sec. 31.0038. TEMPORARY EXCLUSION OF NEW SPOUSE'S INCOME. (a) Prohibits income earned by an individual who marries an individual receiving financial assistance at the time of the marriage from being considered by DHS during the six- month period following the date of the marriage for purposes of determining the amount of financial assistance granted to an individual under this chapter for the support of dependent children or whether the family meets household income and resource requirements for financial assistance under this chapter, subject to the limitations prescribed by Subsection (b).

(b) Provides that to be eligible for the income disregard provided by Subsection (a), the combined income of the individual receiving financial assistance and the new spouse cannot exceed 200 percent of the federal poverty level for their family size.

SECTION 2.81. Amends Sections 31.012(b) and (c), Human Resources Code, as follows:

(b) Makes a conforming change.

(c) Deletes language referring to a single person who is the caretaker of a child and the requirement that the person participate in a program under this section.

SECTION 2.82. Amends Subchapter A, Chapter 31, Human Resources Code, by adding Section 31.015, as follows:

Sec. 31.015. HEALTHY MARRIAGE DEVELOPMENT PROGRAM. (a) Requires DHS, subject to available federal funding, to develop and implement a healthy marriage development program for recipients of financial assistance under this chapter.

(b) Requires the healthy marriage development program to promote and provide three instructional courses on certain topics.

(c) Requires DHS to provide to a recipient of financial assistance under this chapter additional financial assistance of not more than \$20 for the recipient's participation in a course offered through the healthy marriage development program up to a maximum payment of \$60 a month.

(d) Authorizes DHS to provide the courses or contract with any person, including a community or faith-based organization, for the provision of the courses. Requires DHS to provide all participants with an option of attending courses in a non-faith-based organization.

(e) Requires DHS to develop rules as necessary for the administration of the healthy marriage development program.

(f) Requires DHS to ensure that the courses provided by DHS and courses provided through contracts with other organizations will be sensitive to the needs of individuals from different religions, races, and genders.

SECTION 2.83. (a) Amends Subchapter A, Chapter 302, Labor Code, by adding Sections

302.0025, 302.0026, 302.0036, 302.0037, and 302.0038 as follows:

Sec. 302.0025. EMPLOYMENT PLAN AND POSTEMPLOYMENT STRATEGIES. (a) Requires the Texas Workforce Commission (TWC) to ensure that an individual employment plan developed for a recipient of financial assistance participating in an employment program under Chapter 31, Human Resources Code, includes specific postemployment strategies to assist the recipient in making a transition to stable employment at a wage that enables the recipient and the recipient's family to maintain self-sufficiency.

(b) Requires the individual employment plan to consider a recipient's individual circumstances and needs in determining the recipient's initial job placement; identify a target wage that enables the recipient and the recipient's family to maintain self-sufficiency; provide specific postemployment goals and include methods and time frames by which the recipient is to achieve those goals; and refer the recipient to additional educational and training opportunities.

Sec. 302.0026. EMPLOYMENT SERVICES REFERRAL PROGRAM. (a) Requires TWC and local workforce development boards (LWDBs) to develop an employment services referral program for recipients of financial assistance who participate in employment programs under Chapter 31, Human Resources Code, and have, in comparison to other recipients, higher levels of barriers to employment. Requires the referral program to be designed to provide to a recipient referrals to preemployment and postemployment services offered by community-based organizations.

(b) Requires TWC and the LWDBs, subject to the availability of funds, in developing the referral program, to coordinate partnerships and contract with community-based organizations that provide employment services specifically for persons with high levels of barriers to employment.

Sec. 302.0036. TRANSPORTATION ASSISTANCE. (a) Requires, to the extent funds are available, TWC and LWDBs to provide transportation assistance to recipients of financial assistance participating in employment programs under Chapter 31, Human Resources Code, that enables the recipients to maintain a stable work history and attain financial stability and self-sufficiency.

(b) Authorizes TWC and LWDBs to provide the assistance described by Subsection (a) by implementing new initiatives or expanding existing initiatives that provide transportation assistance to recipients of financial assistance for whom transportation is a barrier to employment.

Sec. 302.0037. MAXIMIZING FEDERAL FUNDS FOR TRANSPORTATION ASSISTANCE. (a) Requires TWC and LWDBs to maximize the state's receipt of federal funds available to provide transportation assistance to recipients of financial assistance participating in employment programs under Chapter 31, Human Resources Code.

(b) Authorizes TWC and LWDBs to, within any applicable appropriation limits, take any action required by federal law to receive federal funds to provide transportation assistance.

Sec. 302.0038. HOUSING RESOURCES FOR CERTAIN RECIPIENTS OF FINANCIAL ASSISTANCE. (a) Requires TWC, in cooperation with LWDBs, for a recipient of financial assistance participating in an employment program under Chapter 31, Human Resources Code to identify unmet housing needs and assess whether those needs are barriers to the recipient's full participation in the workforce and attainment of financial stability and self-sufficiency, and to develop a service plan that takes into consideration

the recipient's unmet housing needs.

(b) Requires TWC, by rule, to develop and implement a program through which a recipient identified under Subsection (a) as having unmet housing needs is referred by TWC or LWDBs to agencies and organizations providing housing programs and services and connected to other housing resources. Requires TWC, to provide those referrals and connections, to establish collaborative partnerships between certain entities.

(c) Requires TWC to ensure that TWC and LWDB staff members receive training regarding the programs and services offered by agencies and organizations with which TWC establishes partnerships under Subsection (b) and other available housing resources.

(b) Requires TWC and LWDBs, not later than December 1, 2003, to develop the employment services referral program required by Section 302.0026, Labor Code, as added by this section.

(c) Requires TWC, not later than December 1, 2003, to develop and implement the program required by Section 302.0038(b), Labor Code, as added by this section.

SECTION 2.84. Amends Section 302.011, Labor Code, as follows:

Sec. 302.011. New heading: POSTEMPLOYMENT CASE MANAGEMENT AND MENTORING. Requires TWC to encourage LWDBs to provide postemployment case management services for and use mentoring techniques to assist recipients of financial assistance who participate in employment programs under Chapter 31, Human Resources Code, and have, in comparison to other recipients, higher levels of barriers to employment. Requires the case management services and mentoring techniques to be designed to increase the recipient's potential for wage growth and development of a stable employment history.

SECTION 2.85. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.0212, as follows:

Sec. 32.0212. DELIVERY OF MEDICAL ASSISTANCE. Requires HHSC or an agency operating part of the medical assistance program, as appropriate, to provide medical assistance for acute care through the Medicaid managed care system implemented under Chapter 533, Government Code, notwithstanding any other law and subject to Section 533.0025, Government Code.

SECTION 2.86. (a) Amends Section 32.024, Human Resources Code, by adding Subsections (t-1), (z), and (z-1), as follows:

(t-1) Prohibits HHSC, in its rules governing the medical transportation program, from prohibiting a recipient of medical assistance from receiving transportation services through the program on the basis that the recipient resides in a nursing facility.

(z) Authorizes HHSC, in its rules and standards governing the vendor drug program, to the extent allowed by federal law and if HHSC determines the policy to be cost-effective, to ensure that a recipient of prescription drug benefits under the medical assistance program does not, unless authorized by HHSC in consultation with the recipient's attending physician or advanced practice nurse, receive certain amounts of prescription drugs under the medical assistance program.

(z-1) Provides that Subsection (z) does not affect any other limit on prescription

medications otherwise prescribed by department rule.

(b) Makes application of this Act prospective for Section 32.024(z), Human Resources Code, as added by this section.

SECTION 2.87. Amends Section 32.025(e), Human Resources Code, as follows:

(e) Requires HHSC or an agency operating part of the medical assistance program, as appropriate, to permit an application requesting medical assistance for a child under 19 years of age to be conducted by mail instead of through a personal appearance at an HHSC office or the office of an agency operating part of the medical assistance program, as appropriate, unless HHSC determines that the information needed to verify eligibility cannot be obtained in that manner. Authorizes HHSC to by rule develop procedures requiring an application for a child described by this subsection to be conducted through a personal interview with a department representative if the department determines that information needed to verify eligibility cannot be obtained in any other manner.

SECTION 2.88. Amends Section 32.026, Human Resources Code, by amending Subsection (e) and adding Subsection (g), as follows:

(e) Requires HHSC to permit a recertification review of the eligibility and need for medical assistance of a child under 19 years of age to be conducted by a person-to-person telephone interview or through a combination of a telephone interview and mail correspondence instead of through a personal appearance at an HHSC office or the office of an agency operating part of the medical assistance program, as appropriate, unless HHSC determines that the information needed to verify eligibility cannot be obtained in that manner. Authorizes HHSC to by rule develop procedures requiring an application for a child described by this subsection to be conducted through a personal interview with a department representative if the department determines that information needed to verify eligibility cannot be obtained in any other manner.

(g) Prohibits HHSC or an agency operating part of the medical assistance program, as appropriate, if a person is applying for long-term care services through the medical assistance program, from determining and certifying the person's eligibility and need for medical assistance unless the person has applied for and obtained any benefits and services for which the person is eligible through the Department of Veterans Affairs.

SECTION 2.89. Amends Section 32.0315(a), Human Resources Code, to make this section subject to appropriated state funds.

(b) Repealer: Sections 32.0315(d)-(h) (Funds for Graduate Medical Education), Human Resources Code.

SECTION 2.90. Amends Section 10(c), Chapter 584, Acts of the 77th Legislature, Regular Session, 2001, to change the date to September 1, 2005, rather than June 1, 2003, in relation to the effective date of the rules relating to eligibility periods.

SECTION 2.91. Amends Section 32.028, Human Resources Code, by adding Subsections (i), (j), (k), and (l), as follows:

(i) Requires HHSC to adopt rules governing the determination of the amount of reimbursement or credit for restocking drugs under Section 562.1085, Occupations Code, that recognize the costs of processing the drugs, including the cost of reporting the drug's prescription number and date of original issue verifying whether the drug's expiration date or the drug's recommended shelf life exceeds 120 days determining the source of payment and preparing credit records.

(j) Requires HHSC to provide an electronic system for the issuance of credit for returned drugs that complies with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, as amended. Provides that, to ensure a cost-effective system, only drugs for which the credit exceeds the cost of the restocking fee by at least 100 percent are eligible for credit.

(k) Requires HHSC to establish a task force to develop the rules necessary to implement Subsections (i) and (j). Requires the task force to include representatives of nursing facilities and pharmacists.

(b) Requires HHSC to adopt the rules required by Sections 32.028(i) and (j), Human Resources Code, as added by this section, not later than December 1, 2003.

SECTION 2.92. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.0291, as follows:

Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS. (a)

Authorizes HHSC, notwithstanding any other law, to: perform a prepayment review of a claim for reimbursement under the medical assistance program to determine whether the claim involves fraud or abuse; and as necessary to perform that review, withhold payment of the claim for not more than five working days without notice to the person submitting the claim.

(b) Authorizes HHSC, notwithstanding any other law, to impose a postpayment hold on payment of future claims submitted by a provider if HHSC has reliable evidence that the provider has committed fraud or wilful misrepresentation regarding a claim for reimbursement under the medical assistance program. Requires HHSC to notify the provider of the postpayment hold not later than the fifth working day after the date the hold is imposed.

(c) Requires HHSC, on timely written request by a provider subject to a postpayment hold under Subsection (b), to file a request with the State Office of Administrative Hearings for an expedited administrative hearing regarding the hold. Requires the provider to request an expedited hearing under this subsection not later than the 10th day after the date the provider receives notice from HHSC under Subsection (b). Requires HHSC to discontinue the hold unless HHSC makes a prima facie showing at the hearing that the evidence relied on by HHSC in imposing the hold is relevant, credible, and material to the issue of fraud or wilful misrepresentation.

(d) Requires HHSC to adopt rules that allow a provider subject to a postpayment hold under Subsection (b) to seek an informal resolution of the issues identified by HHSC in the notice provided under that subsection. Requires a provider to seek an informal resolution under this subsection not later than the deadline prescribed by Subsection (c). Provides that a provider's decision to seek an informal resolution under this subsection does not extend the time by which the provider must request an expedited administrative hearing under Subsection (c), however, requires a hearing initiated under Subsection (c) to be stayed at HHSC's request until the informal resolution process is completed.

SECTION 2.93. Amends Section 32.032, Human Resources Code, as follows:

Sec. 32.032. New heading: PREVENTION AND DETECTION OF FRAUD AND ABUSE. Makes conforming changes.

SECTION 2.94. Amends Section 32.0321, Human Resources Code, as follows:

Sec. 32.0321. SURETY BOND. (a) Requires HHSC by rule to require a provider of medical assistance to file with TDHS a surety bond in a reasonable amount if HHSC identifies a pattern of suspected fraud or abuse involving criminal conduct relating to the provider's services under the medical assistance program that indicates the need for protection against potential future acts of fraud or abuse.

(b) Makes a conforming change.

(c) Authorizes TDHS, subject to Subsection (d) or (e), by rule to require each provider of medical assistance that establishes a resident's trust fund account to post a surety bond to secure any shortages in the account. Requires the bond to be payable to TDHS to compensate residents of the bonded provider for trust funds that are lost, stolen, or otherwise unaccounted for if the provider does not repay any deficiency in a resident's trust fund account to the person legally entitled to receive the funds.

(d) Prohibits TDHS from requiring the amount of a surety bond posted for a single facility provider under Subsection (c) to exceed the average of the total average monthly balance of all the provider's resident trust fund accounts for the 12-month period preceding the bond issuance or renewal date.

(e) Provides that if an employee of a provider of medical assistance is responsible for the loss of funds in a resident's trust fund account, the resident, the resident's family, and the resident's legal representative are not obligated to make any payments to the provider that would have been made out of the trust fund had the loss not occurred.

SECTION 2.95. (a) Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.0423, as follows:

Sec. 32.0423. RECOVERY OF REIMBURSEMENTS FROM HEALTH COVERAGE PROVIDERS. Requires, to the extent allowed by federal law, a health care service provider to seek reimbursement from available third-party health coverage or insurance that the provider knows about or should know about before billing the medical assistance program.

(b) Makes application of this Act prospective for Section 32.0423, Human Resources Code, as added by this section.

SECTION 2.96. (a) Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.0462, as follows:

Sec. 32.0462. MEDICATIONS AND MEDICAL SUPPLIES. Authorizes HHSC to adopt rules establishing procedures for the purchase and distribution of medically necessary, over-the-counter medications and medical supplies under the medical assistance program that were previously being provided by prescription if HHSC determines it is more cost-effective than obtaining those medications and medical supplies through a prescription.

(b) Requires HHSC, not later than January 1, 2004, to submit a report to the clerks of the standing committees of the senate and house of representatives with jurisdiction over the state Medicaid program describing the status of any cost savings generated by purchasing over-the-counter medications and medical supplies as provided by Section 32.0462, Human Resources Code, as added by this section. Requires the report to be updated not



later than January 1, 2005.

SECTION 2.97. Amends Section 32.050, Human Resources Code, by adding Subsection (d), (e), and (f), as follows:

(d) Requires, except as provided by Subsection (e), a nursing facility, a home health services provider, or any other similar long-term care services provider, that is Medicare-certified and provides care to individuals who are eligible for Medicare to seek reimbursement from Medicare before billing the medical assistance program for services provided to an individual identified under Subsection (a) and as directed by HHSC, appeal Medicare claim denials for payment services provided to an individual identified under Subsection (a).

(e) Provides that a home health services provider is not required to seek reimbursement from Medicare before billing the medical assistance program for services provided to a person who is eligible for Medicare and who has been determined as not being homebound or meets other criteria determined by HHSC.

(f) Authorizes, if the Medicare reimbursement rate for a service provided to an individual identified under Subsection (a) exceeds the medical assistance reimbursement rate for a comparable service, the medical assistance program to not pay a Medicare coinsurance or deductible amount for that service.

SECTION 2.98. (a) Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.060, as follows:

Sec. 32.060. NURSING FACILITY QUALITY ASSURANCE TEAM. (a) Provides that the nursing facility quality assurance team (team) is established to make recommendations to HHSC designed to promote high-quality care for residents of nursing facilities.

(b) Provides that the team is composed of nine particular members appointed by the governor and the state long-term care ombudsman, who serves as an ex officio, nonvoting member of the team.

(c) Requires the governor to designate a member of the team, other than the state long-term care ombudsman, to serve as presiding officer. Requires the members of the team to elect any other necessary officers.

(d) Requires the team to meet at the call of the presiding officer.

(e) Provides that a member of the team serves at the will of the governor.

(f) Prohibits a member of the team from receiving compensation for serving on the team but entitles the team member to reimbursement for travel expenses incurred by the member while conducting the business of the team as provided by the General Appropriations Act.

(g) Requires the team to develop and recommend clearly defined minimum standards to be considered for inclusion in contracts between HHSC, or an agency operating part of the medical assistance program, as appropriate, and nursing facilities for the delivery of medical assistance under this chapter that are designed to: ensure that the care provided by nursing facilities to residents who are recipients of medical assistance meets or exceeds the minimum acceptable standard of care; and encourage nursing facilities to provide the highest quality of care to those residents; and to develop and recommend improvements to consumers' access to information regarding the quality of care provided by nursing

facilities that contract with HHSC or an agency operating part of the medical assistance program, as appropriate, to provide medical assistance, including certain improvements.

(h) Requires the team, in developing minimum standards for contracts as required by Subsection (g)(1), to perform certain tasks.

(i) Requires HHSC to ensure the accuracy of information provided to the team for use by the team in performing the team's duties under this section. Requires HHSC to provide administrative support and resources to the team and request additional administrative support and resources from health and human services agencies as necessary.

(b) Requires the governor to appoint the members of the team established under Section 32.060, Human Resources Code, as added by this section, not later than January 1, 2004.

(c) Requires the team to develop and make the recommendations required by Section 32.060, Human Resources Code, as added by this section, not later than May 1, 2004.

(d) Requires team to report on its work and recommendations to the governor and the LBB no later than October 1, 2004, for consideration by the 79th Legislature.

SECTION 2.99. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.061, as follows:

Sec. 32.061. COMMUNITY ATTENDANT SERVICES PROGRAM. Requires any home and community-based services that HHSC provides under Section 1929, Social Security Act (42 U.S.C. Section 1396t) and its subsequent amendments to functionally disabled individuals who have income that exceeds the limit established by federal law for Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.) and its subsequent amendments to be provided through the community attendant services program.

SECTION 2.100. (a) Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.063, as follows:

Sec. 32.063. THIRD-PARTY BILLING VENDORS. (a) Prohibits a third-party billing vendor from submitting a claim with HHSC for reimbursement on behalf of a provider of medical services under the medical assistance program unless the vendor has entered into a contract with HHSC authorizing that activity.

(b) Requires, to the extent practical, the contract to contain provisions comparable to the provisions contained in contracts between HHSC and providers of medical services, with an emphasis on provisions designed to prevent fraud or abuse under the medical assistance program. Requires, at a minimum, the contract to require the third-party billing vendor to perform certain functions.

(c) Requires HHSC, on receipt of a claim submitted by a third-party billing vendor, to send a remittance notice directly to the provider referenced in the claim. Requires the notice to include detailed information regarding the claim submitted on behalf of the provider.

(d) Requires HHSC to take all action necessary, including any modifications of HHSC's claims processing system, to enable HHSC to identify and verify a third-party billing vendor submitting a claim for reimbursement under the medical assistance program, including identification and verification of any computer or

telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim.

(e) Requires HHSC to audit each third-party billing vendor subject to this section at least annually to prevent fraud and abuse under the medical assistance program.

(b) Provides that Section 32.063, Human Resources Code, as added by this section, takes effect January 1, 2004.

SECTION 2.101. (a) Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.064, as follows:

Sec. 32.064. COST SHARING. (a) Requires HHSC, to the extent permitted under Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), as amended, and any other applicable law or regulations, to adopt provisions requiring recipients of medical assistance to share the cost of medical assistance, including provisions requiring recipients to pay certain costs.

(b) Requires cost-sharing provisions adopted under this section to ensure that families with higher levels of income are required to pay progressively higher percentages of the cost of the medical assistance, subject to Subsection (d).

(c) Requires HHSC to specify the manner in which the premium is paid, if cost sharing provisions imposed under Subsection (a) include requirements that recipients pay a portion of the plan premium. Authorizes HHSC to require that the premium be paid to HHSC, an agency operating part of the medical assistance program, or the Medicaid managed care plan.

(d) Authorizes cost-sharing provisions adopted under this section to be determined based on the maximum level authorized under federal law and applied to income levels in a manner that minimizes administrative costs.

(b) Makes application of this Act prospective for Section 32.064, Human Resources Code.

SECTION 2.102. Amends Section 48.401(1), Human Resources Code, to redefine "agency."

SECTION 2.103. Amends Section 73.0051, Human Resources Code, by adding Subsection (l) to authorize the Interagency Council on Early Childhood Intervention by rule to establish a system of payments by families of children receiving services under this chapter, including a schedule of sliding fees, in a manner consistent with 34 C.F.R. Sections 303.12(a)(3)(iv), 303.520, and 303.521.

SECTION 2.104. (a) Amends Sections 91.027(a) and (b), Human Resources Code, as follows:

(a) Requires HHSC, to the extent that funds are available under Sections 521.421(f), as added by Chapter 510, Acts of the 75th Legislature, Regular Session, 1997, and 521.422(b), Transportation Code, to operate, rather than develop, a Blindness Education, Screening, and Treatment Program to provide certain services.

(b) Requires HHSC to include transition services along with other services. Deletes language requiring HHSC to implement the program only to the extent that funds are available under Section 521.421(f), Transportation Code.

(b) Requires the Texas Commission for the Blind to establish the consolidated program

under Section 91.027, Human Resources Code, as amended by this section, not later than the 90th day after the effective date of this section.

SECTION 2.105. (a) Amends Section 111.052, Human Resources Code, as follows:

Sec. 111.052. GENERAL FUNCTIONS. (a) Deletes “an extended rehabilitation services program” as a program established to provide rehabilitative services.

(b) Includes assessing the statewide need for services necessary to prepare students with disabilities for a successful transition to employment, establishing collaborative relationships with each school district with education service centers to the maximum extent possible within available resources, and developing strategies to assist vocational rehabilitation counselors in identifying and reaching students in need of transition planning to the authority of HHSC. Deletes “contract with a public or private agency to provide and pay for rehabilitative services under the extended rehabilitation services program, including alternative sheltered employment or community integrated employment for a person participating in the program” from HHSC’s authority.

(b) Repealer: Sections 111.002(7) (Definitions), 111.0525(a) (Coordination with State Agencies), and 111.073 (Transition Planning), Human Resources Code.

SECTION 2.106. Amends Section 111.060, Human Resources Code, by adding Subsection (d) to authorize any money in the comprehensive rehabilitation fund notwithstanding any other provision of this section to be used for general governmental purposes under certain conditions.

SECTION 2.107. (a) Provides that Subchapter I, Chapter 264, Family Code, is transferred to Chapter 33, Education Code, redesignated as Subchapter E, Chapter 33, Education Code, and amended as follows:

#### SUBCHAPTER E. COMMUNITIES IN SCHOOLS PROGRAM

Sec. 33.151. DEFINITIONS. Defines "department," "communities in schools program," "delinquent conduct," and "student at risk of dropping out of school."

Sec. 33.152. STATEWIDE OPERATION OF PROGRAM. Includes “as that chapter existed on August 31, 1999” in reference to Chapter 305, Labor Code. Replaces “department” with “agency.”

Sec. 33.153. STATE DIRECTOR. Requires the commissioner of education, rather than the executive director of the department, to designate a state director for the Communities In Schools program.

Sec. 33.154. DUTIES OF STATE DIRECTOR. No changes to this section.

Sec. 33.155. New heading: DEPARTMENT COOPERATION; MEMORANDUM OF UNDERSTANDING.

(b) Deletes the term “mutually” as a modifier to “agree” in reference to a memorandum of understanding. Makes conforming and nonsubstantive changes.

Sec. 33.156. FUNDING; EXPANSION OF PARTICIPATION. Makes a conforming change.

Sec. 33.157. PARTICIPATION IN PROGRAM. Requires an elementary or secondary

school receiving funding under Section 33.156 to participate in a local Communities In Schools program if the number of students enrolled in the school who are at risk of dropping out of school is equal to at least 10 percent of the number of students in average daily attendance at the school, as determined by the Texas Education Agency. Makes a conforming change.

Sec. 33.158. DONATIONS TO PROGRAM. (a) Makes conforming changes.

(b) Amends Section 302.062(g), Labor Code, to make conforming changes.

(c) Provides that on September 1, 2003:

(1) all powers, duties, functions, and activities relating to the Communities In Schools (CIS) program assigned to or performed by the Department of Protective Services (DPRS) immediately before September 1, 2003, are transferred to the Texas Education Agency (TEA);

(2) all funds, rights, obligations, and contracts of the DPRS related to the CIS program are transferred to the TEA for the CIS program;

(3) all property and records in the custody of the DPRS related to the CIS program and all funds appropriated by the legislature for the CIS program are transferred to the TEA for the CIS program; and

(4) all employees of the DPRS who primarily perform duties related to the CIS program become employees of the TEA, to be assigned duties related to the CIS program.

(d) Provides that for the 2003 and 2004 state fiscal years, all full-time equivalent positions (FTEs) authorized by the General Appropriations Act for the CIS program are transferred to the TEA and are not included in determining the agency's compliance with any limitation on the number of full-time equivalent positions (FTEs) imposed by the General Appropriations Act.

(e) Provides that a reference in law or administrative rule to the DPRS that relates to the CIS program means the TEA. Provides that a reference in law or administrative rule to the executive director of the DPRS that relates to the CIS program means the commissioner of education.

(f) Provides that a rule of the DPRS relating to the CIS program continues in effect as a rule of the commissioner of education until superseded by rule of the commissioner of education. Provides that the secretary of state is authorized to adopt rules as necessary to expedite the implementation of this subsection.

(g) Provides that the transfer of the CIS program and associated powers, duties, functions, and activities under this section does not affect or impair any act done, any obligation, right, order, license, permit, rule, criterion, standard, or requirement existing, any investigation begun, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

(h) Makes application of this Act prospective.

SECTION 2.108. (a) Amends Sections 2(a) and (c), Article 4.11, Insurance Code, to redefine "carrier" and "gross premiums."

(b) Provides that the change in law made by this section applies only to a tax report

originally due on or after January 1, 2004.

(c) Provides that the change in law made by this section expires December 31, 2007.

SECTION 2.109. (a) Amends Article 4.17(a), Insurance Code, to delete references to “this state” in relation to gross premiums. Deletes “for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by this state or the United States.” Makes conforming changes.

(b) Provides that the change in law made by this section applies only to a tax report originally due on or after January 1, 2004.

(c) Provides that the change in law made by this section expires December 31, 2007.

SECTION 2.110. (a) Amends Section 20A.33(d), Texas Health Maintenance Organization Act (Article 20A.33, Vernon's Texas Insurance Code), to make conforming changes.

(b) Provides that the change in law made by this section applies only to a tax report originally due on or after January 1, 2004.

(c) Provides that the change in law made by this section expires December 31, 2007.

SECTION 2.111. Amends Section 2, Article 21.52K, Insurance Code, by amending Subsections (c) and (d) and adding Subsection (g), as follows:

(c) Includes on receipt of “request” in relation to enrolling in the plan. Makes conforming changes.

(d) Makes conforming changes.

(g) Requires the issuer of a group health benefit plan to permit an individual who is otherwise eligible for enrollment in the plan to enroll in the plan without regard to any enrollment period restriction if the individual becomes ineligible for medical assistance under the state Medicaid program or enrollment in the state child health plan under Chapter 62, Health and Safety Code, after initially establishing eligibility and provides a written request for enrollment in the group health benefit plan not later than the 30th day after the date the individual's eligibility for the state Medicaid program or the state child health plan terminated.

SECTION 2.112. (a) Amends Article 21.53F, Insurance Code, as added by Chapter 683, Acts of the 75th Legislature, Regular Session, 1997, by adding Section 9, as follows:

**Sec. 9. OFFER OF COVERAGE REQUIRED; CERTAIN THERAPIES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.** (a) Provides that for purposes of this section, rehabilitative and habilitative therapies include certain evaluations and services.

(b) Requires the issuer of a health benefit plan to offer coverage that complies with this section. Authorizes the individual or group policy or contract holder to reject coverage required to be offered under this subsection.

(c) Prohibits a health benefit plan that provides coverage for rehabilitative and habilitative therapies under this section from prohibiting or restricting payment for covered services provided to a child and determined to be necessary to and provided in accordance with an individualized family service plan issued by the Interagency Council on Early Childhood Intervention under Chapter 73, Human

Resources Code.

(d) Requires rehabilitative and habilitative therapies described by Subsection (c) of this section be covered in the amount, duration, scope, and service setting established in the child's individualized family service plan.

(e) Prohibits, under the coverage required to be offered under this section, a health benefit plan issuer from performing certain actions.

(b) Makes application of this section prospective to January 1, 2004.

SECTION 2.113. Amends Article 27.05, Insurance Code, as follows:

Art. 27.05. EXEMPTION FROM PREMIUM TAX. Provides that a health benefit plan be approved under Article 27.03 of this code.

SECTION 2.114. Amends Chapter 27, Insurance Code, by adding Article 27.07, as follows:

Art. 27.07. INAPPLICABILITY TO CERTAIN PLANS. Provides that this chapter does not apply to a health benefit plan provided under the state Medicaid program or the state child health plan.

SECTION 2.115. Amends Subchapter C, Chapter 562, Occupations Code, by adding Sections 562.1085 and 562.1086, as follows:

Sec. 562.1085. UNUSED DRUGS RETURNED BY CERTAIN PHARMACISTS. (a) Authorizes a pharmacist who practices in or serves as a consultant for a health care facility in this state to return to a pharmacy certain unused drugs, other than a controlled substance as defined by Chapter 481, Health and Safety Code, purchased from the pharmacy as provided by Texas State Board of Pharmacy (TSBP) rule. Requires the unused drugs to be approved by the federal Food and Drug Administration and meet certain other requirements.

(b) Requires a pharmacist for the pharmacy to examine a drug returned under this section to ensure the integrity of the drug product. Prohibits a health care facility from returning certain drugs.

(c) Authorizes the pharmacy to restock and redistribute unused drugs returned under this section.

(d) Requires the pharmacy to reimburse or credit the state Medicaid program for an unused drug returned under this section.

(e) Requires TSBP to adopt the rules, policies, and procedures necessary to administer this section, including rules that require a health care facility to inform HHSC of medicines returned to a pharmacy under this section.

Sec. 562.1086. LIMITATION ON LIABILITY. (a) Provides that a pharmacy that returns unused drugs and a manufacturer that accepts the unused drugs under Section 562.1085 and the employees of the pharmacy or manufacturer are not liable for harm caused by the accepting, dispensing, or administering of drugs returned in strict compliance with Section 562.1085 unless the harm is caused by wilful or wanton acts of negligence, conscious indifference or reckless disregard for the safety of others or intentional conduct.

(b) Provides that this section does not limit, or in any way affect or diminish, the liability of a drug seller or manufacturer under Chapter 82, Civil Practice and

Remedies Code.

(c) Provides that this section does not apply if harm results from the failure to fully and completely comply with the requirements of Section 562.1085.

(d) Provides that this section does not apply to a pharmacy or manufacturer that fails to comply with the insurance provisions of Chapter 84, Civil Practice and Remedies Code.

SECTION 2.116. Amends Section 455.0015, Transportation Code, by amending Subsection (b) and adding Subsections (c)-(g), as follows:

(b) Provides that the legislature likewise recognizes the potential cost savings and other benefits for utilizing existing private sector transportation resources. Provides that the Texas Department of Transportation (TxDOT) will contract with and promote the use of private sector transportation resources to the maximum extent feasible consistent with the goals of this subsection.

(c) Requires the TDH and HHSC to contract with TxDOT for TxDOT to assume all responsibilities of TDH and HHSC relating to the provision of transportation services for clients of eligible programs. Requires TxDOT to hold at least one public hearing to solicit the views of the public concerning the transition of transportation services under this subsection and shall meet with and consider the views of interested persons, including persons representing transportation clients.

(d) Authorizes TxDOT to contract with an appropriate number of regional transportation brokers for administrative assistance in providing transportation services under the medical transportation program. Requires TxDOT, in designing the medical transportation program, and in determining the appropriate number of regions, to consider overall cost control, access to services, and service quality.

(e) Authorizes TxDOT to contract under Subsection (d) with any person or organization that meets the criteria established by TxDOT, including a nonprofit organization, public entity, or private contractor.

(f) Requires a contract under Subsection (d) between TxDOT and a broker to contain certain requirements.

(g) Authorizes a broker selected by TxDOT to contract with transportation providers as necessary to provide transportation services to persons eligible for those services. Requires TxDOT to encourage each broker to make maximum use of existing service providers in each region.

SECTION 2.117. Amends Section 40.002, Human Resources Code, by adding Subsection (f), to authorize HHSC to contract with TxDOT for TxDOT to assume all responsibilities of HHSC relating to the provision of transportation services for clients of eligible programs.

SECTION 2.118. Amends Section 22.001, Human Resources Code, by adding Subsection (e), to require HHSC to contract with TxDOT for TxDOT to assume all responsibilities of HHSC relating to the provision of transportation services for clients of eligible programs.

SECTION 2.119. Amends Section 91.021, Human Resources Code, by adding Subsection (g) to require HHSC to contract with TxDOT for TxDOT to assume all responsibilities of HHSC relating to the provision of transportation services for clients of eligible programs.

SECTION 2.120. Amends Section 101.0256, Human Resources Code, as follows:



Sec. 101.0256. COORDINATED ACCESS TO LOCAL SERVICES. (a) Creates this subsection from existing text.

(b) Makes a conforming change.

SECTION 2.121. Amends Section 111.0525, Human Resources Code, by adding Subsection (d), to make a conforming change.

SECTION 2.122. Amends Section 461.012(a), Health and Safety Code, to include: “contract with TxDOT for TxDOT to assume all responsibilities of HHSC relating to the provision of transportation services for clients of eligible programs” as a required duty of HHSC. Makes a nonsubstantive change.

SECTION 2.123. Amends Section 533.012, Health and Safety Code, as follows:

Sec. 533.012. COOPERATION OF STATE AGENCIES. (a) Creates this subsection from existing text.

(b) Requires MHMR to contract with TxDOT for TxDOT to assume all responsibilities of MHMR relating to the provision of transportation services for clients of eligible programs.

SECTION 2.124. (a) Amends Section 1551.159, Insurance Code, as effective June 1, 2003, by amending Subsection (a) and adding Subsection (h), as follows:

(a) Replaces “the program established by the state to implement Title XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended” with “the state child health plan established under Chapter 62, Health and Safety Code” in relation to a child’s insurance coverage.

(h) Provides that a child enrolled in dependent child coverage under this section is subject to the same requirements and restrictions relating to income eligibility, continuous coverage, and enrollment, including applicable waiting periods, as a child enrolled in the state child health plan under Chapter 62, Health and Safety Code.

(b) Makes application of this section prospective as applies to a child enrolled in dependent child coverage under the state employees group benefits program on or after September 1, 2003.

SECTION 2.125. Amends Section 31.03, Penal Code, by adding Subsection (j) to provide that with the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

SECTION 2.126. Amends Section 32.45, Penal Code, by adding Subsection (d) to provide that with the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

SECTION 2.127. Amends Section 32.46, Penal Code, by adding Subsection (e) to provide that with the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

SECTION 2.128. Amends Section 37.10, Penal Code, by adding Subsection (i) to provide that

with the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

SECTION 2.129. Amends Section 57.046, Utilities Code, by adding Subsection (c) to authorize the Telecommunications Infrastructure Fund Board to use money in the account to award grants to HHSC for technology initiatives of Public Utility Commission, in addition to the purposes for which the qualifying entities account may be used.

SECTION 2.130. Amends Articles 59.01(1) and (2), Code of Criminal Procedure, to redefine "attorney representing the state" and "contraband."

SECTION 2.131. Amends Article 59.06, Code of Criminal Procedure, by adding Subsection (p) to require the attorney representing the state to transfer to HHSC all forfeited property defined as contraband under Article 59.01(2)(B)(vii), notwithstanding Subsection (a), and to the extent necessary to protect the commission's ability to recover amounts wrongfully obtained by the owner of the property and associated damages and penalties to which the commission is otherwise authorized to be entitled by law. Authorizes the attorney representing the state to, if approved by the commission, sell the property and deliver to the commission the proceeds from the sale, minus costs attributable to the sale, if the forfeited property consists of property other than money or negotiable instruments. Requires the sale to be conducted in a manner that is reasonably expected to result in receiving the fair market value for the property.

SECTION 2.132. STUDY. (a) Requires the Medicaid and Public Assistance Fraud Oversight Task Force, with the participation of TDH's bureau of vital statistics and other agencies designated by the comptroller of public accounts, to study procedures and documentation requirements used by the state in confirming a person's identity for purposes of establishing entitlement to Medicaid and other benefits provided through health and human services programs.

(b) Requires, not later than December 1, 2004, the Medicaid and Public Assistance Fraud Oversight Task Force, with assistance from the agencies participating in the study required by Subsection (a) of this section, to submit a report to the legislature containing recommendations for improvements in the procedures and documentation requirements described by Subsection (a) of this section that would strengthen the state's ability to prevent fraud and abuse in the Medicaid program and other health and human services programs.

SECTION 2.133. EVALUATION OF MANAGED CARE PLANS. Requires HHSC, during state fiscal years 2004 and 2005 and in accordance with federal policy, to evaluate, as part of the processes of contract management and developing payment and rate methodologies and amounts, the administrative cost of a Medicaid managed care plan for a managed care organization, including a health maintenance organization, primary care case management, and an exclusive provider organization.

SECTION 2.134. STUDY: REVENUE ENHANCEMENT RELATED TO MEDICAID VENDOR DRUG REBATE. (a) Creates a task force to study the prescription drug rebate system established and operated under the medical assistance program and other related programs.

(b) Requires HHSC to establish a task force, composed of appropriate legislators, state agency personnel, and other appropriate personnel to study the prescription drug rebate system established and operated under the medical assistance program and other related programs.

(c) Requires the study to include certain information.

(d) Requires the study to be completed by December 1, 2004, and presented to the

governor and the presiding officers of each house, the House Committee on Appropriations, and the Senate Finance Committee.

**SECTION 2.135. LEGISLATIVE INTENT REGARDING PROVISION OF HEALTH AND HUMAN SERVICE TRANSPORTATION THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION.** Sets forth legislative intent.

**SECTION 2.136.** (a) Provides that a change in law made by this article to Section 242.047, Health and Safety Code, that requires HHSC to accept an annual accreditation review from the Joint Commission on Accreditation of Health Organizations for a nursing home in satisfaction of the requirements for certification: applies only to a nursing home that participates in the medical assistance program under Chapter 32, Human Resources Code, before September 1, 2003; and may be implemented only as a pilot program.

(b) Provides that a pilot program operated in accordance with this section expires September 1, 2007.

**SECTION 2.137.** (a) Requires the TSBP to adopt the rules required by Section 562.1085, Occupations Code, as added by this Act, not later than December 1, 2003.

(b) Provides that, notwithstanding Section 562.1085, Occupations Code, as added by this Act, a pharmacy is not required to accept unused drugs from a health care facility before January 1, 2004.

**SECTION 2.138. TRANSFER OF MEDICAL TRANSPORTATION PROGRAM.** (a) Provides that on September 1, 2004, or on an earlier date specified by HHSC, certain actions will occur relating to the transfer to HHSC.

(b) Requires HHSC to take all action necessary to provide for the transfer of the medical transportation program to HHSC as soon as possible after the effective date of this section but not later than September 1, 2004.

**SECTION 2.139. CONSOLIDATION OF CERTAIN DIVISIONS AND ACTIVITIES.** (a) Requires HHSC to consolidate the Medicaid post-payment third-party recovery divisions or activities of DHS, the Medicaid vendor drug program, and the state's Medicaid claims administrator with the Medicaid post-payment third-party recovery function, not later than March 1, 2004.

(b) Requires HHSC to use HHSC's Medicaid post-payment third-party recovery contractor for the consolidated division.

(c) Requires HHSC to update its computer system to facilitate the consolidation.

**SECTION 2.140. ABOLITION OF ADVISORY COMMITTEES.** (a) Provides that, notwithstanding any other provision of state law, each advisory committee, as that term is defined by Section 2110.001, Government Code, created before the effective date of this section that advises a health and human services agency is abolished on the effective date of this section unless the committee: is required by federal law; or advises an agency with respect to certification or licensing programs, the regulation of entities providing health and human services, or the implementation of a duty prescribed under this article, as determined by the commissioner of HHSC.

(b) Requires the commissioner of health and human services to certify which advisory committees are exempt from abolition under Subsection (a) of this section and publish that certification in the Texas Register.

(c) Requires an advisory committee that is created on or after the effective date of this section or that is exempt under Subsection (b) of this section from abolition to make recommendations to the executive director of the health and human services agency the advisory committee was created to advise and to the commissioner of health and human services to assist with eliminating or minimizing overlapping functions or required duties between the health and human services agencies or between those agencies and HHSC.

(d) Provides that this section does not apply to the telemedicine advisory committee established under Section 531.02172, Government Code, as added by Chapters 661 and 959, Acts of the 77th Legislature, Regular Session, 2001, and that committee continues in existence.

SECTION 2.141. Authorizes community mental health centers to coordinate with local community health centers, federally qualified health centers (FQHC), and/or disproportionate share hospitals for the purpose of accessing local, state, and federal programs that could result in lower cost pharmaceuticals. Authorizes community mental health centers to form a referral relationship with community health centers, FQHC, disproportionate share hospitals, and/or other eligible entities for the purpose of obtaining federal 340B pricing for pharmaceuticals. Authorizes community mental health centers to form a referral relationship with community health centers, FQHC, disproportionate share hospitals, and/or other eligible entities for the purpose of taking advantage of 340B or other lower cost drug programs regardless of any statewide preferred drug list or vendor drug program which may be adopted.

SECTION 2.142. CHILD HEALTH PLAN PROGRAM WAIVER. Requires HHSC to request and actively pursue any necessary waivers from a federal agency or any other appropriate entity to allow families enrolled in the state Medicaid program to opt into the child health plan program under Chapter 62, Health and Safety Code, while retaining the appropriate federal match rate and the child's entitlement to Medicaid coverage, not later than October 1, 2003. Requires the waiver to, on at least an annual basis, allow families eligible for Medicaid who have previously opted to enroll their children in the child health plan program under Chapter 62, Health and Safety Code, to return those children to the Medicaid program.

SECTION 2.143. STATE CHILD HEALTH PLAN AMENDMENT. (a) Provides that in this section, "group plan" means the group health benefit plan under the health insurance premium payment reimbursement program established under Section 62.059, Health and Safety Code.

(b) Requires HHSC, as soon as possible after the effective date of this section, to submit for approval a plan amendment relating to the state child health plan under 42 U.S.C. Section 1397ff, as amended, as necessary to include the employers' share of required premiums for coverage of individuals enrolled in the group plan as expenditures for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended, for federal match funding for the child health plan program provided under Chapter 62, Health and Safety Code.

SECTION 2.144. STATE MEDICAID PLAN AMENDMENT. (a) Provides that in this section, "group plan" means the group health benefit plan under the health insurance premium payment reimbursement program for Medicaid recipients established under Section 32.0422, Human Resources Code.

(b) Requires HHSC, as soon as possible after the effective date of this section, to submit an amendment to the state Medicaid plan as necessary to allow this state to include the employers' share of required premiums for coverage of individuals enrolled in the group plan as expenditures for the purpose of determining this state's Medicaid program expenditures for federal match funding for the state Medicaid program.

SECTION 2.145. REPEAL. (a) Repealer: Sections 62.055(b) and (c) (relating to Contracts for

Implementation of Child Health Plan), 62.056 (Community Outreach Campaign; Toll-Free Hotline), 62.057 (Regional Advisory Committees), 142.006(d), (e), and (f) (relating to License Issuance; Term), 142.009(i) (relating to Surveys; Consumer Complaints), 142.0176 (Certain Agencies Excepted), 252.206(d) (relating to Quality Assurance Fund), and 252.207(b) (relating to Reimbursement of Facilities), Health and Safety Code, and Sections 32.024(i) (relating to Authority and Scope of Program; Eligibility) and 32.027(b) and (e) (relating to Selection of Provider of Medical Assistance), Human Resources Code.

(b) Provides that an advisory committee established under Section 62.057, Health and Safety Code, is abolished on the effective date of this section.

SECTION 2.146. Provides that in the event of a conflict between a provision of this Act and another Act passed by the 78th Legislature, Regular Session, 2003, that becomes law, this Act prevails and controls regardless of the relative dates of enactment.

SECTION 2.147. FEDERAL AUTHORIZATION OR WAIVER. Authorizes a state agency to delay implementing a provision of this Act until a requested federal waiver or authorization necessary to implement that provision is granted.

SECTION 2.148. Requires any funds that are used by TxDOT to implement the transportation services provided in Sections 2.116, 2.117, 2.118, 2.119, 2.120, 2.121, 2.122, and 2.123 of this Act be accounted for and budgeted separately from other funds appropriated to TxDOT for any other public transportation program or budget strategy.

SECTION 2.149. EFFECTIVE DATE. Effective date: September 1, 2003, except as otherwise provided by this article.

#### **LIST OF COMMITTEE AMENDMENTS**

##### TECHNICAL AMENDMENT #1 Duties of Department of Aging and Disability Services

Amend proposed C.S.H.B. 2292 as follows:

(1) In Section 1.13A on page 58, line 16, strike "and"

(2) In Section 1.13A, on page 58, between lines 16 and 17, insert the following language:

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

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

(3) In Section 1.13A, on page 58, on line 17, strike “ (7) ” and substitute “ (9) ”

##### TECHNICAL AMENDMENT #2 Transfer of Duties to Department of Family and Protective Services

Amend proposed C.S.H.B. 2292 as follows:

(1) On page 67, line 9, strike Section 1.20;

(2) In Section 1.23, on page 75, line 6, strike “1.20”;

(3) In Section 1.23, on page 75, lines 7-8, strike “the Department of Family and Protective Services,”

TECHNICAL AMENDMENT #3  
Purchasing Provisions Applicable to HHS Agencies

Amend C.S.H.B. 2292 by adding the following appropriately numbered sections to read as follows:

SECTION \_\_. Section 2177.0001(3), Government Code, is amended to read as follows:

(3) "State agency" has the meaning assigned by Section 2054.003, except that the term does not include a university system or institution of higher education or an agency identified in Section 531.001(4).

SECTION \_\_\_\_. Section 2177.101(a), Government Code, is amended to read as follows:

(a) This subchapter does not apply to procurements conducted by an agency identified in Section 531.001(4) or to procurements for major construction projects, as defined by the commission in consultation with the department, such as procurements made under Chapter 223, Transportation Code. In defining a major construction project, the commission shall base its decision on whether the nature of the project, any related contract or specifications, or other considerations are of a type that would make electronic procurement inappropriate.

SECTION \_\_. Section 2055.001(4), Government Code, is amended to read as follows:

(3) "State agency" has the meaning assigned by Section 2054.003, except that the term does not include a university system or institution of higher education or an agency identified in Section 531.001(4).

SECTION \_\_. Section 2055.002, Government Code, is amended to read as follows:

§ 2055.002. Applicability to Institutions of Higher Education or Health and Human Services Agencies

(a) Except as provided by Subsection (b), the requirements of this chapter regarding electronic government projects do not apply to institutions of higher education or a health and human services agency identified in Section 531.001(4), Government Code.

(b) Subject to approval by the office, an institution of higher education or a health and human service agency may elect to participate regarding an electronic government project of that institution or agency in the same manner as a state agency under this chapter. If the institution or health and human service agency makes this election and the office approves the election, the institution or health and human service agency:

(1) shall comply with this chapter regarding that electronic government project in the same manner as a state agency; and

(2) may not withdraw the project from management by the office unless the office approves the withdrawal.

TECHNICAL AMENDMENT #4  
CHIP Cost Sharing

Amend proposed C.S.H.B. 2292 as follows:

In Section 2.44, on page 136, line 12, add the following language between "law" and "":

"and applied to income levels in a manner that minimizes administrative costs".

TECHNICAL AMENDMENT #5  
90-day Waiting Period

Amend proposed C.S.H.B. 2292 as follows:

In Section 2.45, on page 138, strike lines 5-8 and substitute the following:

“~~(1)~~ extend for a period of 90 days after:  
(i) the first day of the month in [last date on] which the applicant is enrolled under the child health plan, if the date of enrollment is on or before the 15th day of the month; or  
(ii) the first day of the month after which the applicant is enrolled under the child health plan, if the date of enrollment is after the 15th day of the month ~~[was covered under a health benefits plan; and]”~~”

TECHNICAL AMENDMENT #6  
Quality Standards for Privatization of State Schools

Amend proposed C.S.H.B. 2292 as follows:

- (1) In Section 2.68, on page 162, line 5, strike "and"
- (2) In Section 2.68, on page 162, between lines 5 and 6, insert the following language:

“(3) the private service provider is required under the contract to operate the school at a quality level at least equal to the quality level achieved by the department when the department operated the school, as measured by the school's most recent applicable ICF/MR survey; and”

- (3) In Section 2.68, on page 162, line 6, strike “ (3) ” and substitute “ (4) ”

TECHNICAL AMENDMENT #7  
Department of Family and Protective Services

Amend proposed C.S.H.B. 2292 in Section 2.107 by changing all references to the “Department of Protective Services” to read the “Department of Protective and Regulatory Services” (page 208, lines 10-11, page 213, lines 12, 20, and 24-25, and page 214, lines 9 and 14).

TECHNICAL AMENDMENT #8  
Medically Needy

Amend proposed C.S.H.B. 2292 as follows:

- (1) Add the following new section, appropriately numbered, to read as follows:

SECTION \_\_\_\_\_. Section 32.024 (i), Human Resources Code, is amended to read as follows:

(i) The department in its adoption of rules may ~~shall~~ establish a medically needy program that serves pregnant women, children, and caretakers who have high medical expenses, subject to availability of appropriated funds.

- (2) In Section 2.145, on page 244, line 2, strike “32.024(i)”.

TECHNICAL AMENDMENT #9  
Correcting Chapter Reference

Amend proposed C.S.H.B. 2292 as follows:

- (1) On page 7, line 27, following “with”, insert “Government Code”.
- (2) On page 7, line 28, strike “2101” and insert “2102”

TECHNICAL AMENDMENT #13  
PDL amendment

Amend proposed C.S.H.B. 2292 as follows:

(1) In Section 2.11, on page 88, line 27, strike “quarterly Medicaid” and substitute “appropriate quarterly health and human services program”

(2) In Section 2.11, on page 89, line 2, insert “if necessary,” between “and” and “approved”

(3) In Section 2.13, on page 94, strike lines 4-5 and substitute the following:

“for community mental health centers, state mental health hospitals, and any other state program administered by the commission or a state health and human services agency.”

(4) In Section 2.14, page 96, strike line 2 and substitute the following:

“provided through any other state program administered by the commission or a state health and human services agency, including a community mental health center and a state mental”

(5) In Section 2.14, on page 96, line 10, between “illnesses” and “that” strike “and”

(6) In Section 2.14, beginning on page 98, line 1, strike subsection (f) and reletter subsequent subsections accordingly.

TECHNICAL AMENDMENT # 14  
Prescribing practitioners

Amend proposed C.S.H.B. 2292, in SECTION 2.14 of the bill, amend Sec. 531.073 (a), Government Code (page 96, line 7, proposed committee substitute) as follows:

After “physician” and before the period, insert “or prescribing practitioner”.

TECHNICAL AMENDMENT #15  
Sunset Date for Premium Tax Exemption

Amend proposed C.S.H.B. 2292 as follows:

- (1) In Section 2.108, on page 217, lines 1-2, strike subsection (c);
- (2) In Section 2.109, on page 217, lines 25-26, strike subsection (c);



(1) In Section 2.110, on page 218, line 27 through page 219, line 1, strike subsection (c);

COMMITTEE AMENDMENT #16

Amend C.S.H.B. No. 2292 as follows:

Section 32.028, Human Resources Code, is amended by amending subsection (g) and adding Subsection (i) to read as follows:

(g) Subject to Subsection (i), the ~~The~~ Health and Human Services Commission shall ensure that the rules governing the determination of rates paid for nursing home services improve the quality of care by:

(1) providing a program offering incentives for increasing direct care staff and direct care wages and benefits, but only to the extent that appropriated funds are available after money is allocated to base rate reimbursements as determined by the Health and Human Services Commission's nursing facility rate setting methodologies; and

(2) if appropriated funds are available after money is allocated for payment of incentive-based rates under Subdivision (1), providing incentives that incorporate the use of a quality of care index, a customer satisfaction index, and a resolved complaints index developed by the commission.

(i) The Health and Human Services Commission shall ensure that rules governing the incentives program described by Subsection (g)(1):

(1) provide that participation in the program by a nursing home is voluntary;

(2) do not impose on a nursing home not participating in the program a minimum spending requirement for direct care staff wages and benefits; and

(3) do not set a base rate for a nursing home participating in the program that is more than the base rate for a nursing home participation in the program.

COMMITTEE AMENDMENT #18

Amend the proposed substitute to H.B. No. 2292 by adding the following appropriately numbered Section to Article 2 of the bill and renumbering subsequent SECTIONS of the article accordingly:

SECTION 2.\_\_\_\_. Subchapter A, Chapter 531, Government code, is amended by adding Section 531.018 to read as follows:

Sec. 531.018. EMPLOYEE WELLNESS PROGRAM. (a) The commission and each health and human services agency shall designate an individual as the wellness coordinator for their respective agency. The wellness coordinator may collaborate with other agencies and sources to provide information and resources to employees through bulletin boards and e-mail.

The employee wellness program may include:

(1) an agency wellness center staffed by a nurse practitioner who provides employees with services such as blood pressure monitoring and annual health assessments;

(2) ergonomic office equipment;

(3) nutrition education;

(4) smoking cessation programs; and

(b) A Health and human services agency with fewer than 100 employees may join with the commission or a health and human services agency with 100 employees or more to create a program under this section and to share resources under the program.

#### COMMITTEE AMENDMENT #19

Amend H.B. No. 2292 (House Engrossed Printing) by adding the following appropriately numbered SECTION to article 2 of the bill and renumbering subsequent SECTIONS of the article accordingly:

SECTION 2.\_\_\_\_. (a) Subtitle E, Title 2, Health and Safety Code, is amended by adding Chapter 112 to read as follows:

#### CHAPTER 112. BORDER HEALTH FOUNDATION

Sec. 112.001. DEFINITIONS. In the chapter:

(1) "Board of directors" means the board of directors of the Border Health Foundation.

(2) "Foundation" means the Border Health Foundation.

Sec. 112.002. CREATION OF FOUNDATION. (a) The department shall establish the Border Health Foundation as a nonprofit corporation that complies with the Texas Non-Profit

Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), except as otherwise provided by this chapter, and qualifies as an organization exempt from federal income tax under Section 501 (c) (3), Internal Revenue Code of 1986, as amended.

(b) The department shall ensure that the foundation operates independently of any state agency or political subdivision of this state.

Sec. 112.003. POWERS AND DUTIES. (a) The foundation shall raise money from other foundations, governmental entities, and other sources to finance health programs in this state in areas adjacent to the border with the United Mexican States.

(b) The foundation shall:

(1) identify and seek potential partners in the private sector that will afford this state the opportunity to maintain or increase the existing levels of financing of health programs and activities;

(2) engage in outreach efforts to make the existence of the office known to potential partners throughout this state; and

(3) perform any other function necessary to carry out the purposes of this section.

(c) The department shall review programs from all agencies under its control to determine which projects should be available to received money under Subsection (a).

(d) The foundation has the powers necessary and convenient to carry out its duties.

Sec. 112.004 ADMINISTRATION. (a) The foundation is governed by a board of five directors appointed by the Texas Board of Health from individuals recommended by the commissioner.

(b) Members of the board of directors serve for staggered terms of six years, with as near as possible to one-third of the member's terms expiring every two years.

(c) Appointments to the board of directors shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(d) The board of directors shall ensure that the foundation remains eligible for an exemption from federal income tax under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt organization under Section 501 (c) (3) of that code, as amended.

Sec. 112.005. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND

EMPLOYMENT. (a) In this section, “Texas trade association” means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board of directors and may not be a foundation employee employed in a “bona fide executive, administrative, or professional capacity,” as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), as amended, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person’s spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a member of the board of directors or act as the general counsel to the board of directors or the foundation if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person’s activities for compensation on behalf of a profession related to the operation of the foundation.

Sec. 112.006. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board of directors that a member:

(1) is ineligible for membership under Section 112.005;

(2) cannot, because of illness or disability, discharge the member’s duties for a substantial part of the member’s term; or

(3) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board of directors.

(b) The validity of an action of the board of directors is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) The foundation in its articles or bylaws shall establish the manner in which a board member may be removed under this section and may establish other grounds for removal of a member.

Sec. 112.007. VACANCY. A vacancy on the board of directors shall be filled for the remainder of the unexpired term in the same manner as provided in Section 112.004(a).

Sec. 112.008. OFFICERS. The board of directors shall elect from among its members a presiding officer, an assistant presiding officer, and other necessary officers. The presiding officer and assistant presiding officer serve for a period of one year and may be reelected.

Sec. 112.009. MEETINGS. The board of directors may meet as often as necessary, but shall meet at least twice a year.

Sec. 112.010. TAX EXEMPTION. All income, property, and other assets of the foundation are exempt from taxation by this state and political subdivisions of this state.

Sec. 112.011. MEMORANDUM OF UNDERSTANDING. The foundation and the department shall enter into a memorandum of understanding that:

(1) requires the board of directors and staff of the foundation to report to the commissioner and department;

(2) allows the department to provide staff functions to the foundation; and

(3) outlines the financial contributions to be made to the foundation from funds obtained from grants and other sources.

Sec. 112.012. FUNDING. (a) The department, another agency of this state, including an institution of higher education as defined by Section 61.003, Education Code, or a political subdivision of this state may contract with the foundation to finance, on behalf of the department, agency, or political subdivision, health programs described by Section 112.003.

(b) The foundation may apply for and accept funds from the federal government or any other public or private entity. The foundation or any member of the foundation may also solicit and accept pledges, gifts, and endowments from private sources on the foundation's behalf. The foundation may only accept a pledge, gift, or endowment solicited under this section that is consistent with the purposes of the foundation.

(c) The board of directors of the foundation shall manage and approve disbursements of funds, pledges, gifts, and endowments that are the property of the foundation.

(d) The board of directors of the foundation shall manage any capital improvements constructed, owned, or leased by the foundation and any real property acquired by the foundation.

Sec. 112.013. RECORDS. (a) The foundation shall maintain financial records and reports independently from those of the department.

(b) The foundation shall comply with all filing requirements of the secretary of state and the Internal Revenue Service.

Sec. 112.014. REPORT TO DEPARTMENT. Not later than the 60th day after the last day of the fiscal year, the foundation shall submit to the department a report itemizing all income and expenditures and describing all activities of the foundation during the preceding fiscal year.

(b) The Border Health Foundation shall be created as required by this section not later than June 1, 2004.