

AN ACT

relating to the provision of health and human services in this state, including the powers and duties of the Health and Human Services Commission and other state agencies; providing penalties.

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

ARTICLE 1. ORGANIZATION OF THE HEALTH AND HUMAN SERVICES

COMMISSION AND HEALTH AND HUMAN SERVICES AGENCIES

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

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

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

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

(A) Interagency Council on Early Childhood Intervention;

(B) Texas Department on Aging;

(C) Texas Commission on Alcohol and Drug Abuse;

(D) Texas Commission for the Blind;

(E) Texas Commission for the Deaf and Hard of Hearing;

(F) Texas Department of Health;

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

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

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

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

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

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

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

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

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

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

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

1 to read as follows:

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

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

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

12           (b) The commission shall:

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

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

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

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

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

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

9                   (A) the child health plan program;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6                   (A) selecting the director of internal audit;

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

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

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

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

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

20                   (3) personnel and employment policies;

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

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

25                   (6) location of agency facilities; and

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

1 agencies.

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

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

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

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



1 section.

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

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

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

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

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

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

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

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

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

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

1 to read as follows:

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

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

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

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

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

27           (f) The executive commissioner shall submit the

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

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

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

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

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

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

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

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

26 (A) the child health plan program;

27 (B) the financial assistance program under

1 Chapter 31, Human Resources Code;

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

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

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

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

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

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

15 (3) the office of the ombudsman to:

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

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

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

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

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

27 Sec. 531.0161. NEGOTIATED RULEMAKING AND ALTERNATIVE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12           SUBCHAPTER K. HEALTH AND HUMAN SERVICES COUNCIL

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

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

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

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

7       (d) Chapter 551 applies to the council.

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

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

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

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

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

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

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



1           (2) the programs operated by the commission;

2           (3) the role and functions of the commission and the  
3 council, including detailed information regarding the advisory  
4 responsibilities of the council;

5           (4) the rules of the executive commissioner applicable  
6 to the commission, with an emphasis on the rules that relate to  
7 disciplinary and investigatory authority;

8           (5) the current budget for the commission;

9           (6) the results of the most recent formal audit of the  
10 commission;

11           (7) the requirements of:

12                   (A) the open meetings law, Chapter 551;

13                   (B) the public information law, Chapter 552;

14                   (C) the administrative procedure law, Chapter  
15 2001; and

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

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

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

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

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

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

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

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

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

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

14 Sec. 531.409. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

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

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

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

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

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

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

11 TITLE 12. HEALTH AND MENTAL HEALTH

12 CHAPTER 1001. DEPARTMENT OF STATE HEALTH SERVICES

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 1001.001. DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

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

3 [Sections 1001.004-1001.020 reserved for expansion]

4 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

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

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

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

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

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

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

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

1 appointees.

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

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

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

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

15 (2) the programs operated by the department;

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

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

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

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

26 (5) the current budget for the department;

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

1 department;

2 (7) the requirements of:

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

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

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

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

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

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

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

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

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

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

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

1 different areas of the state.

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

7 Sec. 1001.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

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

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

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

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

27 (1) at least 25 persons;





1 ability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5           (c) The policy statement must be:

6                 (1) updated annually;

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

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

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

14           [Sections 1001.058-1001.070 reserved for expansion]

15           SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

24          (13) enforcing regulations regarding radioactive  
25 materials;

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

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

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

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

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

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

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

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

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

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

27           (3) providing public education on substance abuse

1 issues, as directed by law.

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

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

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

8 (3) the subject matter of the complaint;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Retardation or its successor agency;

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 Sec. 40.022. APPOINTMENTS [~~RESTRICTIONS ON BOARD~~]

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

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

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

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

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

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

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

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

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

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

15                   (2) the programs operated by the department;

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

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

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

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

26                   (5) the current budget for the department;

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

1 department;

2 (7) the requirements of the:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 CHAPTER 117. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 117.001. DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

24 [Sections 117.004-117.020 reserved for expansion]

25 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

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

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

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

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

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

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

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

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

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



1 reflect the ethnic diversity of this state.

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

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

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

11 (2) the programs operated by the department;

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

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

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

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

22 (5) the current budget for the department;

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

25 (7) the requirements of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 Sec. 117.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

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

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

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

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

23 (1) at least 25 persons;

24 (2) a governmental entity; or

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

1       (c) The policy statement must be:

2           (1) updated annually;

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

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

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

10       [Sections 117.058-117.070 reserved for expansion]

11       SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

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

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

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

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

27           (3) the subject matter of the complaint;

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

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

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

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

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

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

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

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

25           CHAPTER 161. DEPARTMENT OF AGING AND DISABILITY SERVICES

26           SUBCHAPTER A. GENERAL PROVISIONS

27           Sec. 161.001. DEFINITIONS. In this chapter:



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

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

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

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

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

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

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

17           [Sections 161.004-161.020 reserved for expansion]

18           SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

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

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

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

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

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

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

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

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

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

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

27       (1) the legislation that created the department and

1 the council;

2 (2) the programs operated by the department;

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

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

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

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

13 (5) the current budget for the department;

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

16 (7) the requirements of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Sec. 161.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

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

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

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

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

14               (1) at least 25 persons;

15               (2) a governmental entity; or

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

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

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

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

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

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

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

10 [Sections 161.033-161.050 reserved for expansion]

11 SUBCHAPTER C. PERSONNEL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20       (c) The policy statement must be:

21               (1) updated annually;

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

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

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



1 methods of participation in the state employee incentive program.

2 [Sections 161.058-161.070 reserved for expansion]

3 SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 with the department. The file must include:

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

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

5 (3) the subject matter of the complaint;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (3) all complaints, investigations, or contested

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 Act.

2 (g) The committee shall:

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

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

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

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

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

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

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

27 (h) The committee shall monitor the effectiveness and

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

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

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

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

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

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

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

20 (3) recommendations for legislative action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (B) planning for daily operations;

4 (C) validation of fiscal and program synergies;

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

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

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

12 (A) optimization of initial implementation  
13 initiatives;

14 (B) use of enterprise teaming operations;

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

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

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

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

25 (B) continuation of risk assessments; and

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

SECTION 1.26. ABOLITION OF STATE AGENCIES AND ENTITIES.

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

(1) the Interagency Council on Early Childhood Intervention;

(2) the Texas Commission for the Blind;

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

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

(5) the Texas Department of Health;

(6) the Texas Department of Human Services;

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

(8) the Texas Department on Aging;

(9) the Texas Health Care Information Council; and

(10) the Texas Rehabilitation Commission.

(b) 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. A reference in law to the Department of Protective and Regulatory Services means the Department of Family

1 and Protective Services.

2 SECTION 1.28. REPEAL. The following are repealed:

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

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

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

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

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

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

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

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

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

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

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

4 (b) The purchasing division shall:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 531.008(c); and

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

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

7 (g) The commission shall develop:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

27 (3) may only cover products that have received

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

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

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

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

22 (2) the child health plan program; and

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

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

1 the commission.

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

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

9 (2) the child health plan program; and

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

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

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

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

20 (3) other program benefits as specified in Subsection  
21 (c).

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

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

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

1 drug lists;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (2) the clinical efficacy of the drug;

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

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

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

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

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

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

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

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

1 section.

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

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

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

25 (1) are life-threatening;

26 (2) are chronic; and

27 (3) require complex medical management strategies.

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

4             (1) a notification of the implementation date; and

5             (2) a detailed description of the procedures to be  
6 used in obtaining prior authorization.

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

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

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

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

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



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

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

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

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

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

25 Sec. 531.074. PHARMACEUTICAL AND THERAPEUTICS COMMITTEE.

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

1 lists adopted by the commission under Section 531.072.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 imposition of appropriate administrative or civil sanctions; or

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

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

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

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

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

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

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

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

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

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

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

22 (2) request that the attorney general obtain an  
23 injunction to prevent a person from disposing of an asset  
24 identified by the office as potentially subject to recovery by the  
25 office due to the person's fraud or abuse;

26 (3) provide for coordination between the office and  
27 special investigative units formed by managed care organizations

1 under Section 531.113 or entities with which managed care  
2 organizations contract under that section;

3 (4) audit the use and effectiveness of state or  
4 federal funds, including contract and grant funds, administered by  
5 a person or state agency receiving the funds from a health and human  
6 services agency;

7 (5) conduct investigations relating to the funds  
8 described by Subdivision (4); and

9 (6) recommend policies promoting economical and  
10 efficient administration of the funds described by Subdivision (4)  
11 and the prevention and detection of fraud and abuse in  
12 administration of those funds.

13 (i) Notwithstanding any other provision of law, a reference  
14 in law or rule to the commission's office of investigations and  
15 enforcement means the office of inspector general established under  
16 this section.

17 (b) As soon as possible after the effective date of this  
18 section, the governor shall appoint a person to serve as inspector  
19 general in accordance with Section 531.102, Government Code, as  
20 amended by this section. The initial term of the person appointed  
21 in accordance with this subsection expires February 1, 2005.

22 SECTION 2.20. Subchapter C, Chapter 531, Government Code,  
23 is amended by adding Section 531.1021 to read as follows:

24 Sec. 531.1021. SUBPOENAS. (a) The office of inspector  
25 general may request that the commissioner or the commissioner's  
26 designee approve the issuance by the office of a subpoena in  
27 connection with an investigation conducted by the office. If the

1 request is approved, the office may issue a subpoena to compel the  
2 attendance of a relevant witness or the production, for inspection  
3 or copying, of relevant evidence that is in this state.

4 (b) A subpoena may be served personally or by certified  
5 mail.

6 (c) If a person fails to comply with a subpoena, the office,  
7 acting through the attorney general, may file suit to enforce the  
8 subpoena in a district court in this state.

9 (d) On finding that good cause exists for issuing the  
10 subpoena, the court shall order the person to comply with the  
11 subpoena. The court may punish a person who fails to obey the court  
12 order.

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

16 (f) The reimbursement of the expenses of a witness whose  
17 attendance is compelled under this section is governed by Section  
18 2001.103.

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

27 SECTION 2.21. (a) Section 531.103, Government Code, is

1 amended to read as follows:

2           Sec. 531.103. INTERAGENCY COORDINATION.           (a)       The  
3 commission, acting through the commission's office of inspector  
4 general, and the office of the attorney general shall enter into a  
5 memorandum of understanding to develop and implement joint written  
6 procedures for processing cases of suspected fraud, waste, or  
7 abuse, as those terms are defined by state or federal law, or other  
8 violations of state or federal law under the state Medicaid program  
9 or other program administered by the commission or a health and  
10 human services agency, including the financial assistance program  
11 under Chapter 31, Human Resources Code, a nutritional assistance  
12 program under Chapter 33, Human Resources Code, and the child  
13 health plan program. The memorandum of understanding shall  
14 require:

15           (1) the office of inspector general [~~commission~~] and  
16 the office of the attorney general to set priorities and guidelines  
17 for referring cases to appropriate state agencies for  
18 investigation, prosecution, or other disposition to enhance  
19 deterrence of fraud, waste, [~~or~~] abuse, or other violations of  
20 state or federal law, including a violation of Chapter 102,  
21 Occupations Code, in the programs [~~program~~] and maximize the  
22 imposition of penalties, the recovery of money, and the successful  
23 prosecution of cases;

24           (1-a) the office of inspector general to refer each  
25 case of suspected provider fraud, waste, or abuse to the office of  
26 the attorney general not later than the 20th business day after the  
27 date the office of inspector general determines that the existence

1 of fraud, waste, or abuse is reasonably indicated;

2 (1-b) the office of the attorney general to take  
3 appropriate action in response to each case referred to the  
4 attorney general, which action may include direct initiation of  
5 prosecution, with the consent of the appropriate local district or  
6 county attorney, direct initiation of civil litigation, referral to  
7 an appropriate United States attorney, a district attorney, or a  
8 county attorney, or referral to a collections agency for initiation  
9 of civil litigation or other appropriate action;

10 (2) the office of inspector general [~~commission~~] to  
11 keep detailed records for cases processed by that office [~~the~~  
12 ~~commission~~] or the office of the attorney general, including  
13 information on the total number of cases processed and, for each  
14 case:

15 (A) the agency and division to which the case is  
16 referred for investigation;

17 (B) the date on which the case is referred; and

18 (C) the nature of the suspected fraud, waste, or  
19 abuse;

20 (3) the office of inspector general [~~commission~~] to  
21 notify each appropriate division of the office of the attorney  
22 general of each case referred by the office of inspector general  
23 [~~commission~~];

24 (4) the office of the attorney general to ensure that  
25 information relating to each case investigated by that office is  
26 available to each division of the office with responsibility for  
27 investigating suspected fraud, waste, or abuse;

1           (5) the office of the attorney general to notify the  
2 office of inspector general [~~commission~~] of each case the attorney  
3 general declines to prosecute or prosecutes unsuccessfully;

4           (6) representatives of the office of inspector general  
5 [~~commission~~] and of the office of the attorney general to meet not  
6 less than quarterly to share case information and determine the  
7 appropriate agency and division to investigate each case; and

8           (7) the office of inspector general [~~commission~~] and  
9 the office of the attorney general to submit information requested  
10 by the comptroller about each resolved case for the comptroller's  
11 use in improving fraud detection.

12           (b) An exchange of information under this section between  
13 the office of the attorney general and the commission, the office of  
14 inspector general, or a health and human services agency does not  
15 affect whether the information is subject to disclosure under  
16 Chapter 552.

17           (c) The commission and the office of the attorney general  
18 shall jointly prepare and submit a semiannual report to the  
19 governor, lieutenant governor, [~~and~~] speaker of the house of  
20 representatives, and comptroller concerning the activities of  
21 those agencies in detecting and preventing fraud, waste, and abuse  
22 under the state Medicaid program or other program administered by  
23 the commission or a health and human services agency. The report  
24 may be consolidated with any other report relating to the same  
25 subject matter the commission or office of the attorney general is  
26 required to submit under other law.

27           (d) The commission and the office of the attorney general

1 may not assess or collect investigation and attorney's fees on  
2 behalf of any state agency unless the office of the attorney general  
3 or other state agency collects a penalty, restitution, or other  
4 reimbursement payment to the state.

5 (e) In addition to the provisions required by Subsection  
6 (a), the memorandum of understanding required by this section must  
7 also ensure that no barriers to direct fraud referrals to the office  
8 of the attorney general's Medicaid fraud control unit or  
9 unreasonable impediments to communication between Medicaid agency  
10 employees and the Medicaid fraud control unit are imposed, and must  
11 include procedures to facilitate the referral of cases directly to  
12 the office of the attorney general. [~~The commission shall refer a~~  
13 ~~case of suspected fraud, waste, or abuse under the state Medicaid~~  
14 ~~program to the appropriate district attorney, county attorney, city~~  
15 ~~attorney, or private collection agency if the attorney general~~  
16 ~~fails to act within 30 days of referral of the case to the office of~~  
17 ~~the attorney general. A failure by the attorney general to act~~  
18 ~~within 30 days constitutes approval by the attorney general under~~  
19 ~~Section 2107.003.~~]

20 (f) A [~~The~~] district attorney, county attorney, city  
21 attorney, or private collection agency may collect and retain costs  
22 associated with a [~~the~~] case referred to the attorney or agency in  
23 accordance with procedures adopted under this section and 20  
24 percent of the amount of the penalty, restitution, or other  
25 reimbursement payment collected.

26 (b) Not later than December 1, 2003, the office of the  
27 attorney general and the Health and Human Services Commission shall



1 amend the memorandum of understanding required by Section 531.103,  
2 Government Code, as necessary to comply with that section, as  
3 amended by this section.

4 SECTION 2.22. Section 531.104(b), Government Code, is  
5 amended to read as follows:

6 (b) The memorandum of understanding must specify the type,  
7 scope, and format of the investigative support provided to the  
8 attorney general under this section [~~provide that the commission is~~  
9 ~~not required to provide investigative support in more than 100 open~~  
10 ~~investigations in a fiscal year~~].

11 SECTION 2.23. (a) Subchapter C, Chapter 531, Government  
12 Code, is amended by adding Section 531.1063 to read as follows:

13 Sec. 531.1063. MEDICAID FRAUD PILOT PROGRAM. (a) The  
14 commission, with cooperation from the Texas Department of Human  
15 Services, shall develop and implement a front-end Medicaid fraud  
16 reduction pilot program in one or more counties in this state to  
17 address provider fraud and appropriate cases of third-party and  
18 recipient fraud.

19 (b) The program must be designed to reduce:

20 (1) the number of fraud cases arising from  
21 authentication fraud and abuse;

22 (2) the total amount of Medicaid expenditures; and

23 (3) the number of fraudulent participants.

24 (c) The program must include:

25 (1) participant smart cards and biometric readers that  
26 reside at the point of contact with Medicaid providers, recipients,  
27 participating pharmacies, hospitals, and appropriate third-party

1 participants;

2 (2) a secure finger-imaging system that is compliant  
3 with the Health Insurance Portability and Accountability Act  
4 (HIPAA) and the use of any existing state database of fingerprint  
5 images developed in connection with the financial assistance  
6 program under Chapter 31, Human Resources Code; fingerprint images  
7 collected as part of the program shall only be placed on the smart  
8 card; and

9 (3) a monitoring system.

10 (d) In implementing the program, the commission may:

11 (1) exempt recipients who are children or who are  
12 elderly or disabled; and

13 (2) obtain a fingerprint image from a parent or  
14 caretaker of a recipient who is a child, regardless of whether the  
15 parent or caretaker is a recipient.

16 (e) The commission must ensure that the procedures for  
17 obtaining fingerprint images of participating recipients and  
18 parents and caretakers who are not recipients are designed in a  
19 flexible manner that gives consideration to transportation  
20 barriers and work schedules of those individuals.

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

27 (g) The commission may extend the program to additional

1 counties if the commission determines that expansion would be  
2 cost-effective.

3 (b) Not later than January 1, 2004, the Health and Human  
4 Services Commission shall begin implementation of the program  
5 required by Section 531.1063, Government Code, as added by this  
6 section.

7 (c) Not later than February 1, 2005, the Health and Human  
8 Services Commission shall report to the governor, the lieutenant  
9 governor, and the speaker of the house of representatives regarding  
10 the program required by Section 531.1063, Government Code, as added  
11 by this section. The report must include:

12 (1) an identification and evaluation of the benefits  
13 of the program; and

14 (2) recommendations regarding expanding the program  
15 statewide.

16 SECTION 2.24. Section 531.107(b), Government Code, is  
17 amended to read as follows:

18 (b) The task force is composed of a representative of the:

19 (1) attorney general's office, appointed by the  
20 attorney general;

21 (2) comptroller's office, appointed by the  
22 comptroller;

23 (3) Department of Public Safety, appointed by the  
24 public safety director;

25 (4) state auditor's office, appointed by the state  
26 auditor;

27 (5) commission, appointed by the commissioner of

1 health and human services;

2 (6) Texas Department of Human Services, appointed by  
3 the commissioner of human services; ~~and~~

4 (7) Texas Department of Insurance, appointed by the  
5 commissioner of insurance; and

6 (8) Texas Department of Health, appointed by the  
7 commissioner of public health.

8 SECTION 2.25. (a) Subchapter C, Chapter 531, Government  
9 Code, is amended by adding Section 531.113 to read as follows:

10 Sec. 531.113. MANAGED CARE ORGANIZATIONS: SPECIAL  
11 INVESTIGATIVE UNITS OR CONTRACTS. (a) Each managed care  
12 organization that provides or arranges for the provision of health  
13 care services to an individual under a government-funded program,  
14 including the Medicaid program and the child health plan program,  
15 shall:

16 (1) establish and maintain a special investigative  
17 unit within the managed care organization to investigate fraudulent  
18 claims and other types of program abuse by recipients and service  
19 providers; or

20 (2) contract with another entity for the investigation  
21 of fraudulent claims and other types of program abuse by recipients  
22 and service providers.

23 (b) Each managed care organization subject to this section  
24 shall adopt a plan to prevent and reduce fraud and abuse and  
25 annually file that plan with the commission's office of inspector  
26 general for approval. The plan must include:

27 (1) a description of the managed care organization's

1 procedures for detecting and investigating possible acts of fraud  
2 or abuse;

3 (2) a description of the managed care organization's  
4 procedures for the mandatory reporting of possible acts of fraud or  
5 abuse to the commission's office of inspector general;

6 (3) a description of the managed care organization's  
7 procedures for educating and training personnel to prevent fraud  
8 and abuse;

9 (4) the name, address, telephone number, and fax  
10 number of the individual responsible for carrying out the plan;

11 (5) a description or chart outlining the  
12 organizational arrangement of the managed care organization's  
13 personnel responsible for investigating and reporting possible  
14 acts of fraud or abuse;

15 (6) a detailed description of the results of  
16 investigations of fraud and abuse conducted by the managed care  
17 organization's special investigative unit or the entity with which  
18 the managed care organization contracts under Subsection (a)(2);  
19 and

20 (7) provisions for maintaining the confidentiality of  
21 any patient information relevant to an investigation of fraud or  
22 abuse.

23 (c) If a managed care organization contracts for the  
24 investigation of fraudulent claims and other types of program abuse  
25 by recipients and service providers under Subsection (a)(2), the  
26 managed care organization shall file with the commission's office  
27 of inspector general:

1           (1) a copy of the written contract;

2           (2) the names, addresses, telephone numbers, and fax  
3 numbers of the principals of the entity with which the managed care  
4 organization has contracted; and

5           (3) a description of the qualifications of the  
6 principals of the entity with which the managed care organization  
7 has contracted.

8           (d) The commission's office of inspector general may review  
9 the records of a managed care organization to determine compliance  
10 with this section.

11           (e) The commissioner shall adopt rules as necessary to  
12 accomplish the purposes of this section.

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

16           SECTION 2.26. (a) Subchapter C, Chapter 531, Government  
17 Code, is amended by adding Section 531.114 to read as follows:

18           Sec. 531.114. FINANCIAL ASSISTANCE FRAUD. (a) For  
19 purposes of establishing or maintaining the eligibility of a person  
20 and the person's family for financial assistance under Chapter 31,  
21 Human Resources Code, or for purposes of increasing or preventing a  
22 reduction in the amount of that assistance, a person may not  
23 intentionally:

24           (1) make a statement that the person knows is false or  
25 misleading;

26           (2) misrepresent, conceal, or withhold a fact; or

27           (3) knowingly misrepresent a statement as being true.

1       (b) If after an investigation the commission determines  
2 that a person violated Subsection (a), the commission shall:

3           (1) notify the person of the alleged violation not  
4 later than the 30th day after the date the commission completes the  
5 investigation and provide the person with an opportunity for a  
6 hearing on the matter; or

7           (2) refer the matter to the appropriate prosecuting  
8 attorney for prosecution.

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

18       (d) A person determined under Subsection (c) to have  
19 violated Subsection (a) is not eligible for financial assistance:

20           (1) before the first anniversary of the date of that  
21 determination, if the person has no previous violations; and

22           (2) permanently, if the person was previously  
23 determined to have committed a violation.

24       (e) If a person is convicted of a state or federal offense  
25 for conduct described by Subsection (a), or if the person is granted  
26 deferred adjudication or placed on community supervision for that  
27 conduct, the person is permanently disqualified from receiving

1 financial assistance.

2 (f) This section does not affect the eligibility for  
3 financial assistance of any other member of the household of a  
4 person ineligible as a result of Subsection (d) or (e).

5 (g) The commission shall adopt rules as necessary to  
6 implement this section.

7 (b) Section 531.114, Government Code, as added by this  
8 section, applies only to conduct occurring on or after the  
9 effective date of this section. Conduct occurring before the  
10 effective date of this section is governed by the law in effect on  
11 the date the conduct occurred, and the former law is continued in  
12 effect for that purpose.

13 SECTION 2.27. Subchapter C, Chapter 531, Government Code,  
14 is amended by adding Section 531.115 to read as follows:

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

19 SECTION 2.28. Subchapter C, Chapter 531, Government Code,  
20 is amended by adding Section 531.116 to read as follows:

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

27 SECTION 2.29. Subchapter A, Chapter 533, Government Code,



1 is amended by adding Section 533.0025 to read as follows:

2 Sec. 533.0025. DELIVERY OF SERVICES. (a) In this section,  
3 "medical assistance" has the meaning assigned by Section 32.003,  
4 Human Resources Code.

5 (b) Except as otherwise provided by this section and  
6 notwithstanding any other law, the commission shall provide medical  
7 assistance for acute care through the most cost-effective model of  
8 Medicaid managed care as determined by the commission. If the  
9 commission determines that it is more cost-effective, the  
10 commission may provide medical assistance for acute care in a  
11 certain part of this state or to a certain population of recipients  
12 using:

13 (1) a health maintenance organization model,  
14 including the acute care portion of Medicaid Star + Plus pilot  
15 programs;

16 (2) a primary care case management model;

17 (3) a prepaid health plan model;

18 (4) an exclusive provider organization model; or

19 (5) another Medicaid managed care model or  
20 arrangement.

21 (c) In determining whether a model or arrangement described  
22 by Subsection (b) is more cost-effective, the commissioner must  
23 consider:

24 (1) the scope, duration, and types of health benefits  
25 or services to be provided in a certain part of this state or to a  
26 certain population of recipients;

27 (2) administrative costs necessary to meet federal and

1 state statutory and regulatory requirements;

2 (3) the anticipated effect of market competition  
3 associated with the configuration of Medicaid service delivery  
4 models determined by the commission; and

5 (4) the gain or loss to this state of a tax collected  
6 under Article 4.11, Insurance Code.

7 (d) If the commission determines that it is not more  
8 cost-effective to use a Medicaid managed care model to provide  
9 certain types of medical assistance for acute care in a certain area  
10 or to certain medical assistance recipients as prescribed by this  
11 section, the commission shall provide medical assistance for acute  
12 care through a traditional fee-for-service arrangement.

13 (e) Notwithstanding Subsection (b)(1), the commission may  
14 not provide medical assistance using a health maintenance  
15 organization in Cameron County, Hidalgo County, or Maverick County.

16 SECTION 2.30. Subchapter A, Chapter 533, Government Code,  
17 is amended by adding Section 533.0132 to read as follows:

18 Sec. 533.0132. STATE TAXES. The commission shall ensure  
19 that any experience rebate or profit sharing for managed care  
20 organizations is calculated by treating premium, maintenance, and  
21 other taxes under the Insurance Code and any other taxes payable to  
22 this state as allowable expenses for purposes of determining the  
23 amount of the experience rebate or profit sharing.

24 SECTION 2.31. Sections 403.105(a) and (c), Government Code,  
25 are amended to read as follows:

26 (a) The permanent fund for health and tobacco education and  
27 enforcement is a dedicated account in the general revenue fund. The

1 fund is composed of:

2 (1) money transferred to the fund at the direction of  
3 the legislature;

4 (2) gifts and grants contributed to the fund; and

5 (3) the available earnings of the fund determined in  
6 accordance with Section 403.1068.

7 (c) The available earnings of the fund may be appropriated  
8 to the Texas Department of Health for:

9 (1) programs to reduce the use of cigarettes and  
10 tobacco products in this state, including:

11 (A) ~~[(1)]~~ smoking cessation programs;

12 (B) ~~[(2)]~~ enforcement of Subchapters H, K, and N,  
13 Chapter 161, Health and Safety Code, or other laws relating to  
14 distribution of cigarettes or tobacco products to minors or use of  
15 cigarettes or tobacco products by minors;

16 (C) ~~[(3)]~~ public awareness programs relating to  
17 use of cigarettes and tobacco products, including general  
18 educational programs and programs directed toward youth; and

19 (D) ~~[(4)]~~ specific programs for communities  
20 traditionally targeted, by advertising and other means, by  
21 companies that sell cigarettes or tobacco products; and

22 (2) the provision of preventive medical and dental  
23 services to children in the medical assistance program under  
24 Chapter 32, Human Resources Code.

25 SECTION 2.32. The heading to Section 403.105, Government  
26 Code, is amended to read as follows:

27 Sec. 403.105. PERMANENT FUND FOR HEALTH AND TOBACCO

1 EDUCATION AND ENFORCEMENT.

2 SECTION 2.33. Section 403.1055(c), Government Code, is  
3 amended to read as follows:

4 (c) The available earnings of the fund may be appropriated  
5 to:

6 (1) the Texas Department of Health for the purpose of:

7 (A) developing and demonstrating cost-effective  
8 prevention and intervention strategies for improving health  
9 outcomes for children and the public;

10 (B) [~~and for~~] providing grants to local  
11 communities to address specific public health priorities,  
12 including sickle cell anemia, diabetes, high blood pressure,  
13 cancer, heart attack, stroke, keloid tissue and scarring, and  
14 respiratory disease;

15 (C) [~~and for~~] providing grants to local  
16 communities for essential public health services as defined in the  
17 Health and Safety Code; and

18 (D) providing grants to schools of public health  
19 located in Texas; and

20 (2) the Interagency Council on Early Childhood  
21 Intervention to provide intervention services for children with  
22 developmental delay or who have a high probability of developing  
23 developmental delay and the families of those children.

24 SECTION 2.34. Section 466.408(b), Government Code, is  
25 amended to read as follows:

26 (b) If a claim is not made for prize money on or before the  
27 180th day after the date on which the winner was selected, the prize

1 money shall be used in the following order of priority:

2 (1) subject to legislative appropriation, not more  
3 than \$20 million in prize money each year may be deposited to or  
4 appropriated from the Texas Department of Health state-owned  
5 multicategorical teaching hospital account, which is an account in  
6 the general revenue fund;

7 (2) not more than \$5 million in prize money each year  
8 may be appropriated to the Health and Human Services Commission and  
9 shall be used to support the provision of inpatient hospital  
10 services in hospitals located in the 15 counties that comprise the  
11 Texas-Mexico border area, with payment for those services to be not  
12 less than the amount established under the Tax Equity and Fiscal  
13 Responsibility Act of 1982 (TEFRA) cost reimbursement methodology  
14 for the hospital providing the services; and

15 (3) all prize money subject to this section and not  
16 appropriated from the Texas Department of Health state-owned  
17 multicategorical teaching hospital account or not appropriated to  
18 the Health and Human Services Commission for the purpose specified  
19 in Subdivision (2) shall be deposited in the general revenue fund  
20 and may be appropriated for any purpose as determined by the  
21 legislature, including the provision of indigent health care  
22 services as specified in Chapter 61, Health and Safety Code ~~shall~~  
23 ~~be deposited to the credit of the Texas Department of Health~~  
24 ~~state-owned multicategorical teaching hospital account or the~~  
25 ~~tertiary care facility account as follows:~~

26 ~~[(1) not more than \$40 million in prize money each~~  
27 ~~biennium may be deposited to or appropriated from the Texas~~

1 ~~Department of Health state-owned multicategorical teaching~~  
2 ~~hospital account, which is an account in the general revenue fund,~~  
3 ~~and~~

4 ~~[(2) all prize money subject to this section in excess~~  
5 ~~of \$40 million each biennium shall be deposited in the tertiary care~~  
6 ~~facility account. Money deposited in the tertiary care facility~~  
7 ~~account may only be appropriated to the department for purposes~~  
8 ~~specified in Chapter 46 or 61, Health and Safety Code].~~

9 SECTION 2.35. Section 533.005, Government Code, is amended  
10 to read as follows:

11 Sec. 533.005. REQUIRED CONTRACT PROVISIONS. (a) A  
12 contract between a managed care organization and the commission for  
13 the organization to provide health care services to recipients must  
14 contain:

15 (1) procedures to ensure accountability to the state  
16 for the provision of health care services, including procedures for  
17 financial reporting, quality assurance, utilization review, and  
18 assurance of contract and subcontract compliance;

19 (2) capitation and provider payment rates that ensure  
20 the cost-effective provision of quality health care;

21 (3) a requirement that the managed care organization  
22 provide ready access to a person who assists recipients in  
23 resolving issues relating to enrollment, plan administration,  
24 education and training, access to services, and grievance  
25 procedures;

26 (4) a requirement that the managed care organization  
27 provide ready access to a person who assists providers in resolving

1 issues relating to payment, plan administration, education and  
2 training, and grievance procedures;

3 (5) a requirement that the managed care organization  
4 provide information and referral about the availability of  
5 educational, social, and other community services that could  
6 benefit a recipient;

7 (6) procedures for recipient outreach and education;

8 (7) a requirement that the managed care organization  
9 make payment to a physician or provider for health care services  
10 rendered to a recipient under a managed care plan not later than the  
11 45th day after the date a claim for payment is received with  
12 documentation reasonably necessary for the managed care  
13 organization to process the claim, or within a period, not to exceed  
14 60 days, specified by a written agreement between the physician or  
15 provider and the managed care organization;

16 (8) a requirement that the commission, on the date of a  
17 recipient's enrollment in a managed care plan issued by the managed  
18 care organization, inform the organization of the recipient's  
19 Medicaid certification date;

20 (9) a requirement that the managed care organization  
21 comply with Section 533.006 as a condition of contract retention  
22 and renewal; ~~and~~

23 (10) a requirement that the managed care organization  
24 provide the information required by Section 533.012 and otherwise  
25 comply and cooperate with the commission's office of investigations  
26 and enforcement;

27 (11) a requirement that the managed care

1 organization's usages of out-of-network providers or groups of  
2 out-of-network providers may not exceed limits for those usages  
3 relating to total inpatient admissions, total outpatient services,  
4 and emergency room admissions determined by the commission; and

5 (12) if the commission finds that a managed care  
6 organization has violated Subdivision (11), a requirement that the  
7 managed care organization reimburse an out-of-network provider for  
8 health care services at a rate that is equal to the allowable rate  
9 for those services, as determined under Sections 32.028 and  
10 32.0281, Human Resources Code.

11 (b) In accordance with Subsection (a)(12), all  
12 post-stabilization services provided by an out-of-network provider  
13 must be reimbursed by the managed care organization at the  
14 allowable rate for those services until the managed care  
15 organization arranges for the timely transfer of the recipient, as  
16 determined by the recipient's attending physician, to a provider in  
17 the network. A managed care organization may not refuse to  
18 reimburse an out-of-network provider for emergency or  
19 post-stabilization services provided as a result of the managed  
20 care organization's failure to arrange for and authorize a timely  
21 transfer of a recipient.

22 SECTION 2.36. Section 533.012(a), Government Code, is  
23 amended to read as follows:

24 (a) Each managed care organization contracting with the  
25 commission under this chapter shall submit to the commission:

26 (1) a description of any financial or other business  
27 relationship between the organization and any subcontractor



1 providing health care services under the contract;

2 (2) a copy of each type of contract between the  
3 organization and a subcontractor relating to the delivery of or  
4 payment for health care services; ~~and~~

5 (3) a description of the fraud control program used by  
6 any subcontractor that delivers health care services; and

7 (4) a description and breakdown of all funds paid to  
8 the managed care organization, including a health maintenance  
9 organization, primary care case management, and an exclusive  
10 provider organization, necessary for the commission to determine  
11 the actual cost of administering the managed care plan.

12 SECTION 2.37. The heading to Subchapter C, Chapter 531,  
13 Government Code, is amended to read as follows:

14 SUBCHAPTER C. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES

15 [~~WELFARE~~] FRAUD, ABUSE, OR OVERCHARGES

16 SECTION 2.37A. Subchapter C, Chapter 531, Government Code,  
17 is amended by adding Section 531.1011 to read as follows:

18 Sec. 531.1011. DEFINITIONS. For purposes of this  
19 subchapter:

20 (1) "Fraud" means an intentional deception or  
21 misrepresentation made by a person with the knowledge that the  
22 deception could result in some unauthorized benefit to that person  
23 or some other person, including any act that constitutes fraud  
24 under applicable federal or state law.

25 (2) "Hold on payment" means the temporary denial of  
26 reimbursement under the Medicaid program for items or services  
27 furnished by a specified provider.

1           (3) "Practitioner" means a physician or other  
2 individual licensed under state law to practice the individual's  
3 profession.

4           (4) "Program exclusion" means the suspension of a  
5 provider from being authorized under the Medicaid program to  
6 request reimbursement for items or services furnished by that  
7 specific provider.

8           (5) "Provider" means a person, firm, partnership,  
9 corporation, agency, association, institution, or other entity  
10 that was or is approved by the commission to:

11                   (A) provide medical assistance under contract or  
12 provider agreement with the commission; or

13                   (B) provide third-party billing vendor services  
14 under a contract or provider agreement with the commission.

15           SECTION 2.38. Section 2177.0001(3), Government Code, is  
16 amended to read as follows:

17           (3) "State agency" has the meaning assigned by Section  
18 2054.003, except that the term does not include a university system  
19 or institution of higher education or an agency identified in  
20 Section 531.001(4).

21           SECTION 2.39. Section 2177.101(a), Government Code, is  
22 amended to read as follows:

23           (a) This subchapter does not apply to procurements  
24 conducted by an agency identified in Section 531.001(4) or to  
25 procurements for major construction projects, as defined by the  
26 commission in consultation with the department, such as  
27 procurements made under Chapter 223, Transportation Code. In

1 defining a major construction project, the commission shall base  
2 its decision on whether the nature of the project, any related  
3 contract or specifications, or other considerations are of a type  
4 that would make electronic procurement inappropriate.

5 SECTION 2.40. Section 2055.001(4), Government Code, is  
6 amended to read as follows:

7 (4) "State agency" has the meaning assigned by Section  
8 2054.003, except that the term does not include a university system  
9 or institution of higher education or an agency identified in  
10 Section 531.001(4).

11 SECTION 2.41. Section 2055.002, Government Code, is amended  
12 to read as follows:

13 Sec. 2055.002. APPLICABILITY TO INSTITUTIONS OF HIGHER  
14 EDUCATION OR HEALTH AND HUMAN SERVICES AGENCIES. (a) Except as  
15 provided by Subsection (b), the requirements of this chapter  
16 regarding electronic government projects do not apply to  
17 institutions of higher education or a health and human services  
18 agency identified in Section 531.001(4), Government Code.

19 (b) Subject to approval by the office, an institution of  
20 higher education or a health and human services agency may elect to  
21 participate regarding an electronic government project of that  
22 institution or agency in the same manner as a state agency under  
23 this chapter. If the institution or health and human services  
24 agency makes this election and the office approves the election,  
25 the institution or health and human services agency:

26 (1) shall comply with this chapter regarding that  
27 electronic government project in the same manner as a state agency;

1 and

2 (2) may not withdraw the project from management by  
3 the office unless the office approves the withdrawal.

4 SECTION 2.42. (a) Subchapter B, Chapter 12, Health and  
5 Safety Code, is amended by adding Sections 12.0111 and 12.0112 to  
6 read as follows:

7 Sec. 12.0111. LICENSING FEES. (a) This section applies in  
8 relation to each licensing program administered by the department  
9 or administered by a regulatory board or other agency that is under  
10 the jurisdiction of the department or administratively attached to  
11 the department. In this section and Section 12.0112, "license"  
12 includes a permit, certificate, or registration.

13 (b) Notwithstanding other law, the department shall charge  
14 a fee for issuing or renewing a license that is in an amount  
15 designed to allow the department to recover from its license  
16 holders all of the department's direct and indirect costs in  
17 administering and enforcing the applicable licensing program.

18 (c) Notwithstanding other law, each regulatory board or  
19 other agency that is under the jurisdiction of the department or  
20 administratively attached to the department and that issues  
21 licenses shall charge a fee for issuing or renewing a license that  
22 is in an amount designed to allow the department and the regulatory  
23 board or agency to recover from the license holders all of the  
24 direct and indirect costs to the department and to the regulatory  
25 board or agency in administering and enforcing the applicable  
26 licensing program.

27 (d) This section does not apply to a person regulated under

1 Chapter 773.

2 Sec. 12.0112. TERM OF LICENSE. (a) Notwithstanding other  
3 law and except as provided by Subsection (b), the term of each  
4 license issued by the department, or by a regulatory board or other  
5 agency that is under the jurisdiction of the department or  
6 administratively attached to the department, is two years. The  
7 department, regulatory board, or agency may provide for staggering  
8 the issuance and renewal of licenses.

9 (b) This section does not apply to a license issued for a  
10 youth camp under Chapter 141.

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

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

20 SECTION 2.43. Sections 62.055(a), (d), and (e), Health and  
21 Safety Code, are amended to read as follows:

22 (a) It is the intent of the legislature that the commission  
23 maximize the use of private resources in administering the child  
24 health plan created under this chapter. In administering the child  
25 health plan, the commission may contract with[+]

26 [~~1~~] a third party administrator to provide  
27 enrollment and related services under the state child health plan[+]

1 ~~or~~

2 [~~(2) another entity, including the Texas Healthy Kids~~  
3 ~~Corporation under Subchapter F, Chapter 109, to obtain health~~  
4 ~~benefit plan coverage for children who are eligible for coverage~~  
5 ~~under the state child health plan].~~

6 (d) A third party administrator [~~or other entity~~] may  
7 perform tasks under the contract that would otherwise be performed  
8 by the Texas Department of Health or Texas Department of Human  
9 Services under this chapter.

10 (e) The commission shall:

11 (1) retain all policymaking authority over the state  
12 child health plan;

13 (2) procure all contracts with a third party  
14 administrator [~~or other entity~~] through a competitive procurement  
15 process in compliance with all applicable federal and state laws or  
16 regulations; and

17 (3) ensure that all contracts with child health plan  
18 providers under Section 62.155 are procured through a competitive  
19 procurement process in compliance with all applicable federal and  
20 state laws or regulations.

21 SECTION 2.44. (a) Subchapter B, Chapter 62, Health and  
22 Safety Code, is amended by adding Section 62.0582 to read as  
23 follows:

24 Sec. 62.0582. THIRD-PARTY BILLING VENDORS. (a) A  
25 third-party billing vendor may not submit a claim with the  
26 commission for payment on behalf of a health plan provider under the  
27 program unless the vendor has entered into a contract with the

1 commission authorizing that activity.

2 (b) To the extent practical, the contract shall contain  
3 provisions comparable to the provisions contained in contracts  
4 between the commission and health plan providers, with an emphasis  
5 on provisions designed to prevent fraud or abuse under the program.  
6 At a minimum, the contract must require the third-party billing  
7 vendor to:

8 (1) provide documentation of the vendor's authority to  
9 bill on behalf of each provider for whom the vendor submits claims;

10 (2) submit a claim in a manner that permits the  
11 commission to identify and verify the vendor, any computer or  
12 telephone line used in submitting the claim, any relevant user  
13 password used in submitting the claim, and any provider number  
14 referenced in the claim; and

15 (3) subject to any confidentiality requirements  
16 imposed by federal law, provide the commission, the office of the  
17 attorney general, or authorized representatives with:

18 (A) access to any records maintained by the  
19 vendor, including original records and records maintained by the  
20 vendor on behalf of a provider, relevant to an audit or  
21 investigation of the vendor's services or another function of the  
22 commission or office of attorney general relating to the vendor;  
23 and

24 (B) if requested, copies of any records described  
25 by Paragraph (A) at no charge to the commission, the office of the  
26 attorney general, or authorized representatives.

27 (c) On receipt of a claim submitted by a third-party billing

1 vendor, the commission shall send a remittance notice directly to  
2 the provider referenced in the claim. The notice must include  
3 detailed information regarding the claim submitted on behalf of the  
4 provider.

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

13 (e) The commission shall audit each third-party billing  
14 vendor subject to this section at least annually to prevent fraud  
15 and abuse under the program.

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

18 SECTION 2.45. Section 62.002(4), Health and Safety Code, is  
19 amended to read as follows:

20 (4) "Gross [~~Net~~] family income" means the total amount  
21 of income established without consideration of any reduction for  
22 offsets that may be available to the family under any other [~~for a~~  
23 ~~family after reduction for offsets for expenses such as child care~~  
24 ~~and work-related expenses, in accordance with standards applicable~~  
25 ~~under the Medicaid]~~ program.

26 SECTION 2.46. Section 62.101(b), Health and Safety Code, is  
27 amended to read as follows:



1 (b) The commission shall establish income eligibility  
2 levels consistent with Title XXI, Social Security Act (42 U.S.C.  
3 Section 1397aa et seq.), as amended, and any other applicable law or  
4 regulations, and subject to the availability of appropriated money,  
5 so that a child who is younger than 19 years of age and whose gross  
6 ~~[net]~~ family income is at or below 200 percent of the federal  
7 poverty level is eligible for health benefits coverage under the  
8 program. In addition, the commission may establish eligibility  
9 standards regarding the amount and types of allowable assets for a  
10 family whose gross family income is above 150 percent of the federal  
11 poverty level.

12 SECTION 2.47. Section 62.1015(b), Health and Safety Code,  
13 is amended to read as follows:

14 (b) A child of an employee of a charter school, school  
15 district, other educational district whose employees are members of  
16 the Teacher Retirement System of Texas, or regional education  
17 service center may be enrolled in health benefits coverage under  
18 the child health plan. A child enrolled in the child health plan  
19 under this section:

20 (1) participates in the same manner as any other child  
21 enrolled in the child health plan; and

22 (2) is subject to the same requirements and  
23 restrictions relating to income eligibility, continuous coverage,  
24 and enrollment, including applicable waiting periods, as any other  
25 child enrolled in the child health plan.

26 SECTION 2.48. Section 62.102, Health and Safety Code, is  
27 amended to read as follows:

1           Sec. 62.102. CONTINUOUS COVERAGE. (a) The commission  
2 shall provide that an individual who is determined to be eligible  
3 for coverage under the child health plan remains eligible for those  
4 benefits until the earlier of:

5                 (1) the end of a period, not to exceed 12 months,  
6 following the date of the eligibility determination; or

7                 (2) the individual's 19th birthday.

8           (b) The period of continuous eligibility may be established  
9 at an interval of 6 months beginning immediately upon passage of  
10 this Act and ending September 1, 2005, at which time an interval of  
11 12 months of continuous eligibility will be re-established.

12           SECTION 2.49. Section 62.151, Health and Safety Code, is  
13 amended by amending Subsection (b) and adding Subsections (e) and  
14 (f) to read as follows:

15           (b) In developing the covered benefits, the commission  
16 shall consider the health care needs of healthy children and  
17 children with special health care needs. ~~[At the time the child~~  
18 ~~health plan program is first implemented, the child health plan~~  
19 ~~must provide a benefits package that is actuarially equivalent, as~~  
20 ~~determined in accordance with 42 U.S.C. Section 1397cc, to the~~  
21 ~~basic plan for active state employees offered through health~~  
22 ~~maintenance organizations under the Texas Employees Uniform Group~~  
23 ~~Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance~~  
24 ~~Code), as determined by the commission. The child health plan must~~  
25 ~~provide at least the covered benefits described by the recommended~~  
26 ~~benefits package described for a state-designed child health plan~~  
27 ~~by the Texas House of Representatives Committee on Public Health~~

1 ~~"CHIP" Interim Report to the Seventy-Sixth Texas Legislature dated~~  
2 ~~December, 1998, and the Senate Interim Committee on Children's~~  
3 ~~Health Insurance Report to the Seventy-Sixth Texas Legislature~~  
4 ~~dated December 1, 1998.]~~

5 (e) In developing the covered benefits, the commission  
6 shall seek input from the Public Assistance Health Benefit Review  
7 and Design Committee established under Section 531.067, Government  
8 Code.

9 (f) The commission, if it determines the policy to be  
10 cost-effective, may ensure that an enrolled child does not, unless  
11 authorized by the commission in consultation with the child's  
12 attending physician or advanced practice nurse, receive under the  
13 child health plan:

14 (1) more than four different outpatient brand-name  
15 prescription drugs during a month; or

16 (2) more than a 34-day supply of a brand-name  
17 prescription drug at any one time.

18 SECTION 2.50. Section 62.153, Health and Safety Code, is  
19 amended by amending Subsection (b) and adding Subsection (d) to  
20 read as follows:

21 (b) Subject to Subsection (d), cost-sharing [~~Cost-sharing~~]  
22 provisions adopted under this section shall ensure that families  
23 with higher levels of income are required to pay progressively  
24 higher percentages of the cost of the plan.

25 (d) Cost-sharing provisions adopted under this section may  
26 be determined based on the maximum level authorized under federal  
27 law and applied to income levels in a manner that minimizes

1 administrative costs.

2 SECTION 2.51. (a) The heading to Section 62.154, Health and  
3 Safety Code, is amended to read as follows:

4 Sec. 62.154. WAITING PERIOD; CROWD OUT.

5 (b) Sections 62.154(a), (b), and (d), Health and Safety  
6 Code, are amended to read as follows:

7 (a) To the extent permitted under Title XXI of the Social  
8 Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any  
9 other applicable law or regulations, the child health plan must  
10 include a waiting period. The child health plan ~~[and]~~ may include  
11 copayments and other provisions intended to discourage:

12 (1) employers and other persons from electing to  
13 discontinue offering coverage for children under employee or other  
14 group health benefit plans; and

15 (2) individuals with access to adequate health benefit  
16 plan coverage, other than coverage under the child health plan,  
17 from electing not to obtain or to discontinue that coverage for a  
18 child.

19 (b) A child is not subject to a waiting period adopted under  
20 Subsection (a) if:

21 (1) the family lost coverage for the child as a result  
22 of:

23 (A) termination of employment because of a layoff  
24 or business closing;

25 (B) termination of continuation coverage under  
26 the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L.  
27 No. 99-272);

1 (C) change in marital status of a parent of the  
2 child;

3 (D) termination of the child's Medicaid  
4 eligibility because:

5 (i) the child's family's earnings or  
6 resources increased; or

7 (ii) the child reached an age at which  
8 Medicaid coverage is not available; or

9 (E) a similar circumstance resulting in the  
10 involuntary loss of coverage;

11 (2) the family terminated health benefits plan  
12 coverage for the child because the cost to the child's family for  
13 the coverage exceeded 10 percent of the family's net income; ~~[or]~~

14 (3) the child has access to group-based health  
15 benefits plan coverage and is required to participate in the health  
16 insurance premium payment reimbursement program administered by  
17 the commission; or

18 (4) the commission has determined that other grounds  
19 exist for a good cause exception.

20 (d) The waiting period required by Subsection (a) must ~~[+]~~  
21 ~~[-1-]~~ extend for a period of 90 days after:

22 (1) the first day of the month in ~~[last date on]~~ which  
23 the applicant is enrolled under the child health plan, if the date  
24 of enrollment is on or before the 15th day of the month; or

25 (2) the first day of the month after which the  
26 applicant is enrolled under the child health plan, if the date of  
27 enrollment is after the 15th day of the month ~~[was covered under a~~

1 health benefits plan, and

2           ~~[(2) apply to a child who was covered by a health~~  
3 ~~benefits plan at any time during the 90 days before the date of~~  
4 ~~application for coverage under the child health plan, other than a~~  
5 ~~child who was covered under a health benefits plan provided under~~  
6 ~~Chapter 109].~~

7           SECTION 2.52. Sections 62.155(c) and (d), Health and Safety  
8 Code, are amended to read as follows:

9           (c) In selecting a health plan provider, the commission:

10           (1) may give preference to a person who provides  
11 similar coverage under the Medicaid program ~~[or through the Texas~~  
12 ~~Healthy Kids Corporation]~~; and

13           (2) shall provide for a choice of at least two health  
14 plan providers in each service ~~[metropolitan]~~ area.

15           (d) The commissioner may authorize an exception to  
16 Subsection (c)(2) if there is only one acceptable applicant to  
17 become a health plan provider in the service ~~[metropolitan]~~ area.

18           SECTION 2.53. Subchapter D, Chapter 62, Health and Safety  
19 Code, is amended by adding Section 62.158 to read as follows:

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

26           SECTION 2.54. (a) Subtitle E, Title 2, Health and Safety  
27 Code, is amended by adding Chapter 112 to read as follows:

CHAPTER 112. BORDER HEALTH FOUNDATION

Sec. 112.001. DEFINITIONS. In this 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

1           (3) perform any other function necessary to carry out  
2 the purposes of this section.

3           (c) The department shall review programs from all agencies  
4 under its control to determine which projects should be available  
5 to receive money under Subsection (a).

6           (d) The foundation has the powers necessary and convenient  
7 to carry out its duties.

8           Sec. 112.004. ADMINISTRATION. (a) The foundation is  
9 governed by a board of five directors appointed by the Texas Board  
10 of Health from individuals recommended by the commissioner.

11           (b) Members of the board of directors serve for staggered  
12 terms of six years, with as near as possible to one-third of the  
13 members' terms expiring every two years.

14           (c) Appointments to the board of directors shall be made  
15 without regard to the race, color, disability, sex, religion, age,  
16 or national origin of the appointees.

17           (d) The board of directors shall ensure that the foundation  
18 remains eligible for an exemption from federal income tax under  
19 Section 501(a), Internal Revenue Code of 1986, as amended, by being  
20 listed as an exempt organization under Section 501(c)(3) of that  
21 code, as amended.

22           Sec. 112.005. RESTRICTIONS ON BOARD APPOINTMENT,  
23 MEMBERSHIP, AND EMPLOYMENT. (a) In this section, "Texas trade  
24 association" means a cooperative and voluntarily joined  
25 association of business or professional competitors in this state  
26 designed to assist its members and its industry or profession in  
27 dealing with mutual business or professional problems and in



1 promoting their common interest.

2 (b) A person may not be a member of the board of directors  
3 and may not be a foundation employee employed in a "bona fide  
4 executive, administrative, or professional capacity," as that  
5 phrase is used for purposes of establishing an exemption to the  
6 overtime provisions of the federal Fair Labor Standards Act of 1938  
7 (29 U.S.C. Section 201 et seq.), as amended, if:

8 (1) the person is an officer, employee, or paid  
9 consultant of a Texas trade association in the field of health care;  
10 or

11 (2) the person's spouse is an officer, manager, or paid  
12 consultant of a Texas trade association in the field of health care.

13 (c) A person may not be a member of the board of directors or  
14 act as the general counsel to the board of directors or the  
15 foundation if the person is required to register as a lobbyist under  
16 Chapter 305, Government Code, because of the person's activities  
17 for compensation on behalf of a profession related to the operation  
18 of the foundation.

19 Sec. 112.006. REMOVAL OF BOARD MEMBER. (a) It is a ground  
20 for removal from the board of directors that a member:

21 (1) is ineligible for membership under Section  
22 112.005;

23 (2) cannot, because of illness or disability,  
24 discharge the member's duties for a substantial part of the member's  
25 term; or

26 (3) is absent from more than half of the regularly  
27 scheduled board meetings that the member is eligible to attend

1 during a calendar year without an excuse approved by a majority vote  
2 of the board of directors.

3 (b) The validity of an action of the board of directors is  
4 not affected by the fact that it is taken when a ground for removal  
5 of a board member exists.

6 (c) The foundation in its articles or bylaws shall establish  
7 the manner in which a board member may be removed under this section  
8 and may establish other grounds for removal of a member.

9 Sec. 112.007. VACANCY. A vacancy on the board of directors  
10 shall be filled for the remainder of the unexpired term in the same  
11 manner as provided in Section 112.004(a).

12 Sec. 112.008. OFFICERS. The board of directors shall elect  
13 from among its members a presiding officer, an assistant presiding  
14 officer, and other necessary officers. The presiding officer and  
15 assistant presiding officer serve for a period of one year and may  
16 be reelected.

17 Sec. 112.009. MEETINGS. The board of directors may meet as  
18 often as necessary, but shall meet at least twice a year.

19 Sec. 112.010. TAX EXEMPTION. All income, property, and  
20 other assets of the foundation are exempt from taxation by this  
21 state and political subdivisions of this state.

22 Sec. 112.011. MEMORANDUM OF UNDERSTANDING. The foundation  
23 and the department shall enter into a memorandum of understanding  
24 that:

25 (1) requires the board of directors and staff of the  
26 foundation to report to the commissioner and department;

27 (2) allows the department to provide staff functions

1 to the foundation; and

2 (3) outlines the financial contributions to be made to  
3 the foundation from funds obtained from grants and other sources.

4 Sec. 112.012. FUNDING. (a) The department, another agency  
5 of this state, including an institution of higher education as  
6 defined by Section 61.003, Education Code, or a political  
7 subdivision of this state may contract with the foundation to  
8 finance, on behalf of the department, agency, or political  
9 subdivision, health programs described by Section 112.003.

10 (b) The foundation may apply for and accept funds from the  
11 federal government or any other public or private entity. The  
12 foundation or any member of the foundation may also solicit and  
13 accept pledges, gifts, and endowments from private sources on the  
14 foundation's behalf. The foundation may only accept a pledge,  
15 gift, or endowment solicited under this section that is consistent  
16 with the purposes of the foundation.

17 (c) The board of directors of the foundation shall manage  
18 and approve disbursements of funds, pledges, gifts, and endowments  
19 that are the property of the foundation.

20 (d) The board of directors of the foundation shall manage  
21 any capital improvements constructed, owned, or leased by the  
22 foundation and any real property acquired by the foundation.

23 Sec. 112.013. RECORDS. (a) The foundation shall maintain  
24 financial records and reports independently from those of the  
25 department.

26 (b) The foundation shall comply with all filing  
27 requirements of the secretary of state and the Internal Revenue

1 Service.

2 Sec. 112.014. REPORT TO DEPARTMENT. Not later than the 60th  
3 day after the last day of the fiscal year, the foundation shall  
4 submit to the department a report itemizing all income and  
5 expenditures and describing all activities of the foundation during  
6 the preceding fiscal year.

7 (b) The Border Health Foundation shall be created as  
8 required by this section not later than June 1, 2004.

9 SECTION 2.55. Section 142.003(a), Health and Safety Code,  
10 is amended to read as follows:

11 (a) The following persons need not be licensed under this  
12 chapter:

13 (1) a physician, dentist, registered nurse,  
14 occupational therapist, or physical therapist licensed under the  
15 laws of this state who provides home health services to a client  
16 only as a part of and incidental to that person's private office  
17 practice;

18 (2) a registered nurse, licensed vocational nurse,  
19 physical therapist, occupational therapist, speech therapist,  
20 medical social worker, or any other health care professional as  
21 determined by the department who provides home health services as a  
22 sole practitioner;

23 (3) a registry that operates solely as a clearinghouse  
24 to put consumers in contact with persons who provide home health,  
25 hospice, or personal assistance services and that does not maintain  
26 official client records, direct client services, or compensate the  
27 person who is providing the service;

1           (4) an individual whose permanent residence is in the  
2 client's residence;

3           (5) an employee of a person licensed under this  
4 chapter who provides home health, hospice, or personal assistance  
5 services only as an employee of the license holder and who receives  
6 no benefit for providing the services, other than wages from the  
7 license holder;

8           (6) a home, nursing home, convalescent home, assisted  
9 living facility, special care facility, or other institution for  
10 individuals who are elderly or who have disabilities that provides  
11 home health or personal assistance services only to residents of  
12 the home or institution;

13           (7) a person who provides one health service through a  
14 contract with a person licensed under this chapter;

15           (8) a durable medical equipment supply company;

16           (9) a pharmacy or wholesale medical supply company  
17 that does not furnish services, other than supplies, to a person at  
18 the person's house;

19           (10) a hospital or other licensed health care facility  
20 that provides home health or personal assistance services only to  
21 inpatient residents of the hospital or facility;

22           (11) a person providing home health or personal  
23 assistance services to an injured employee under Title 5, Labor  
24 Code;

25           (12) a visiting nurse service that:

26                 (A) is conducted by and for the adherents of a  
27 well-recognized church or religious denomination; and

1 (B) provides nursing services by a person exempt  
2 from licensing by Section 301.004, Occupations Code, because the  
3 person furnishes nursing care in which treatment is only by prayer  
4 or spiritual means;

5 (13) an individual hired and paid directly by the  
6 client or the client's family or legal guardian to provide home  
7 health or personal assistance services;

8 (14) a business, school, camp, or other organization  
9 that provides home health or personal assistance services,  
10 incidental to the organization's primary purpose, to individuals  
11 employed by or participating in programs offered by the business,  
12 school, or camp that enable the individual to participate fully in  
13 the business's, school's, or camp's programs;

14 (15) a person or organization providing  
15 sitter-companion services or chore or household services that do  
16 not involve personal care, health, or health-related services;

17 (16) a licensed health care facility that provides  
18 hospice services under a contract with a hospice;

19 (17) a person delivering residential acquired immune  
20 deficiency syndrome hospice care who is licensed and designated as  
21 a residential AIDS hospice under Chapter 248; [~~or~~]

22 (18) the Texas Department of Criminal Justice;

23 (19) a person that provides home health, hospice, or  
24 personal assistance services only to persons enrolled in a program  
25 funded wholly or partly by the Texas Department of Mental Health and  
26 Mental Retardation and monitored by the Texas Department of Mental  
27 Health and Mental Retardation or its designated local authority in

1 accordance with standards set by the Texas Department of Mental  
2 Health and Mental Retardation; or

3 (20) an individual who provides home health or  
4 personal assistance services as the employee of a consumer or an  
5 entity or employee of an entity acting as a consumer's fiscal agent  
6 under Section 531.051, Government Code.

7 SECTION 2.56. Section 142.009(j), Health and Safety Code,  
8 is amended to read as follows:

9 (j) Except as provided by Subsections (h) [~~-(i)-~~] and (l),  
10 an on-site survey must be conducted within 18 months after a survey  
11 for an initial license. After that time, an on-site survey must be  
12 conducted at least every 36 months.

13 SECTION 2.57. (a) Section 242.047, Health and Safety Code,  
14 is amended to read as follows:

15 Sec. 242.047. ACCREDITATION REVIEW TO SATISFY [~~INSTEAD OF~~]  
16 INSPECTION OR CERTIFICATION REQUIREMENTS. (a) The department  
17 shall accept an annual accreditation review from the Joint  
18 Commission on Accreditation of Health Organizations for a nursing  
19 home instead of an inspection for renewal of a license under Section  
20 242.033 and in satisfaction of the requirements for certification  
21 by the department for participation in the medical assistance  
22 program under Chapter 32, Human Resources Code, and the federal  
23 Medicare program, but only if:

24 (1) the nursing home is accredited by the commission  
25 under the commission's long-term care standards;

26 (2) the commission maintains an annual inspection or  
27 review program that, for each nursing home, meets the department's

1 applicable minimum standards as confirmed by the board;

2 (3) the commission conducts an annual on-site  
3 inspection or review of the home; [~~and~~]

4 (4) the nursing home submits to the department a copy  
5 of its annual accreditation review from the commission in addition  
6 to the application, fee, and any report required for renewal of a  
7 license or for certification, as applicable; and

8 (5) the department has:

9 (A) determined whether a waiver or authorization  
10 from a federal agency is necessary under federal law, including for  
11 federal funding purposes, before the department accepts an annual  
12 accreditation review from the joint commission:

13 (i) instead of an inspection for license  
14 renewal purposes;

15 (ii) as satisfying the requirements for  
16 certification by the department for participation in the medical  
17 assistance program; or

18 (iii) as satisfying the requirements for  
19 certification by the department for participation in the federal  
20 Medicare program; and

21 (B) obtained any necessary federal waivers or  
22 authorizations.

23 (b) The department shall coordinate its licensing and  
24 certification activities with the commission.

25 (c) The department and the commission shall sign a  
26 memorandum of agreement to implement this section. The memorandum  
27 must provide that if all parties to the memorandum do not agree in



1 the development, interpretation, and implementation of the  
2 memorandum, any area of dispute is to be resolved by the board.

3 (d) Except as specifically provided by this section, this  
4 [~~This~~] section does not limit the department in performing any  
5 duties and inspections authorized by this chapter or under any  
6 contract relating to the medical assistance program under Chapter  
7 32, Human Resources Code, and Titles XVIII and XIX of the Social  
8 Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.),  
9 including authority to take appropriate action relating to an  
10 institution, such as closing the institution.

11 (e) This section does not require a nursing home to obtain  
12 accreditation from the commission.

13 (b) Not later than October 1, 2003, the Texas Department of  
14 Human Services shall:

15 (1) determine whether a waiver or authorization from a  
16 federal agency is necessary under federal law, including for  
17 federal funding purposes, before the department may accept an  
18 annual accreditation review from the Joint Commission on  
19 Accreditation of Health Organizations for a nursing home:

20 (A) instead of an inspection for purposes of  
21 renewing a nursing home license under Chapter 242, Health and  
22 Safety Code;

23 (B) as satisfying the requirements for  
24 certification by the department for participation in the medical  
25 assistance program under Chapter 32, Human Resources Code; and

26 (C) as satisfying the requirements for  
27 certification by the department for participation in the federal

1 Medicare program; and

2 (2) if the department determines that a waiver or  
3 authorization is necessary, request any required waivers or  
4 authorizations that the department may possibly obtain under  
5 federal law.

6 (c) Not later than December 1, 2003, the Texas Department of  
7 Human Services shall report its progress under Subsection (b) of  
8 this section to the governor and to the presiding officer of each  
9 house of the legislature.

10 SECTION 2.58. (a) Section 242.063(d), Health and Safety  
11 Code, is amended to read as follows:

12 (d) A [~~Notwithstanding Chapter 15, Civil Practice and~~  
13 ~~Remedies Code, or Section 65.023, Civil Practice and Remedies Code,~~  
14 ~~a]~~ suit for a temporary restraining order or other injunctive  
15 relief must [~~may~~] be brought in [~~Travis County or in~~] the county in  
16 which the alleged violation occurs.

17 (b) Section 242.063(e), Health and Safety Code, is  
18 repealed.

19 (c) The changes in law made by this section to Section  
20 242.063(d), Health and Safety Code, apply only to a suit filed on or  
21 after the effective date of this section. A suit filed before the  
22 effective date of this section is covered by the law in effect when  
23 the suit was filed, and that law is continued in effect for that  
24 purpose.

25 SECTION 2.59. Section 242.065(b), Health and Safety Code,  
26 is amended to read as follows:

27 (b) In determining the amount of a penalty to be awarded

1 under this section, the trier of fact shall consider:

2 (1) the seriousness of the violation[~~, including the~~  
3 ~~nature, circumstances, extent, and gravity of the violation and the~~  
4 ~~hazard or potential hazard created by the violation to the health or~~  
5 ~~safety of a resident~~];

6 (2) the history of violations committed by the person  
7 or the person's affiliate, employee, or controlling person;

8 (3) the amount necessary to deter future violations;

9 (4) the efforts made to correct the violation;

10 (5) any misrepresentation made to the department or to  
11 another person regarding:

12 (A) the quality of services rendered or to be  
13 rendered to residents;

14 (B) the compliance history of the institution or  
15 any institutions owned or controlled by an owner or controlling  
16 person of the institution; or

17 (C) the identity of an owner or controlling  
18 person of the institution;

19 (6) the culpability of the individual who committed  
20 the violation; and

21 (7) any other matter that should, as a matter of  
22 justice or equity, be considered.

23 SECTION 2.60. (a) Section 242.070, Health and Safety Code,  
24 is amended to read as follows:

25 Sec. 242.070. APPLICATION OF OTHER LAW. The department may  
26 not assess more than one monetary penalty under this chapter and  
27 Chapter 32, Human Resources Code, for a violation arising out of the

1 same act or failure to act, except as provided by Section  
2 242.0665(c). The [~~This section does not prohibit the~~] department  
3 may assess the greater of [~~from assessing~~] a monetary penalty under  
4 this chapter or [~~and~~] a monetary penalty under Chapter 32, Human  
5 Resources Code, for the same act or failure to act.

6 (b) The change in law made by this section to Section  
7 242.070, Health and Safety Code, applies only to a penalty assessed  
8 on or after the effective date of this section.

9 SECTION 2.61. Section 242.601(a), Health and Safety Code,  
10 is amended to read as follows:

11 (a) An institution must establish medication administration  
12 procedures [~~to ensure that:~~

13 [~~(1) medications to be administered are checked~~  
14 ~~against the order of a physician, advanced practice nurse, or~~  
15 ~~physician assistant pursuant to protocols jointly developed with a~~  
16 ~~physician;~~

17 [~~(2) the resident is identified before the~~  
18 ~~administration of a medication;~~

19 [~~(3) each resident's clinical record includes an~~  
20 ~~individual medication record in which the dose of medication~~  
21 ~~administered is properly recorded by the person who administered~~  
22 ~~the medication;~~

23 [~~(4) medications and biologicals are prepared and~~  
24 ~~administered to a resident by the same individual, except under~~  
25 ~~unit-of-use package distribution systems; and~~

26 [~~(5) a medication prescribed for one resident is not~~  
27 ~~administered to any other person].~~

1           SECTION 2.62. Section 242.603(a), Health and Safety Code,  
2 is amended to read as follows:

3           (a) An institution shall store medications under  
4 appropriate conditions of sanitation, temperature, light,  
5 moisture, ventilation, segregation, and security. ~~[Poisons,  
6 medications used externally, and medications taken internally  
7 shall be stored on separate shelves or in separate cabinets.  
8 Medication stored in a refrigerator containing other items shall be  
9 kept in a separate compartment with appropriate security. The  
10 institution shall store a medication in a locked area that must  
11 remain locked unless an individual authorized to distribute the  
12 medication is present.]~~

13           SECTION 2.63. (a) Section 245.004(a), Health and Safety  
14 Code, is amended to read as follows:

15           (a) The following facilities need not be licensed under this  
16 chapter:

17                 (1) a hospital licensed under Chapter 241 (Texas  
18 Hospital Licensing Law); or

19                 (2) the office of a physician licensed under Subtitle  
20 B, Title 3, Occupations Code, unless the office is used for the  
21 purpose of performing more than 50 ~~[300]~~ abortions in any 12-month  
22 period.

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

27           SECTION 2.64. Section 252.202(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) A quality assurance fee is imposed on each facility for  
3 which a license fee must be paid under Section 252.034, ~~and~~ on  
4 each facility owned by a community mental health and mental  
5 retardation center, as described by Subchapter A, Chapter 534, and  
6 on each facility owned by the Texas Department of Mental Health and  
7 Mental Retardation. The fee:

8 (1) is an amount established under Subsection (b)  
9 multiplied by the number of patient days as determined in  
10 accordance with Section 252.203;

11 (2) is payable monthly; and

12 (3) is in addition to other fees imposed under this  
13 chapter.

14 SECTION 2.65. Section 252.203, Health and Safety Code, is  
15 amended to read as follows:

16 Sec. 252.203. PATIENT DAYS. For each calendar day, a  
17 facility shall determine the number of patient days by adding the  
18 following:

19 (1) the number of patients occupying a facility bed  
20 immediately before midnight of that day; and

21 ~~(2) [the number of beds that are on hold on that day~~  
22 ~~and that have been placed on hold for a period not to exceed three~~  
23 ~~consecutive calendar days during which a patient is in a hospital,~~  
24 ~~and~~

25 ~~[(3)]~~ the number of beds that are on hold on that day  
26 and that have been placed on hold for a period not to exceed three  
27 consecutive calendar days during which a patient is on therapeutic

1 ~~home~~ leave.

2 SECTION 2.66. Section 252.204(b), Health and Safety Code,  
3 is amended to read as follows:

4 (b) Each facility shall:

5 (1) not later than the 20th ~~10th~~ day after the last  
6 day of a month file a report with the Health and Human Services  
7 Commission or the department, as appropriate, stating the total  
8 patient days for the month; and

9 (2) not later than the 30th day after the last day of  
10 the month pay the quality assurance fee.

11 SECTION 2.67. Sections 252.207(a) and (c), Health and  
12 Safety Code, are amended to read as follows:

13 (a) Subject to legislative appropriation and state and  
14 federal law, the ~~The~~ Health and Human Services Commission may  
15 ~~shall~~ use money in the quality assurance fund, together with any  
16 federal money available to match that money~~, to~~:

17 (1) to offset ~~allowable~~ expenses incurred to  
18 administer the quality assurance fee under this chapter ~~under the~~  
19 ~~Medicaid program~~; ~~or~~

20 (2) to increase reimbursement rates paid under the  
21 Medicaid program to facilities or waiver programs for persons with  
22 mental retardation operated in accordance with 42 U.S.C. Section  
23 1396n(c) and its subsequent amendments; or

24 (3) for any other health and human services purpose  
25 approved by the governor and Legislative Budget Board~~, subject to~~  
26 ~~Section 252.206(d)~~.

27 (c) If money in the quality assurance fund is used to

1 increase a reimbursement rate in the Medicaid program, the [The]  
2 Health and Human Services Commission shall ensure that the  
3 reimbursement methodology used to set that rate describes how the  
4 money in the fund will be used to increase the rate and [~~formula~~  
5 ~~devised under Subsection (b)~~] provides incentives to increase  
6 direct care staffing and direct care wages and benefits.

7 SECTION 2.68. Section 253.008, Health and Safety Code, is  
8 amended to read as follows:

9 Sec. 253.008. VERIFICATION OF EMPLOYABILITY. (a) Before a  
10 facility, ~~or~~ an agency licensed under Chapter 142, or a person  
11 exempt from licensing under Section 142.003(a)(19) may hire an  
12 employee, the facility, ~~or~~ agency, or person shall search the  
13 employee misconduct registry under this chapter and the nurse aide  
14 registry maintained under the Omnibus Budget Reconciliation Act of  
15 1987 (Pub. L. No. 100-203) to determine whether the applicant for  
16 employment [~~person~~] is designated in either registry as having  
17 abused, neglected, or exploited a resident or consumer of a  
18 facility or an individual receiving services from an agency  
19 licensed under Chapter 142 or from a person exempt from licensing  
20 under Section 142.003(a)(19).

21 (b) A facility, ~~or~~ agency licensed under Chapter 142, or a  
22 person exempt from licensing under Section 142.003(a)(19) may not  
23 employ a person who is listed in either registry as having abused,  
24 neglected, or exploited a resident or consumer of a facility or an  
25 individual receiving services from an agency licensed under Chapter  
26 142 or from a person exempt from licensing under Section  
27 142.003(a)(19).



1 SECTION 2.69. Section 253.009(a), Health and Safety Code,  
2 is amended to read as follows:

3 (a) Each facility, ~~[or]~~ each agency licensed under Chapter  
4 142, and each person exempt from licensing under Section  
5 142.003(a)(19) shall notify its employees in a manner prescribed by  
6 the department:

7 (1) about the employee misconduct registry; and

8 (2) that an employee may not be employed if the  
9 employee is listed in the registry.

10 SECTION 2.70. (a) Chapter 285, Health and Safety Code, is  
11 amended by adding Subchapter M to read as follows:

12 SUBCHAPTER M. PROVISION OF SERVICES

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

21 (b) This section takes effect immediately if this Act  
22 receives a vote of two-thirds of all the members elected to each  
23 house, as provided by Section 39, Article III, Texas Constitution.  
24 If this Act does not receive the vote necessary for immediate  
25 effect, this section takes effect September 1, 2003.

26 SECTION 2.71. Section 431.021, Health and Safety Code, is  
27 amended to read as follows:

1           Sec. 431.021. PROHIBITED ACTS. The following acts and the  
2 causing of the following acts within this state are unlawful and  
3 prohibited:

4           (a) the introduction or delivery for introduction into  
5 commerce of any food, drug, device, or cosmetic that is adulterated  
6 or misbranded;

7           (b) the adulteration or misbranding of any food, drug,  
8 device, or cosmetic in commerce;

9           (c) the receipt in commerce of any food, drug, device, or  
10 cosmetic that is adulterated or misbranded, and the delivery or  
11 proffered delivery thereof for pay or otherwise;

12           (d) the distribution in commerce of a consumer commodity, if  
13 such commodity is contained in a package, or if there is affixed to  
14 that commodity a label that does not conform to the provisions of  
15 this chapter and of rules adopted under the authority of this  
16 chapter; provided, however, that this prohibition shall not apply  
17 to persons engaged in business as wholesale or retail distributors  
18 of consumer commodities except to the extent that such persons:

19           (1) are engaged in the packaging or labeling of such  
20 commodities; or

21           (2) prescribe or specify by any means the manner in  
22 which such commodities are packaged or labeled;

23           (e) the introduction or delivery for introduction into  
24 commerce of any article in violation of Section 431.084, 431.114,  
25 or 431.115;

26           (f) the dissemination of any false advertisement;

27           (g) the refusal to permit entry or inspection, or to permit

1 the taking of a sample or to permit access to or copying of any  
2 record as authorized by Sections 431.042-431.044; or the failure to  
3 establish or maintain any record or make any report required under  
4 Section 512(j), (l), or (m) of the federal Act, or the refusal to  
5 permit access to or verification or copying of any such required  
6 record;

7 (h) the manufacture within this state of any food, drug,  
8 device, or cosmetic that is adulterated or misbranded;

9 (i) the giving of a guaranty or undertaking referred to in  
10 Section 431.059, which guaranty or undertaking is false, except by  
11 a person who relied on a guaranty or undertaking to the same effect  
12 signed by, and containing the name and address of the person  
13 residing in this state from whom the person received in good faith  
14 the food, drug, device, or cosmetic; or the giving of a guaranty or  
15 undertaking referred to in Section 431.059, which guaranty or  
16 undertaking is false;

17 (j) the use, removal, or disposal of a detained or embargoed  
18 article in violation of Section 431.048;

19 (k) the alteration, mutilation, destruction, obliteration,  
20 or removal of the whole or any part of the labeling of, or the doing  
21 of any other act with respect to a food, drug, device, or cosmetic,  
22 if such act is done while such article is held for sale after  
23 shipment in commerce and results in such article being adulterated  
24 or misbranded;

25 (l)(1) forging, counterfeiting, simulating, or falsely  
26 representing, or without proper authority using any mark, stamp,  
27 tag, label, or other identification device authorized or required

1 by rules adopted under this chapter or the regulations promulgated  
2 under the provisions of the federal Act;

3 (2) making, selling, disposing of, or keeping in  
4 possession, control, or custody, or concealing any punch, die,  
5 plate, stone, or other thing designed to print, imprint, or  
6 reproduce the trademark, trade name, or other identifying mark,  
7 imprint, or device of another or any likeness of any of the  
8 foregoing on any drug or container or labeling thereof so as to  
9 render such drug a counterfeit drug;

10 (3) the doing of any act that causes a drug to be a  
11 counterfeit drug, or the sale or dispensing, or the holding for sale  
12 or dispensing, of a counterfeit drug;

13 (m) the using by any person to the person's own advantage,  
14 or revealing, other than to the commissioner, an authorized agent,  
15 a health authority or to the courts when relevant in any judicial  
16 proceeding under this chapter, of any information acquired under  
17 the authority of this chapter concerning any method or process that  
18 as a trade secret is entitled to protection;

19 (n) the using, on the labeling of any drug or device or in  
20 any advertising relating to such drug or device, of any  
21 representation or suggestion that approval of an application with  
22 respect to such drug or device is in effect under Section 431.114 or  
23 Section 505, 515, or 520(g) of the federal Act, as the case may be,  
24 or that such drug or device complies with the provisions of such  
25 sections;

26 (o) the using, in labeling, advertising or other sales  
27 promotion of any reference to any report or analysis furnished in

1 compliance with Sections 431.042-431.044 or Section 704 of the  
2 federal Act;

3 (p) in the case of a prescription drug distributed or  
4 offered for sale in this state, the failure of the manufacturer,  
5 packer, or distributor of the drug to maintain for transmittal, or  
6 to transmit, to any practitioner licensed by applicable law to  
7 administer such drug who makes written request for information as  
8 to such drug, true and correct copies of all printed matter that is  
9 required to be included in any package in which that drug is  
10 distributed or sold, or such other printed matter as is approved  
11 under the federal Act. Nothing in this subsection shall be  
12 construed to exempt any person from any labeling requirement  
13 imposed by or under other provisions of this chapter;

14 (q)(1) placing or causing to be placed on any drug or device  
15 or container of any drug or device, with intent to defraud, the  
16 trade name or other identifying mark, or imprint of another or any  
17 likeness of any of the foregoing;

18 (2) selling, dispensing, disposing of or causing to be  
19 sold, dispensed, or disposed of, or concealing or keeping in  
20 possession, control, or custody, with intent to sell, dispense, or  
21 dispose of, any drug, device, or any container of any drug or  
22 device, with knowledge that the trade name or other identifying  
23 mark or imprint of another or any likeness of any of the foregoing  
24 has been placed thereon in a manner prohibited by Subdivision (1) of  
25 this subsection; or

26 (3) making, selling, disposing of, causing to be made,  
27 sold, or disposed of, keeping in possession, control, or custody,

1 or concealing with intent to defraud any punch, die, plate, stone,  
2 or other thing designed to print, imprint, or reproduce the  
3 trademark, trade name, or other identifying mark, imprint, or  
4 device of another or any likeness of any of the foregoing on any  
5 drug or container or labeling of any drug or container so as to  
6 render such drug a counterfeit drug;

7 (r) dispensing or causing to be dispensed a different drug  
8 in place of the drug ordered or prescribed without the express  
9 permission in each case of the person ordering or prescribing;

10 (s) the failure to register in accordance with Section 510  
11 of the federal Act, the failure to provide any information required  
12 by Section 510(j) or (k) of the federal Act, or the failure to  
13 provide a notice required by Section 510(j)(2) of the federal Act;

14 (t)(1) the failure or refusal to:

15 (A) comply with any requirement prescribed under  
16 Section 518 or 520(g) of the federal Act; or

17 (B) furnish any notification or other material or  
18 information required by or under Section 519 or 520(g) of the  
19 federal Act;

20 (2) with respect to any device, the submission of any  
21 report that is required by or under this chapter that is false or  
22 misleading in any material respect;

23 (u) the movement of a device in violation of an order under  
24 Section 304(g) of the federal Act or the removal or alteration of  
25 any mark or label required by the order to identify the device as  
26 detained;

27 (v) the failure to provide the notice required by Section

1 412(b) or 412(c), the failure to make the reports required by  
2 Section 412(d)(1)(B), or the failure to meet the requirements  
3 prescribed under Section 412(d)(2) of the federal Act;

4 (w) except as provided under Subchapter M of this chapter  
5 and Section 562.1085, Occupations Code, the acceptance by a person  
6 of an unused prescription or drug, in whole or in part, for the  
7 purpose of resale, after the prescription or drug has been  
8 originally dispensed, or sold;

9 (x) engaging in the wholesale distribution of drugs or  
10 operating as a distributor or manufacturer of devices in this state  
11 without filing a licensing statement with the commissioner as  
12 required by Section 431.202 or having a license as required by  
13 Section 431.272, as applicable;

14 (y) engaging in the manufacture of food in this state or  
15 operating as a food wholesaler in this state without having a  
16 license as required by Section 431.222; or

17 (z) unless approved by the United States Food and Drug  
18 Administration pursuant to the federal Act, the sale, delivery,  
19 holding, or offering for sale of a self-testing kit designed to  
20 indicate whether a person has a human immunodeficiency virus  
21 infection, acquired immune deficiency syndrome, or a related  
22 disorder or condition.

23 SECTION 2.72. (a) Section 461.018(b), Health and Safety  
24 Code, is amended to read as follows:

25 (b) The commission's program under Subsection (a) must  
26 include:

27 (1) establishing and maintaining a list of webpages

1 and toll-free "800" telephone numbers of nonprofit entities that  
2 ~~[number to]~~ provide crisis counseling and referral services to  
3 families experiencing difficulty as a result of problem or  
4 compulsive gambling;

5 (2) promoting public awareness regarding the  
6 recognition and prevention of problem or compulsive gambling;

7 (3) facilitating, through in-service training and  
8 other means, the availability of effective assistance programs for  
9 problem or compulsive gamblers; and

10 (4) conducting studies to identify adults and  
11 juveniles in this state who are, or who are at risk of becoming,  
12 problem or compulsive gamblers.

13 (b) Section 466.251(b), Government Code, and Section  
14 2001.417(b), Occupations Code, are repealed.

15 SECTION 2.73. Section 533.034, Health and Safety Code, is  
16 amended to read as follows:

17 Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED  
18 SERVICES. (a) The department may cooperate, negotiate, and  
19 contract with local agencies, hospitals, private organizations and  
20 foundations, community centers, physicians, and other persons to  
21 plan, develop, and provide community-based mental health and mental  
22 retardation services.

23 (b) The department may adopt a schedule of initial and  
24 annual renewal compliance fees for persons that provide services  
25 under a home and community-based services waiver program for  
26 persons with mental retardation adopted in accordance with Section  
27 1915(c) of the federal Social Security Act (42 U.S.C. Section



1 1396n), as amended, and that is funded wholly or partly by the  
2 department and monitored by the department or by a designated local  
3 authority in accordance with standards adopted by the department.  
4 This subsection expires September 1, 2005.

5 SECTION 2.74. Section 533.035, Health and Safety Code, is  
6 amended by amending Subsection (c) and by adding Subsections (e),  
7 (f), and (g) to read as follows:

8 (c) A local mental health and mental retardation authority,  
9 with the department's approval, shall use the funds received under  
10 Subsection (b) to ensure mental health, mental retardation, and  
11 chemical dependency services are provided in the local service  
12 area. The local authority shall consider public input, ultimate  
13 cost-benefit, and client care issues to ensure consumer choice and  
14 the best use of public money in:

- 15 (1) assembling a network of service providers; and  
16 (2) ~~[determining whether to become a provider of a~~  
17 ~~service or to contract that service to another organization; and~~  
18 ~~[(3)]~~ making recommendations relating to the most  
19 appropriate and available treatment alternatives for individuals  
20 in need of mental health or mental retardation services.

21 (e) In assembling a network of service providers, a local  
22 mental health and mental retardation authority may serve as a  
23 provider of services only as a provider of last resort and only if  
24 the authority demonstrates to the department that:

- 25 (1) the authority has made every reasonable attempt to  
26 solicit the development of an available and appropriate provider  
27 base that is sufficient to meet the needs of consumers in its

1 service area; and

2 (2) there is not a willing provider of the relevant  
3 services in the authority's service area or in the county where the  
4 provision of the services is needed.

5 (f) The department shall review the appropriateness of a  
6 local mental health and mental retardation authority's status as a  
7 service provider at least biennially.

8 (g) The department, together with local mental health and  
9 mental retardation authorities and other interested persons, shall  
10 develop and implement a plan to privatize all services by  
11 intermediate facilities for persons with mental retardation and all  
12 related waiver services programs operated by an authority. The  
13 transfer of services to private providers may not occur on or before  
14 August 31, 2006. The plan must provide criteria that:

15 (1) promote the transition of services to private  
16 providers in a manner that causes the least disruption practicable  
17 to the consumers of those services;

18 (2) ensure the continuation of services at the same  
19 level of service provided before the transfer;

20 (3) provide for consumer choice as appropriate and as  
21 required by rule; and

22 (4) require local mental health and mental retardation  
23 authorities to implement the privatization of services in a  
24 fiscally responsible manner.

25 SECTION 2.75. Subchapter B, Chapter 533, Health and Safety  
26 Code, is amended by adding Section 533.0354 to read as follows:

27 Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL

1 DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES. (a) A local  
2 mental health authority shall ensure the provision of assessment  
3 services, crisis services, and intensive and comprehensive  
4 services using disease management practices for adults with bipolar  
5 disorder, schizophrenia, or clinically severe depression and for  
6 children with serious emotional illnesses. The local mental health  
7 authority shall ensure that individuals are engaged with treatment  
8 services that are:

9 (1) ongoing and matched to the needs of the individual  
10 in type, duration, and intensity;

11 (2) focused on a process of recovery designed to allow  
12 the individual to progress through levels of service;

13 (3) guided by evidence-based protocols and a  
14 strength-based paradigm of service; and

15 (4) monitored by a system that holds the local  
16 authority accountable for specific outcomes, while allowing  
17 flexibility to maximize local resources.

18 (b) The department shall require each local mental health  
19 authority to incorporate jail diversion strategies into the  
20 authority's disease management practices for managing adults with  
21 schizophrenia and bipolar disorder to reduce the involvement of  
22 those client populations with the criminal justice system.

23 (c) The department shall enter into performance contracts  
24 between the department and each local mental health authority for  
25 the fiscal years ending August 31, 2004, and August 31, 2005, that  
26 specify measurable outcomes related to their success in using  
27 disease management practices to meet the needs of the target

1 populations.

2 (d) The department shall study the implementation of  
3 disease management practices, including the jail diversion  
4 measures, and shall submit to the governor, the lieutenant  
5 governor, and the speaker of the house of representatives a report  
6 on the progress in implementing disease management practices and  
7 jail diversion measures by local mental health authorities. The  
8 report must be delivered not later than December 31, 2004, and must  
9 include specific information on:

10 (1) the implementation of jail diversion measures  
11 undertaken; and

12 (2) the effect of disparities in per capita funding  
13 levels among local mental health authorities on the implementation  
14 and effectiveness of disease management practices and jail  
15 diversion measures.

16 (e) The department may use the fiscal year ending August 31,  
17 2004, as a transition period for implementing the requirements of  
18 Subsections (a)-(c).

19 SECTION 2.76. Subchapter B, Chapter 533, Health and Safety  
20 Code, is amended by adding Section 533.0355 to read as follows:

21 Sec. 533.0355. ALLOCATION OF DUTIES UNDER CERTAIN MEDICAID  
22 WAIVER PROGRAMS. (a) In this section, "waiver program" means the  
23 local mental retardation authority waiver program established  
24 under the state Medicaid program.

25 (b) A provider of services under the waiver program shall:

26 (1) develop a person-directed plan and an individual  
27 program plan for each person who receives services from the

1 provider under the waiver program;

2 (2) perform justification and implementation  
3 functions for the plans described by Subdivision (1);

4 (3) conduct case management under the waiver program,  
5 other than case management under Subsection (c)(3), in accordance  
6 with applicable state and federal laws; and

7 (4) plan, coordinate, and review the provision of  
8 services to all persons who receive services from the service  
9 provider under the waiver program.

10 (c) A local mental retardation authority shall:

11 (1) manage any waiting lists for services under the  
12 waiver program;

13 (2) perform functions relating to consumer choice and  
14 enrollment for persons who receive services under the waiver  
15 program; and

16 (3) conduct case management under the waiver program  
17 relating to funding disputes between a service provider and the  
18 local mental retardation authority.

19 (d) The department shall perform all administrative  
20 functions under the waiver program that are not assigned to a  
21 service provider under Subsection (b) or to a local mental  
22 retardation authority under Subsection (c). Administrative  
23 functions performed by the department include:

24 (1) any surveying, certification, and utilization  
25 review functions required under the waiver program; and

26 (2) managing an appeals process relating to decisions  
27 that affect a person receiving services under the waiver program.

1       (e) The department shall review:

2           (1) screening and assessment of levels of care;

3           (2) case management fees paid under the waiver program  
4 to a community center; and

5           (3) administrative fees paid under the waiver program  
6 to a service provider.

7       (f) The department shall perform any function relating to  
8 inventory for persons who receive services under the waiver program  
9 and agency planning assessments.

10       (g) The review required under Subsection (e) must include a  
11 comparison of fees paid before the implementation of this section  
12 with fees paid after the implementation of this section. The  
13 department may adjust fees paid based on that review.

14       (h) The department shall allocate the portion of the gross  
15 reimbursement funds paid to a local authority and a service  
16 provider for client services for the case management function in  
17 accordance with this section and to the extent allowed by law.

18       (i) The department may adopt rules governing the functions  
19 of a local mental retardation authority or service provider under  
20 this section.

21       SECTION 2.77. (a) Subchapter B, Chapter 533, Health and  
22 Safety Code, is amended by adding Section 533.049 to read as  
23 follows:

24       Sec. 533.049. PRIVATIZATION OF STATE SCHOOL. (a) After  
25 August 31, 2004, and before September 1, 2005, the department may  
26 contract with a private service provider to operate a state school  
27 only if:

1           (1) the Health and Human Services Commission  
2 determines that the private service provider will operate the state  
3 school at a cost that is at least 25 percent less than the cost to  
4 the department to operate the state school;

5           (2) the Health and Human Services Commission approves  
6 the contract;

7           (3) the private service provider is required under the  
8 contract to operate the school at a quality level at least equal to  
9 the quality level achieved by the department when the department  
10 operated the school, as measured by the school's most recent  
11 applicable ICF-MR survey; and

12           (4) the state school, when operated under the  
13 contract, treats a population with the same characteristics and  
14 need levels as the population treated by the state school when  
15 operated by the department.

16           (b) On or before April 1, 2004, the department shall report  
17 to the commissioner of health and human services whether the  
18 department has received a proposal by a private service provider to  
19 operate a state school. The report must include an evaluation of  
20 the private service provider's qualifications, experience, and  
21 financial strength, a determination of whether the provider can  
22 operate the state school under the same standard of care as the  
23 department, and an analysis of the projected savings under a  
24 proposed contract with the provider. The savings analysis must  
25 include all department costs to operate the state school, including  
26 costs, such as employee benefits, that are not appropriated to the  
27 department.

1       (c) If the department contracts with a private service  
2 provider to operate a state school, the department, the Governor's  
3 Office of Budget and Planning, and the Legislative Budget Board  
4 shall identify sources of funding that must be transferred to the  
5 department to fund the contract.

6       (d) The department may renew a contract under this section.  
7 The conditions listed in Subsections (a)(1)-(3) apply to the  
8 renewal of the contract.

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

11       SECTION 2.78. (a) Subchapter B, Chapter 533, Health and  
12 Safety Code, is amended by adding Section 533.050 to read as  
13 follows:

14       Sec. 533.050. PRIVATIZATION OF STATE MENTAL HOSPITAL. (a)  
15 After August 31, 2004, and before September 1, 2005, the department  
16 may contract with a private service provider to operate a state  
17 mental hospital owned by the department only if:

18               (1) the Health and Human Services Commission  
19 determines that the private service provider will operate the  
20 hospital at a cost that is at least 25 percent less than the cost to  
21 the department to operate the hospital;

22               (2) the Health and Human Services Commission approves  
23 the contract;

24               (3) the hospital, when operated under the contract,  
25 treats a population with the same characteristics and acuity levels  
26 as the population treated at the hospital when operated by the  
27 department; and



1           (4) the private service provider is required under the  
2 contract to operate the hospital at a quality level at least equal  
3 to the quality level achieved by the department when the department  
4 operated the hospital, as measured by the hospital's most recent  
5 applicable accreditation determination from the Joint Commission  
6 on Accreditation of Healthcare Organizations (JCAHO).

7           (b) On or before April 1, 2004, the department shall report  
8 to the commissioner of health and human services whether the  
9 department has received a proposal by a private service provider to  
10 operate a state mental hospital. The report must include an  
11 evaluation of the private service provider's qualifications,  
12 experience, and financial strength, a determination of whether the  
13 provider can operate the hospital under the same standard of care as  
14 the department, and an analysis of the projected savings under a  
15 proposed contract with the provider. The savings analysis must  
16 include all department costs to operate the hospital, including  
17 costs, such as employee benefits, that are not appropriated to the  
18 department.

19           (c) If the department contracts with a private service  
20 provider to operate a state mental hospital, the department, the  
21 Governor's Office of Budget and Planning, and the Legislative  
22 Budget Board shall identify sources of funding that must be  
23 transferred to the department to fund the contract.

24           (d) The department may renew a contract under this section.  
25 The conditions listed in Subsections (a)(1)-(3) apply to the  
26 renewal of the contract.

27           (b) Section 533.050, Health and Safety Code, as added by

1 this section, takes effect September 1, 2004.

2 SECTION 2.79. Section 533.084, Health and Safety Code, is  
3 amended by adding Subsections (b-1) and (b-2) to read as follows:

4 (b-1) Notwithstanding Subsection (b) or any other law, the  
5 proceeds from the disposal of any surplus real property by the  
6 department that occurs before September 1, 2005:

7 (1) are not required to be deposited to the credit of  
8 the department in the Texas capital trust fund established under  
9 Chapter 2201, Government Code; and

10 (2) may be appropriated for any general governmental  
11 purpose.

12 (b-2) Subsection (b-1) and this subsection expire September  
13 1, 2005.

14 SECTION 2.80. Subchapter D, Chapter 533, Health and Safety  
15 Code, is amended by adding Section 533.0844 to read as follows:

16 Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT.

17 (a) The mental health community services account is an account in  
18 the general revenue fund that may be appropriated only for the  
19 provision of mental health services by or under contract with the  
20 department.

21 (b) The department shall deposit to the credit of the mental  
22 health community services account any money donated to the state  
23 for inclusion in the account, including life insurance proceeds  
24 designated for deposit to the account.

25 (c) Interest earned on the mental health community services  
26 account shall be credited to the account. The account is exempt  
27 from the application of Section 403.095, Government Code.

1 SECTION 2.81. Subchapter D, Chapter 533, Health and Safety  
2 Code, is amended by adding Section 533.0846 to read as follows:

3 Sec. 533.0846. MENTAL RETARDATION COMMUNITY SERVICES  
4 ACCOUNT. (a) The mental retardation community services account is  
5 an account in the general revenue fund that may be appropriated only  
6 for the provision of mental retardation services by or under  
7 contract with the department.

8 (b) The department shall deposit to the credit of the mental  
9 retardation community services account any money donated to the  
10 state for inclusion in the account, including life insurance  
11 proceeds designated for deposit to the account.

12 (c) Interest earned on the mental retardation community  
13 services account shall be credited to the account. The account is  
14 exempt from the application of Section 403.095, Government Code.

15 SECTION 2.82. Effective September 1, 2006, Section  
16 534.001(b), Health and Safety Code, is amended to read as follows:

17 (b) In accordance with this subtitle, a [A] community center  
18 may be:

19 (1) a community mental health center that provides  
20 mental health services;

21 (2) a community mental retardation center that  
22 provides mental retardation services; or

23 (3) a community mental health and mental retardation  
24 center that provides mental health and mental retardation services.

25 SECTION 2.82A. Effective September 1, 2006, Section  
26 535.002(b), Health and Safety Code, is amended to read as follows:

27 (b) If feasible and economical, the department may use local

1 mental health and mental retardation authorities to implement this  
2 chapter. However, the department may not designate a [~~those~~] local  
3 mental health or [~~and~~] mental retardation authority [~~authorities~~]  
4 as a provider [~~the sole providers~~] of services if other providers  
5 are available.

6 SECTION 2.83. Section 572.0025(f), Health and Safety Code,  
7 is amended to read as follows:

8 (f) A prospective voluntary patient may not be formally  
9 accepted for treatment in a facility unless:

10 (1) the facility has a physician's order admitting the  
11 prospective patient, which order may be issued orally,  
12 electronically, or in writing, signed by the physician, provided  
13 that, in the case of an oral order or an electronically transmitted  
14 unsigned order, a signed original is presented to the mental health  
15 facility within 24 hours of the initial order; the order must be  
16 from:

17 (A) an admitting physician who has, either in  
18 person or through the use of audiovisual or other  
19 telecommunications technology, conducted a a [~~an in-person~~] physical  
20 and psychiatric examination within 72 hours of the admission; or

21 (B) an admitting physician who has consulted with  
22 a physician who has, either in person or through the use of  
23 audiovisual or other telecommunications technology, conducted an  
24 [~~in-person~~] examination within 72 hours of the admission; and

25 (2) the facility administrator or a person designated  
26 by the administrator has agreed to accept the prospective patient  
27 and has signed a statement to that effect.

1 SECTION 2.84. (a) Section 773.050(c), Health and Safety  
2 Code, is amended to read as follows:

3 (c) The board shall consider the education, training, and  
4 experience of allied health professionals in adopting the minimum  
5 standards for emergency medical services personnel certification  
6 and may establish criteria for interstate reciprocity of emergency  
7 medical services personnel. Each out-of-state application for  
8 certification must be accompanied by a nonrefundable fee of not  
9 more than \$120 [~~\$100~~]. The board may also establish criteria for  
10 out-of-country emergency medical services personnel certification.  
11 Each out-of-country application for certification must be  
12 accompanied by a nonrefundable fee of not more than \$180 [~~\$150~~].

13 (b) Section 773.052(a), Health and Safety Code, is amended  
14 to read as follows:

15 (a) An emergency medical services provider with a specific  
16 hardship may apply to the bureau chief for a variance from a rule  
17 adopted under this chapter. The board may adopt a fee of not more  
18 than \$30 [~~\$25~~] for filing an application for a variance.

19 (c) Sections 773.054(c) and (d), Health and Safety Code, are  
20 amended to read as follows:

21 (c) Each application under Subsection (a)(3) must be  
22 accompanied by a nonrefundable fee of not more than \$30 [~~\$25~~] for a  
23 program instructor or examiner or \$60 [~~\$50~~] for a course  
24 coordinator. The department may not require a fee for a  
25 certification from an instructor, examiner, or coordinator who does  
26 not receive compensation for providing services.

27 (d) Each application under Subsection (a)(2) must be

1 accompanied by a nonrefundable fee of not more than \$30 [~~\$25~~] for a  
2 basic course or training program or \$60 [~~\$50~~] for an advanced course  
3 or training program. The department may not require a fee for  
4 approval of a course or training program if the course coordinator  
5 or sponsoring agency does not receive compensation for providing  
6 the course or training program.

7 (d) Sections 773.055(a), (d), and (e), Health and Safety  
8 Code, are amended to read as follows:

9 (a) A nonrefundable fee must accompany each application for  
10 emergency medical services personnel certification. The fee may  
11 not exceed:

12 (1) \$90 [~~\$75~~] for an emergency medical  
13 technician-paramedic or emergency medical  
14 technician-intermediate;

15 (2) \$60 [~~\$50~~] for an emergency medical technician or  
16 emergency care attendant;

17 (3) \$90 [~~\$75~~] for recertification of an emergency  
18 medical technician-paramedic or emergency medical  
19 technician-intermediate;

20 (4) \$60 [~~\$50~~] for recertification of an emergency  
21 medical technician or emergency care attendant; or

22 (5) \$120 [~~\$100~~] for certification or recertification  
23 of a licensed paramedic.

24 (d) The department shall furnish a person who fails an  
25 examination for certification with an analysis of the person's  
26 performance on the examination if requested in writing by that  
27 person. The board may adopt rules to allow a person who fails the

1 examination to retake all or part of the examination. A fee of not  
2 more than \$30 [~~\$25~~] must accompany each application for  
3 reexamination.

4 (e) The department shall issue certificates to emergency  
5 medical services personnel who meet the minimum standards for  
6 personnel certification adopted under Section 773.050. A  
7 certificate is valid for four years from the date of issuance. The  
8 department shall charge a fee of not more than \$10 [~~\$5~~] to replace a  
9 lost certificate.

10 (e) Section 773.056(b), Health and Safety Code, is amended  
11 to read as follows:

12 (b) The department shall issue a certificate to each program  
13 instructor, examiner, or course coordinator who meets the minimum  
14 standards adopted under Section 773.050. The certificate is valid  
15 for two years. The department shall charge a fee of not more than  
16 \$10 [~~\$5~~] to replace a lost or stolen certificate.

17 (f) Section 773.057(b), Health and Safety Code, is amended  
18 to read as follows:

19 (b) A nonrefundable application and vehicle fee determined  
20 by the board must accompany each application. The application fee  
21 may not exceed \$500 [~~\$150~~] for each application and the vehicle fee  
22 may not exceed \$180 for each emergency medical services vehicle  
23 operated by the provider.

24 (g) Section 773.0572, Health and Safety Code, is amended to  
25 read as follows:

26 Sec. 773.0572. PROVISIONAL LICENSES. The board by rule  
27 shall establish conditions under which an emergency medical

1 services provider who fails to meet the minimum standards  
2 prescribed by this chapter may be issued a provisional license. The  
3 department may issue a provisional license to an emergency medical  
4 services provider under this chapter if the department finds that  
5 issuing the license would serve the public interest and that the  
6 provider meets the requirements of the rules adopted under this  
7 section. A nonrefundable fee of not more than \$30 [~~\$25~~] must  
8 accompany each application for a provisional license.

9 (h) Section 773.0611(c), Health and Safety Code, is amended  
10 to read as follows:

11 (c) The board shall adopt rules for unannounced inspections  
12 authorized under this section. The department or its  
13 representative shall perform unannounced inspections in accordance  
14 with those rules. An emergency medical services provider shall pay  
15 to the department a nonrefundable fee of not more than \$30 [~~\$25~~] if  
16 reinspection is necessary to determine compliance with this chapter  
17 and the rules adopted under this chapter.

18 (i) Section 773.065(c), Health and Safety Code, is amended  
19 to read as follows:

20 (c) The penalty may not exceed \$7,500 [~~\$1,000~~] for each  
21 violation. The board by rule shall establish gradations of  
22 penalties in accordance with the relative seriousness of the  
23 violation.

24 (j) Subchapter C, Chapter 773, Health and Safety Code, is  
25 amended by adding Section 773.071 to read as follows:

26 Sec. 773.071. FEES. (a) To the extent feasible, the board  
27 by rule shall set the fees under this subchapter in amounts



1 necessary for the department to recover the cost of administering  
2 this subchapter.

3 (b) Subsection (a) does not apply to fees for which Section  
4 773.059 prescribes the method for determining the amount of the  
5 fees.

6 (k) Sections 773.116(b) and (d), Health and Safety Code, are  
7 amended to read as follows:

8 (b) The board by rule shall set the amount of the fee  
9 schedule for initial or continuing designation as a trauma facility  
10 according to the number of beds in the health care facility. The  
11 amount of the fee may not exceed:

12 (1) \$5,000 for a Level I or II facility;

13 (2) \$2,500 for a Level III facility; or

14 (3) \$1,000 for a Level IV facility.

15 (d) To the extent feasible, the board by rule shall set the  
16 fee in an amount necessary for the department to recover [~~A fee~~  
17 ~~under Subsection (c) may not exceed~~] the cost directly related to  
18 designating trauma facilities under this subchapter.

19 (l) Section 773.116(c), Health and Safety Code, is  
20 repealed.

21 (m) The changes in law made by this section relating to  
22 administrative penalties apply only to a violation that occurs on  
23 or after the effective date of this section. For the purposes of  
24 this subsection, an offense is committed before the effective date  
25 of this section if any element of the offense occurs before that  
26 date. A violation that occurred before the effective date of this  
27 section is covered by the law in effect when the violation occurred,

1 and the former law is continued in effect for that purpose.

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

10 SECTION 2.85. Chapter 22, Human Resources Code, is amended  
11 by adding Section 22.040 to read as follows:

12 Sec. 22.040. THIRD-PARTY INFORMATION. Notwithstanding any  
13 other provision of this code, the department may use information  
14 obtained from a third party to verify the assets and resources of a  
15 person for purposes of determining the person's eligibility and  
16 need for medical assistance, financial assistance, or nutritional  
17 assistance. Third-party information includes information obtained  
18 from:

19 (1) a consumer reporting agency, as defined by Section  
20 20.01, Business & Commerce Code;

21 (2) an appraisal district; or

22 (3) the Texas Department of Transportation's vehicle  
23 registration record database.

24 SECTION 2.86. (a) Section 31.0031, Human Resources Code,  
25 is amended by amending Subsection (g) and adding Subsection (h) to  
26 read as follows:

27 (g) In this section:

1           (1) "Caretaker [~~," caretaker]~~ relative" means a person  
2 who is listed as a relative eligible to receive assistance under 42  
3 U.S.C. Section 602(a).

4           (2) "Payee" means a person who resides in a household  
5 with a dependent child and who is within the degree of relationship  
6 with the child that is required of a caretaker but whose needs are  
7 not included in determining the amount of financial assistance  
8 provided for the person's household.

9           (h) The department shall require each payee to sign a bill  
10 of responsibilities that defines the responsibilities of the state  
11 and of the payee. The responsibility agreement must require that a  
12 payee comply with the requirements of Subsections (d)(1), (2), (5),  
13 (6), and (7).

14           (b) Not later than January 1, 2004, the Texas Department of  
15 Human Services shall require each payee of financial assistance  
16 under Chapter 31, Human Resources Code, who received that  
17 assistance on behalf of a dependent child before September 1, 2003,  
18 and each recipient of financial assistance under Chapter 31, Human  
19 Resources Code, who received that assistance before September 1,  
20 2003, to enter into a responsibility agreement that complies with  
21 the requirements of Section 31.0031, Human Resources Code, as  
22 amended by this section, to continue receiving that assistance.  
23 The department may not enforce the terms of the new agreement until  
24 the payee or recipient has an opportunity to enter into the  
25 agreement.

26           SECTION 2.87. Section 31.0031(c), Human Resources Code, is  
27 amended to read as follows:

1 (c) The department shall adopt rules governing sanctions  
2 and penalties under this section to or for:

3 (1) a person who fails to cooperate [~~comply~~] with each  
4 applicable requirement of the responsibility agreement prescribed  
5 by this section; and

6 (2) the family of a person who fails to cooperate with  
7 each applicable requirement of the responsibility agreement.

8 SECTION 2.88. (a) Sections 31.0032, 31.0033, and 31.0034,  
9 Human Resources Code, are amended to read as follows:

10 Sec. 31.0032. PAYMENT OF ASSISTANCE FOR PERFORMANCE  
11 [~~PENALTIES AND SANCTIONS~~]. (a) Except as provided by Section  
12 231.115, Family Code, [~~as added by Chapter 911, Acts of the 75th~~  
13 ~~Legislature, Regular Session, 1997,~~] if after an investigation the  
14 department or the Title IV-D agency determines that a person is not  
15 cooperating [~~complying~~] with a requirement of the responsibility  
16 agreement required under Section 31.0031, the department  
17 [~~immediately~~] shall immediately apply a sanction terminating the  
18 total amount of financial assistance provided under this chapter to  
19 or for the person and the person's family [~~apply appropriate~~  
20 ~~sanctions or penalties regarding the assistance provided to or for~~  
21 ~~that person under this chapter~~].

22 (a-1) The department shall apply a sanction or penalty  
23 imposed under Subsection (a) for a period ending when the person  
24 demonstrates cooperation with the requirement of the  
25 responsibility agreement for which the sanction was imposed or for  
26 a one-month period, whichever is longer.

27 (b) The department shall immediately notify the caretaker

1 relative, second parent, or payee receiving the financial  
2 assistance if the department will not make the financial assistance  
3 payment for the period prescribed by Subsection (a-1) because of a  
4 person's failure to cooperate with the requirements of the  
5 responsibility agreement during a month [~~whether sanctions will be~~  
6 ~~applied under this section~~].

7 (c) To the extent allowed by federal law, the Health and  
8 Human Services Commission or any health and human services agency,  
9 as defined by Section 531.001, Government Code, may deny medical  
10 assistance for a person who is eligible for financial assistance  
11 but to whom that assistance is not paid because of the person's  
12 failure to cooperate. Medical assistance to the person's family  
13 may not be denied for the person's failure to cooperate. Medical  
14 assistance may not be denied to a person receiving assistance under  
15 this chapter who is under the age of 19, a pregnant adult, or any  
16 other person who may not be denied medical assistance under federal  
17 law.

18 (d) This section does not prohibit the Texas Workforce  
19 Commission, the Health and Human Services Commission, or any health  
20 and human services agency, as defined by Section 531.001,  
21 Government Code, [department] from providing [medical assistance,  
22 child care[7] or any other related social or support services for an  
23 individual who is eligible for financial assistance but to whom  
24 that assistance is not paid because of the individual's failure to  
25 cooperate [~~subject to sanctions or penalties under this chapter~~].

26 (e) The department by rule shall establish procedures to  
27 determine whether a person has cooperated with the requirements of

1 the responsibility agreement.

2           Sec. 31.0033. GOOD CAUSE [~~NONCOMPLIANCE~~] HEARING FOR  
3 FAILURE TO COOPERATE. (a) If the department or Title IV-D agency  
4 determines that a person has failed to cooperate with the  
5 requirements of the responsibility agreement under Section 31.0031  
6 [penalties and sanctions should be applied under Section 31.0032],  
7 the person determined to have failed to cooperate [~~not complied~~]  
8 or, if different, the person receiving the financial assistance may  
9 request a hearing to show good cause for failure to cooperate  
10 [noncompliance] not later than the 13th day after the date the [~~on~~  
11 ~~which~~] notice is sent [~~received~~] under Section 31.0032. If the  
12 person determined to have failed to cooperate or, if different, the  
13 person receiving the financial assistance requests a hearing to  
14 show good cause not later than the 13th day after the date on which  
15 the notice is sent under Section 31.0032, the department may not  
16 withhold or reduce the payment of financial assistance until the  
17 department determines whether the person had good cause for the  
18 person's failure to cooperate. On a showing of good cause for  
19 failure to cooperate [~~noncompliance~~], the person may receive a  
20 financial assistance payment for the period in which the person  
21 failed to cooperate, but had good cause for that failure to  
22 cooperate [~~sanctions may not be imposed~~].

23           (b) The department shall promptly conduct a hearing if a  
24 timely request is made under Subsection (a).

25           (c) If the department finds that good cause for the person's  
26 failure to cooperate [~~noncompliance~~] was not shown at a hearing,  
27 the department may not make a financial assistance payment in any

1 amount to the person for the person or the person's family for the  
2 period prescribed by Section 31.0032(a-1) [~~shall apply appropriate~~  
3 sanctions or penalties to or for that person until the department,  
4 or the Title IV-D agency in a Title IV-D case, determines that the  
5 person is in compliance with the terms of the responsibility  
6 agreement].

7 (d) The department by rule shall establish criteria for good  
8 cause failure to cooperate [~~noncompliance~~] and guidelines for what  
9 constitutes a good faith effort on behalf of a recipient under this  
10 section.

11 (e) Except as provided by a waiver or modification granted  
12 under Section 31.0322, a person has good cause for failing or  
13 refusing to cooperate with the requirement of the responsibility  
14 agreement under Section 31.0031(d)(1) only if:

15 (1) the person's cooperation would be harmful to the  
16 physical, mental, or emotional health of the person or the person's  
17 dependent child; or

18 (2) the person's noncooperation resulted from other  
19 circumstances the person could not control.

20 Sec. 31.0034. ANNUAL REPORT. The department shall prepare  
21 and submit an annual report to the legislature that contains  
22 statistical information regarding persons who are applying for or  
23 receiving financial assistance or services under this chapter,  
24 including the number of persons receiving assistance, the type of  
25 assistance those persons are receiving, and the length of time  
26 those persons have been receiving the assistance. The report also  
27 must contain information on:

1           (1) the number of persons to whom [~~sanctions and~~] time  
2 limits apply;

3           (2) the number of persons under each time limit  
4 category;

5           (3) the number of persons who are exempt from  
6 participation under Section 31.012(c);

7           (4) the number of persons who were receiving financial  
8 assistance under this chapter but are no longer eligible to receive  
9 that assistance because they failed to cooperate [~~comply~~] with the  
10 requirements prescribed by Section 31.0031;

11           (5) the number of persons who are no longer eligible to  
12 receive financial assistance or transitional benefits under this  
13 chapter because:

14                   (A) the person's household income has increased  
15 due to employment; or

16                   (B) the person has exhausted the person's  
17 benefits under this chapter; [~~and~~]

18           (6) the number of persons receiving child care, job  
19 training, or other support services designed to assist the  
20 transition to self-sufficiency; and

21           (7) the number of persons who were eligible to receive  
22 financial assistance under this chapter for each one-month period  
23 but to whom that financial assistance was not paid because the  
24 person failed to cooperate with the requirements of the  
25 responsibility agreement under Section 31.0031.

26           (b) Subchapter A, Chapter 31, Human Resources Code, is  
27 amended by adding Section 31.00331 to read as follows:



1       Sec. 31.00331. ADDITIONAL PENALTY FOR CONTINUOUS FAILURE TO  
2 COOPERATE. A person who fails to cooperate with the responsibility  
3 agreement for two consecutive months becomes ineligible for  
4 financial assistance for the person or the person's family. The  
5 person may reapply for financial assistance but must cooperate with  
6 the requirements of the responsibility agreement for a one-month  
7 period before receiving an assistance payment for that month.

8       (c) The changes in law made by this section apply to a person  
9 receiving financial assistance under Chapter 31, Human Resources  
10 Code, on or after the effective date of this section, regardless of  
11 the date on which eligibility for financial assistance was  
12 determined.

13       SECTION 2.89. Subchapter A, Chapter 31, Human Resources  
14 Code, is amended by adding Section 31.0038 to read as follows:

15       Sec. 31.0038. TEMPORARY EXCLUSION OF NEW SPOUSE'S INCOME.

16       (a) Subject to the limitations prescribed by Subsection (b),  
17 income earned by an individual who marries an individual receiving  
18 financial assistance at the time of the marriage may not be  
19 considered by the department during the six-month period following  
20 the date of the marriage for purposes of determining:

21               (1) the amount of financial assistance granted to an  
22 individual under this chapter for the support of dependent  
23 children; or

24               (2) whether the family meets household income and  
25 resource requirements for financial assistance under this chapter.

26       (b) To be eligible for the income disregard provided by  
27 Subsection (a), the combined income of the individual receiving

1 financial assistance and the new spouse cannot exceed 200 percent  
2 of the federal poverty level for their family size.

3 SECTION 2.90. Sections 31.012(b) and (c), Human Resources  
4 Code, are amended to read as follows:

5 (b) The department by rule shall establish criteria for good  
6 cause failure to cooperate [~~noncompliance~~] and for notification  
7 procedures regarding participation in work or employment  
8 activities under this section.

9 (c) A person who is the caretaker of a physically or  
10 mentally disabled child who requires the caretaker's presence is  
11 not required to participate in a program under this section. A  
12 [~~Effective January 1, 2000, a single person who is the caretaker of~~  
13 ~~a child is not required to participate in a program under this~~  
14 ~~section until the caretaker's youngest child at the time the~~  
15 ~~caretaker first became eligible for assistance reaches the age of~~  
16 ~~three. Effective September 1, 2000, a single person who is the~~  
17 ~~caretaker of a child is exempt until the caretaker's youngest child~~  
18 ~~at the time the caretaker first became eligible for assistance~~  
19 ~~reaches the age of two. Effective September 1, 2001, a]~~ single  
20 person who is the caretaker of a child is exempt until the  
21 caretaker's youngest child at the time the caretaker first became  
22 eligible for assistance reaches the age of one. Notwithstanding  
23 Sections 31.0035(b) and 32.0255(b), the department shall provide to  
24 a person who is exempt under this subsection and who voluntarily  
25 participates in a program under Subsection (a)(2) six months of  
26 transitional benefits in addition to the applicable limit  
27 prescribed by Section 31.0065.

1 SECTION 2.91. Subchapter A, Chapter 31, Human Resources  
2 Code, is amended by adding Section 31.015 to read as follows:

3 Sec. 31.015. HEALTHY MARRIAGE DEVELOPMENT PROGRAM. (a)  
4 Subject to available federal funding, the department shall develop  
5 and implement a healthy marriage development program for recipients  
6 of financial assistance under this chapter.

7 (b) The healthy marriage development program shall promote  
8 and provide three instructional courses on the following topics:

9 (1) premarital counseling for engaged couples and  
10 marriage counseling for married couples that includes skill  
11 development for:

12 (A) anger resolution;

13 (B) family violence prevention;

14 (C) communication;

15 (D) honoring your spouse; and

16 (E) managing a budget;

17 (2) physical fitness and active lifestyles and  
18 nutrition and cooking, including:

19 (A) abstinence for all unmarried persons,  
20 including abstinence for persons who have previously been married;  
21 and

22 (B) nutrition on a budget; and

23 (3) parenting skills, including parenting skills for  
24 character development, academic success, and stepchildren.

25 (c) The department shall provide to a recipient of financial  
26 assistance under this chapter additional financial assistance of  
27 not more than \$20 for the recipient's participation in a course

1 offered through the healthy marriage development program up to a  
2 maximum payment of \$60 a month.

3 (d) The department may provide the courses or may contract  
4 with any person, including a community or faith-based organization,  
5 for the provision of the courses. The department must provide all  
6 participants with an option of attending courses in a  
7 non-faith-based organization.

8 (e) The department shall develop rules as necessary for the  
9 administration of the healthy marriage development program.

10 (f) The department must ensure that the courses provided by  
11 the department and courses provided through contracts with other  
12 organizations will be sensitive to the needs of individuals from  
13 different religions, races, and genders.

14 SECTION 2.92. (a) Section 32.021, Human Resources Code, is  
15 amended by adding Subsections (q), (r), and (s) to read as follows:

16 (q) The department shall include in its contracts for the  
17 delivery of medical assistance by nursing facilities clearly  
18 defined minimum standards that relate directly to the quality of  
19 care for residents of those facilities. The department shall  
20 consider the recommendations made by the nursing facility quality  
21 assurance team under Section 32.060 in establishing the standards.  
22 The department shall include in each contract:

23 (1) specific performance measures by which the  
24 department may evaluate the extent to which the nursing facility is  
25 meeting the standards; and

26 (2) provisions that allow the department to terminate  
27 the contract if the nursing facility is not meeting the standards.

1       (r) The department may not award a contract for the delivery  
2 of medical assistance to a nursing facility that does not meet the  
3 minimum standards that would be included in the contract as  
4 required by Subsection (q). The department shall terminate a  
5 contract for the delivery of medical assistance by a nursing  
6 facility that does not meet or maintain the minimum standards  
7 included in the contract in a manner consistent with the terms of  
8 the contract.

9       (s) Not later than November 15 of each even-numbered year,  
10 the department shall submit a report to the legislature regarding  
11 nursing facilities that contract with the department to provide  
12 medical assistance under this chapter and other nursing facilities  
13 with which the department was prohibited to contract as provided by  
14 Subsection (r). The department may include the report required  
15 under this section with the report made by the long-term care  
16 legislative oversight committee as required by Section 242.654,  
17 Health and Safety Code. The report must include:

18               (1) recommendations for improving the quality of  
19 information provided to consumers about the facilities;

20               (2) the minimum standards and performance measures  
21 included in the department's contracts with those facilities;

22               (3) the performance of the facilities with regard to  
23 the minimum standards;

24               (4) the number of facilities with which the department  
25 has terminated a contract or to which the department will not award  
26 a contract because the facilities do not meet the minimum  
27 standards; and

1           (5) the overall impact of the minimum standards on the  
2 quality of care provided by the facilities, consumers' access to  
3 facilities, and cost of care.

4           (b) Section 32.021(q), Human Resources Code, as added by  
5 this section, applies only to a contract for the delivery of medical  
6 assistance by a nursing facility that is entered into or renewed on  
7 or after May 1, 2004. A contract for the delivery of medical  
8 assistance by a nursing facility entered into before that date is  
9 governed by the law in effect on the date the contract was entered  
10 into, and the former law is continued in effect for that purpose.

11           SECTION 2.93. (a) Subchapter A, Chapter 302, Labor Code,  
12 is amended by adding Sections 302.0025, 302.0026, 302.0036,  
13 302.0037, and 302.0038 to read as follows:

14           Sec. 302.0025. EMPLOYMENT PLAN AND POSTEMPLOYMENT  
15 STRATEGIES. (a) The commission shall ensure that an individual  
16 employment plan developed for a recipient of financial assistance  
17 participating in an employment program under Chapter 31, Human  
18 Resources Code, includes specific postemployment strategies to  
19 assist the recipient in making a transition to stable employment at  
20 a wage that enables the recipient and the recipient's family to  
21 maintain self-sufficiency.

22           (b) The individual employment plan must:

23           (1) consider a recipient's individual circumstances  
24 and needs in determining the recipient's initial job placement;

25           (2) identify a target wage that enables the recipient  
26 and the recipient's family to maintain self-sufficiency;

27           (3) provide specific postemployment goals and include

1 methods and time frames by which the recipient is to achieve those  
2 goals; and

3 (4) refer the recipient to additional educational and  
4 training opportunities.

5 Sec. 302.0026. EMPLOYMENT SERVICES REFERRAL PROGRAM. (a)  
6 The commission and local workforce development boards shall develop  
7 an employment services referral program for recipients of financial  
8 assistance who participate in employment programs under Chapter 31,  
9 Human Resources Code, and have, in comparison to other recipients,  
10 higher levels of barriers to employment. The referral program must  
11 be designed to provide to a recipient referrals to preemployment  
12 and postemployment services offered by community-based  
13 organizations.

14 (b) In developing the referral program, the commission and  
15 local workforce development boards shall, subject to the  
16 availability of funds, coordinate partnerships and contract with  
17 community-based organizations that provide employment services  
18 specifically for persons with high levels of barriers to  
19 employment.

20 Sec. 302.0036. TRANSPORTATION ASSISTANCE. (a) To the  
21 extent funds are available, the commission and local workforce  
22 development boards shall provide transportation assistance to  
23 recipients of financial assistance participating in employment  
24 programs under Chapter 31, Human Resources Code, that enables the  
25 recipients to maintain a stable work history and attain financial  
26 stability and self-sufficiency.

27 (b) The commission and local workforce development boards

1 may provide the assistance described by Subsection (a) by  
2 implementing new initiatives or expanding existing initiatives  
3 that provide transportation assistance to recipients of financial  
4 assistance for whom transportation is a barrier to employment.

5 Sec. 302.0037. MAXIMIZING FEDERAL FUNDS FOR TRANSPORTATION  
6 ASSISTANCE. (a) The commission and local workforce development  
7 boards shall maximize the state's receipt of federal funds  
8 available to provide transportation assistance to recipients of  
9 financial assistance participating in employment programs under  
10 Chapter 31, Human Resources Code.

11 (b) The commission and local workforce development boards  
12 may, within any applicable appropriation limits, take any action  
13 required by federal law to receive federal funds to provide  
14 transportation assistance.

15 Sec. 302.0038. HOUSING RESOURCES FOR CERTAIN RECIPIENTS OF  
16 FINANCIAL ASSISTANCE. (a) The commission, in cooperation with  
17 local workforce development boards, shall, for a recipient of  
18 financial assistance participating in an employment program under  
19 Chapter 31, Human Resources Code:

20 (1) identify unmet housing needs and assess whether  
21 those needs are barriers to the recipient's full participation in  
22 the workforce and attainment of financial stability and  
23 self-sufficiency; and

24 (2) develop a service plan that takes into  
25 consideration the recipient's unmet housing needs.

26 (b) The commission by rule shall develop and implement a  
27 program through which a recipient identified under Subsection (a)



1 as having unmet housing needs is referred by the commission or local  
2 workforce development board to agencies and organizations  
3 providing housing programs and services and connected to other  
4 housing resources. To provide those referrals and connections, the  
5 commission shall establish collaborative partnerships between:

6 (1) the commission;

7 (2) local workforce development boards;

8 (3) municipal, county, and regional housing  
9 authorities; and

10 (4) sponsors of local housing programs and services.

11 (c) The commission shall ensure that commission and local  
12 workforce development board staff members receive training  
13 regarding the programs and services offered by agencies and  
14 organizations with which the commission establishes partnerships  
15 under Subsection (b) and other available housing resources.

16 (b) Not later than December 1, 2003, the Texas Workforce  
17 Commission and local workforce development boards shall develop the  
18 employment services referral program required by Section 302.0026,  
19 Labor Code, as added by this section.

20 (c) Not later than December 1, 2003, the Texas Workforce  
21 Commission shall develop and implement the program required by  
22 Section 302.0038(b), Labor Code, as added by this section.

23 SECTION 2.94. Section 302.011, Labor Code, is amended to  
24 read as follows:

25 Sec. 302.011. POSTEMPLOYMENT CASE MANAGEMENT AND  
26 MENTORING. The commission shall encourage local workforce  
27 development boards to provide postemployment case management

1 services for and use mentoring techniques to assist recipients of  
2 financial assistance who participate in employment programs under  
3 Chapter 31, Human Resources Code, and have, in comparison to other  
4 recipients, higher levels of barriers to employment. The case  
5 management services and mentoring techniques must be designed to  
6 increase the recipient's potential for wage growth and development  
7 of a stable employment history.

8 SECTION 2.95. Subchapter B, Chapter 32, Human Resources  
9 Code, is amended by adding Section 32.0212 to read as follows:

10 Sec. 32.0212. DELIVERY OF MEDICAL ASSISTANCE.  
11 Notwithstanding any other law and subject to Section 533.0025,  
12 Government Code, the department shall provide medical assistance  
13 for acute care through the Medicaid managed care system implemented  
14 under Chapter 533, Government Code.

15 SECTION 2.96. Section 32.024(i), Human Resources Code, is  
16 amended to read as follows:

17 (i) The department in its adoption of rules may [~~shall~~]  
18 establish a medically needy program that serves pregnant women,  
19 children, and caretakers who have high medical expenses, subject to  
20 availability of appropriated funds.

21 SECTION 2.97. (a) Section 32.024, Human Resources Code, is  
22 amended by adding Subsections (t-1), (z), and (z-1) to read as  
23 follows:

24 (t-1) The department, in its rules governing the medical  
25 transportation program, may not prohibit a recipient of medical  
26 assistance from receiving transportation services through the  
27 program to obtain renal dialysis treatment on the basis that the

1 recipient resides in a nursing facility.

2 (z) In its rules and standards governing the vendor drug  
3 program, the department, to the extent allowed by federal law and if  
4 the department determines the policy to be cost-effective, may  
5 ensure that a recipient of prescription drug benefits under the  
6 medical assistance program does not, unless authorized by the  
7 department in consultation with the recipient's attending  
8 physician or advanced practice nurse, receive under the medical  
9 assistance program:

10 (1) more than four different outpatient brand-name  
11 prescription drugs during a month; or

12 (2) more than a 34-day supply of a brand-name  
13 prescription drug at any one time.

14 (z-1) Subsection (z) does not affect any other limit on  
15 prescription medications otherwise prescribed by department rule.

16 (b) Section 32.024(z), Human Resources Code, as added by  
17 this section, applies to a person receiving medical assistance on  
18 or after the effective date of this section regardless of the date  
19 on which the person began receiving that medical assistance.

20 SECTION 2.98. [RESERVED]

21 SECTION 2.99. (a) Section 32.026(e), Human Resources Code,  
22 is amended to read as follows:

23 (e) The department shall permit a recertification review of  
24 the eligibility and need for medical assistance of a child under 19  
25 years of age to be conducted by telephone or mail instead of through  
26 a personal appearance at a department office, unless the department  
27 determines that the information needed to verify eligibility cannot

1 be obtained in that manner. The department by rule may develop  
2 procedures to determine whether there is a need for a  
3 recertification review of a child described by this subsection to  
4 be conducted through a personal interview with a department  
5 representative. Procedures developed under this subsection shall  
6 be based on objective, risk-based factors and conditions and shall  
7 focus on a targeted group of recertification reviews for which  
8 there is a high probability that eligibility will not be  
9 recertified.

10 (b) Contingent upon enactment of Senate Bill 1522, Senate  
11 Bill 1522 prevails regarding this section notwithstanding Section  
12 2.157.

13 SECTION 2.100. (a) Section 32.0315(a), Human Resources  
14 Code, is amended to read as follows:

15 (a) Subject to appropriated state funds, the ~~[The]~~  
16 department shall establish procedures and formulas for the  
17 allocation of federal medical assistance funds that are directed to  
18 be used to support graduate medical education in connection with  
19 the medical assistance program.

20 (b) Sections 32.0315(d)-(h), Human Resources Code, are  
21 repealed.

22 SECTION 2.101. Section 10(c), Chapter 584, Acts of the 77th  
23 Legislature, Regular Session, 2001, is amended to read as follows:

24 (c) The Health and Human Services Commission or the  
25 appropriate state agency operating part of the medical assistance  
26 program under Chapter 32, Human Resources Code, shall adopt rules  
27 required by Section 32.0261, Human Resources Code, as added by this

1 Act, so that the rules take effect in accordance with that section  
2 not earlier than September 1, 2002, or later than September 1, 2005  
3 [~~June 1, 2003~~]. The rules must provide for a 12-month period of  
4 continuous eligibility in accordance with that section for a child  
5 whose initial or continued eligibility is determined on or after  
6 the effective date of the rules.

7 SECTION 2.102. (a) Section 32.028, Human Resources Code,  
8 is amended by amending Subsection (g) and adding Subsections (i),  
9 (j), (k), (l), and (m) to read as follows:

10 (g) Subject to Subsection (i), the [~~The~~] Health and Human  
11 Services Commission shall ensure that the rules governing the  
12 determination of rates paid for nursing home services improve the  
13 quality of care by:

14 (1) providing a program offering incentives for  
15 increasing direct care staff and direct care wages and benefits,  
16 but only to the extent that appropriated funds are available after  
17 money is allocated to base rate reimbursements as determined by the  
18 Health and Human Services Commission's nursing facility rate  
19 setting methodologies; and

20 (2) if appropriated funds are available after money is  
21 allocated for payment of incentive-based rates under Subdivision  
22 (1), providing incentives that incorporate the use of a quality of  
23 care index, a customer satisfaction index, and a resolved  
24 complaints index developed by the commission.

25 (i) The Health and Human Services Commission shall ensure  
26 that rules governing the incentives program described by Subsection  
27 (g)(1):

1           (1) provide that participation in the program by a  
2 nursing home is voluntary;

3           (2) do not impose on a nursing home not participating  
4 in the program a minimum spending requirement for direct care staff  
5 wages and benefits;

6           (3) do not set a base rate for a nursing home  
7 participating in the program that is more than the base rate for a  
8 nursing home not participating in the program; and

9           (4) establish a funding process to provide incentives  
10 for increasing direct care staff and direct care wages and benefits  
11 in accordance with appropriations provided.

12           (j) The Health and Human Services Commission shall adopt  
13 rules governing the determination of the amount of reimbursement or  
14 credit for restocking drugs under Section 562.1085, Occupations  
15 Code, that recognize the costs of processing the drugs, including  
16 the cost of:

17           (1) reporting the drug's prescription number and date  
18 of original issue;

19           (2) verifying whether the drug's expiration date or  
20 the drug's recommended shelf life exceeds 120 days;

21           (3) determining the source of payment; and

22           (4) preparing credit records.

23           (k) The commission shall provide an electronic system for  
24 the issuance of credit for returned drugs that complies with the  
25 Health Insurance Portability and Accountability Act of 1996, Pub.  
26 L. No. 104-191, as amended. To ensure a cost-effective system, only  
27 drugs for which the credit exceeds the cost of the restocking fee by

1 at least 100 percent are eligible for credit.

2 (l) The commission shall establish a task force to develop  
3 the rules necessary to implement Subsections (j) and (k). The task  
4 force must include representatives of nursing facilities and  
5 pharmacists.

6 (m) The commission may not fund an incentive program under  
7 Subsection (g)(1) using money appropriated for base rate  
8 reimbursements for nursing facilities.

9 (b) The Health and Human Services Commission shall adopt the  
10 rules required by Sections 32.028(j) and (k), Human Resources Code,  
11 as added by this section, not later than December 1, 2003.

12 SECTION 2.103. Subchapter B, Chapter 32, Human Resources  
13 Code, is amended by adding Section 32.0291 to read as follows:

14 Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS.

15 (a) Notwithstanding any other law, the department may:

16 (1) perform a prepayment review of a claim for  
17 reimbursement under the medical assistance program to determine  
18 whether the claim involves fraud or abuse; and

19 (2) as necessary to perform that review, withhold  
20 payment of the claim for not more than five working days without  
21 notice to the person submitting the claim.

22 (b) Notwithstanding any other law, the department may  
23 impose a postpayment hold on payment of future claims submitted by a  
24 provider if the department has reliable evidence that the provider  
25 has committed fraud or wilful misrepresentation regarding a claim  
26 for reimbursement under the medical assistance program. The  
27 department must notify the provider of the postpayment hold not

1 later than the fifth working day after the date the hold is imposed.

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

13 (d) The department shall adopt rules that allow a provider  
14 subject to a postpayment hold under Subsection (b) to seek an  
15 informal resolution of the issues identified by the department in  
16 the notice provided under that subsection. A provider must seek an  
17 informal resolution under this subsection not later than the  
18 deadline prescribed by Subsection (c). A provider's decision to  
19 seek an informal resolution under this subsection does not extend  
20 the time by which the provider must request an expedited  
21 administrative hearing under Subsection (c). However, a hearing  
22 initiated under Subsection (c) shall be stayed at the department's  
23 request until the informal resolution process is completed.

24 SECTION 2.104. Section 32.032, Human Resources Code, is  
25 amended to read as follows:

26 Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE.  
27 The department shall adopt reasonable rules for minimizing the



1 opportunity for fraud and abuse, for establishing and maintaining  
2 methods for detecting and identifying situations in which a  
3 question of fraud or abuse in the program may exist, and for  
4 referring cases where fraud or abuse appears to exist to the  
5 appropriate law enforcement agencies for prosecution.

6 SECTION 2.105. Section 32.0321, Human Resources Code, is  
7 amended to read as follows:

8 Sec. 32.0321. SURETY BOND. (a) The department by rule may  
9 require each provider of medical assistance in a provider type that  
10 has demonstrated significant potential for fraud or abuse to file  
11 with the department a surety bond in a reasonable amount. The  
12 department by rule shall require a provider of medical assistance  
13 to file with the department a surety bond in a reasonable amount if  
14 the department identifies a pattern of suspected fraud or abuse  
15 involving criminal conduct relating to the provider's services  
16 under the medical assistance program that indicates the need for  
17 protection against potential future acts of fraud or abuse.

18 (b) The bond under Subsection (a) must be payable to the  
19 department to compensate the department for damages resulting from  
20 or penalties or fines imposed in connection with an act of fraud or  
21 abuse committed by the provider under the medical assistance  
22 program.

23 (c) Subject to Subsection (d) or (e), the department by rule  
24 may require each provider of medical assistance that establishes a  
25 resident's trust fund account to post a surety bond to secure the  
26 account. The bond must be payable to the department to compensate  
27 residents of the bonded provider for trust funds that are lost,

1 stolen, or otherwise unaccounted for if the provider does not repay  
2 any deficiency in a resident's trust fund account to the person  
3 legally entitled to receive the funds.

4 (d) The department may not require the amount of a surety  
5 bond posted for a single facility provider under Subsection (c) to  
6 exceed the average of the total average monthly balance of all the  
7 provider's resident trust fund accounts for the 12-month period  
8 preceding the bond issuance or renewal date.

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

15 SECTION 2.106. (a) Subchapter B, Chapter 32, Human  
16 Resources Code, is amended by adding Section 32.0423 to read as  
17 follows:

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

24 (b) Section 32.0423, Human Resources Code, as added by this  
25 section, applies to a person receiving medical assistance on or  
26 after the effective date of this section regardless of the date on  
27 which the person began receiving that medical assistance.

1 SECTION 2.107. (a) Subchapter B, Chapter 32, Human  
2 Resources Code, is amended by adding Section 32.0462 to read as  
3 follows:

4 Sec. 32.0462. MEDICATIONS AND MEDICAL SUPPLIES. The  
5 department may adopt rules establishing procedures for the purchase  
6 and distribution of medically necessary, over-the-counter  
7 medications and medical supplies under the medical assistance  
8 program that were previously being provided by prescription if the  
9 department determines it is more cost-effective than obtaining  
10 those medications and medical supplies through a prescription.

11 (b) Not later than January 1, 2004, the Health and Human  
12 Services Commission shall submit a report to the clerks of the  
13 standing committees of the senate and house of representatives with  
14 jurisdiction over the state Medicaid program describing the status  
15 of any cost savings generated by purchasing over-the-counter  
16 medications and medical supplies as provided by Section 32.0462,  
17 Human Resources Code, as added by this section. The report must be  
18 updated not later than January 1, 2005.

19 SECTION 2.108. Section 32.050, Human Resources Code, is  
20 amended by adding Subsections (d), (e), and (f) to read as follows:

21 (d) Except as provided by Subsection (e), a nursing  
22 facility, a home health services provider, or any other similar  
23 long-term care services provider that is Medicare-certified and  
24 provides care to individuals who are eligible for Medicare must:

25 (1) seek reimbursement from Medicare before billing  
26 the medical assistance program for services provided to an  
27 individual identified under Subsection (a); and

1           (2) as directed by the department, appeal Medicare  
2 claim denials for payment services provided to an individual  
3 identified under Subsection (a).

4           (e) A home health services provider is not required to seek  
5 reimbursement from Medicare before billing the medical assistance  
6 program for services provided to a person who is eligible for  
7 Medicare and who:

8                   (1) has been determined as not being homebound; or

9                   (2) meets other criteria determined by the department.

10           (f) If the Medicare reimbursement rate for a service  
11 provided to an individual identified under Subsection (a) exceeds  
12 the medical assistance reimbursement rate for a comparable service,  
13 the medical assistance program may not pay a Medicare coinsurance  
14 or deductible amount for that service.

15           SECTION 2.109. (a) Subchapter B, Chapter 32, Human  
16 Resources Code, is amended by adding Section 32.060 to read as  
17 follows:

18           Sec. 32.060. NURSING FACILITY QUALITY ASSURANCE TEAM. (a)  
19 The nursing facility quality assurance team is established to make  
20 recommendations to the department designed to promote high-quality  
21 care for residents of nursing facilities.

22           (b) The team is composed of nine members appointed by the  
23 governor as follows:

24                   (1) two physicians with expertise in providing  
25 long-term care;

26                   (2) one registered nurse with expertise in providing  
27 long-term care;

1           (3) three nursing facility advocates not affiliated  
2 with the nursing facility industry; and

3           (4) three representatives of the nursing facility  
4 industry.

5           (c) The governor shall designate a member of the team to  
6 serve as presiding officer. The members of the team shall elect any  
7 other necessary officers.

8           (d) The team shall meet at the call of the presiding  
9 officer.

10          (e) A member of the team serves at the will of the governor.

11          (f) A member of the team may not receive compensation for  
12 serving on the team but is entitled to reimbursement for travel  
13 expenses incurred by the member while conducting the business of  
14 the team as provided by the General Appropriations Act.

15          (g) The team shall:

16           (1) develop and recommend clearly defined minimum  
17 standards to be considered for inclusion in contracts between the  
18 department and nursing facilities for the delivery of medical  
19 assistance under this chapter that are designed to:

20            (A) ensure that the care provided by nursing  
21 facilities to residents who are recipients of medical assistance  
22 meets or exceeds the minimum acceptable standard of care; and

23            (B) encourage nursing facilities to provide the  
24 highest quality of care to those residents; and

25           (2) develop and recommend improvements to consumers'  
26 access to information regarding the quality of care provided by  
27 nursing facilities that contract with the department to provide

1 medical assistance, including improvements in:

2 (A) the types and amounts of information to which  
3 consumers have access, such as expanding the types and amounts of  
4 information available through the department's Internet website;  
5 and

6 (B) the department's data systems that compile  
7 nursing facilities' inspection or survey data and other data  
8 relating to quality of care in nursing facilities.

9 (h) In developing minimum standards for contracts as  
10 required by Subsection (g)(1), the team shall:

11 (1) study the risk factors identified by the Texas  
12 Department of Insurance as contributing to lawsuits against nursing  
13 facilities;

14 (2) consider for inclusion in the minimum standards:

15 (A) the practices the Texas Department of  
16 Insurance recommends nursing facilities adopt to reduce the  
17 likelihood of those lawsuits; and

18 (B) other standards designed to improve the  
19 quality of care;

20 (3) focus on a minimum number of critical standards  
21 necessary to identify nursing facilities with poor quality services  
22 that should not be awarded contracts for the delivery of medical  
23 assistance; and

24 (4) with the assistance of the department, assess the  
25 potential cost impacts on providers necessary to meet the minimum  
26 standards and the commensurate fiscal impact on the department's  
27 appropriations requirement.

1        (i) The department shall ensure the accuracy of information  
2 provided to the team for use by the team in performing the team's  
3 duties under this section. The Health and Human Services  
4 Commission shall provide administrative support and resources to  
5 the team and request additional administrative support and  
6 resources from health and human services agencies as necessary.

7        (b) The governor shall appoint the members of the nursing  
8 facility quality assurance team established under Section 32.060,  
9 Human Resources Code, as added by this section, not later than  
10 January 1, 2004.

11        (c) The nursing facility quality assurance team shall  
12 develop and make the recommendations required by Section 32.060,  
13 Human Resources Code, as added by this section, not later than May  
14 1, 2004.

15        (d) The nursing facility quality assurance team shall  
16 report on its work and recommendations to the governor and the  
17 Legislative Budget Board no later than October 1, 2004, for  
18 consideration by the 79th Legislature.

19        SECTION 2.110. Subchapter B, Chapter 32, Human Resources  
20 Code, is amended by adding Section 32.061 to read as follows:

21        Sec. 32.061. COMMUNITY ATTENDANT SERVICES PROGRAM. Any home  
22 and community-based services that the department provides under  
23 Section 1929, Social Security Act (42 U.S.C. Section 1396t) and its  
24 subsequent amendments to functionally disabled individuals who  
25 have income that exceeds the limit established by federal law for  
26 Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.)  
27 and its subsequent amendments shall be provided through the

1 community attendant services program.

2 SECTION 2.111. (a) Subchapter B, Chapter 32, Human  
3 Resources Code, is amended by adding Section 32.063 to read as  
4 follows:

5 Sec. 32.063. THIRD-PARTY BILLING VENDORS. (a) A  
6 third-party billing vendor may not submit a claim with the  
7 department for reimbursement on behalf of a provider of medical  
8 services under the medical assistance program unless the vendor has  
9 entered into a contract with the department authorizing that  
10 activity.

11 (b) To the extent practical, the contract shall contain  
12 provisions comparable to the provisions contained in contracts  
13 between the department and providers of medical services, with an  
14 emphasis on provisions designed to prevent fraud or abuse under the  
15 medical assistance program. At a minimum, the contract must  
16 require the third-party billing vendor to:

17 (1) provide documentation of the vendor's authority to  
18 bill on behalf of each provider for whom the vendor submits claims;

19 (2) submit a claim in a manner that permits the  
20 department to identify and verify the vendor, any computer or  
21 telephone line used in submitting the claim, any relevant user  
22 password used in submitting the claim, and any provider number  
23 referenced in the claim; and

24 (3) subject to any confidentiality requirements  
25 imposed by federal law, provide the department, the office of the  
26 attorney general, or authorized representatives with:

27 (A) access to any records maintained by the



1 vendor, including original records and records maintained by the  
2 vendor on behalf of a provider, relevant to an audit or  
3 investigation of the vendor's services or another function of the  
4 department or office of the attorney general relating to the  
5 vendor; and

6 (B) if requested, copies of any records described  
7 by Paragraph (A) at no charge to the department, the office of the  
8 attorney general, or authorized representatives.

9 (c) On receipt of a claim submitted by a third-party billing  
10 vendor, the department shall send a remittance notice directly to  
11 the provider referenced in the claim. The notice must:

12 (1) include detailed information regarding the claim  
13 submitted on behalf of the provider; and

14 (2) require the provider to review the claim for  
15 accuracy and notify the department promptly regarding any errors.

16 (d) The department shall take all action necessary,  
17 including any modifications of the department's claims processing  
18 system, to enable the department to identify and verify a  
19 third-party billing vendor submitting a claim for reimbursement  
20 under the medical assistance program, including identification and  
21 verification of any computer or telephone line used in submitting  
22 the claim, any relevant user password used in submitting the claim,  
23 and any provider number referenced in the claim.

24 (e) The department shall audit each third-party billing  
25 vendor subject to this section at least annually to prevent fraud  
26 and abuse under the medical assistance program.

27 (b) Section 32.063, Human Resources Code, as added by this

1 section, takes effect January 1, 2004.

2 SECTION 2.112. (a) Subchapter B, Chapter 32, Human  
3 Resources Code, is amended by adding Section 32.064 to read as  
4 follows:

5 Sec. 32.064. COST SHARING. (a) To the extent permitted  
6 under Title XIX, Social Security Act (42 U.S.C. Section 1396 et  
7 seq.), as amended, and any other applicable law or regulations, the  
8 Health and Human Services Commission shall adopt provisions  
9 requiring recipients of medical assistance to share the cost of  
10 medical assistance, including provisions requiring recipients to  
11 pay:

12 (1) an enrollment fee;

13 (2) a deductible; or

14 (3) coinsurance or a portion of the plan premium, if  
15 the recipients receive medical assistance under the Medicaid  
16 managed care program under Chapter 533, Government Code, or a  
17 Medicaid managed care demonstration project under Section 32.041.

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

22 (c) If cost-sharing provisions imposed under Subsection (a)  
23 include requirements that recipients pay a portion of the plan  
24 premium, the commission shall specify the manner in which the  
25 premium is paid. The commission may require that the premium be  
26 paid to the commission, an agency operating part of the medical  
27 assistance program, or the Medicaid managed care plan.

1        (d) Cost-sharing provisions adopted under this section may  
2 be determined based on the maximum level authorized under federal  
3 law and applied to income levels in a manner that minimizes  
4 administrative costs.

5        (b) The changes in law made by Section 32.064, Human  
6 Resources Code, as added by this section, apply to a person  
7 receiving medical assistance on or after the effective date of this  
8 section, regardless of the date on which eligibility for that  
9 assistance was determined.

10        SECTION 2.113. Section 48.401(1), Human Resources Code, is  
11 amended to read as follows:

12            (1) "Agency" means:

13            (A) an entity licensed under Chapter 142, Health  
14 and Safety Code; or

15            (B) a person exempt from licensing under Section  
16 142.003(a)(19), Health and Safety Code.

17        SECTION 2.114. Section 73.0051, Human Resources Code, is  
18 amended by adding Subsection (1) to read as follows:

19        (1) The council by rule may establish a system of payments  
20 by families of children receiving services under this chapter,  
21 including a schedule of sliding fees, in a manner consistent with 34  
22 C.F.R. Sections 303.12(a)(3)(iv), 303.520, and 303.521.

23        SECTION 2.115. (a) Sections 91.027(a) and (b), Human  
24 Resources Code, are amended to read as follows:

25        (a) To the extent that funds are available under Sections  
26 521.421(f), as added by Chapter 510, Acts of the 75th Legislature,  
27 Regular Session, 1997, and 521.422(b), Transportation Code, the

1 ~~[The]~~ commission shall operate ~~[develop]~~ a Blindness Education,  
2 Screening, and Treatment Program to provide:

3 (1) blindness prevention education and ~~[to provide]~~  
4 screening and treatment to prevent blindness for residents who are  
5 not covered under an adequate health benefit plan; and

6 (2) transition services to blind disabled individuals  
7 eligible for vocational rehabilitation services under Section  
8 91.052.

9 (b) ~~[The commission shall implement the program only to the~~  
10 ~~extent that funds are available under Section 521.421(f),~~  
11 ~~Transportation Code.]~~ The program shall include:

12 (1) public education about blindness and other eye  
13 conditions;

14 (2) screenings and eye examinations to identify  
15 conditions that may cause blindness; ~~[and]~~

16 (3) treatment procedures necessary to prevent  
17 blindness; and

18 (4) transition services.

19 (b) The Texas Commission for the Blind shall establish the  
20 consolidated program under Section 91.027, Human Resources Code, as  
21 amended by this section, not later than the 90th day after the  
22 effective date of this section.

23 SECTION 2.116. (a) Section 111.052, Human Resources Code,  
24 is amended to read as follows:

25 Sec. 111.052. GENERAL FUNCTIONS. (a) The commission  
26 shall, to the extent of resources available and priorities  
27 established by the board, provide rehabilitation services directly

1 or through public or private resources to individuals determined by  
2 the commission to be eligible for the services under a vocational  
3 rehabilitation program[~~, an extended rehabilitation services~~  
4 ~~program,~~] or other program established to provide rehabilitative  
5 services.

6 (b) In carrying out the purposes of this chapter, the  
7 commission may:

8 (1) cooperate with other departments, agencies,  
9 political subdivisions, and institutions, both public and private,  
10 in providing the services authorized by this chapter to eligible  
11 individuals, in studying the problems involved, and in planning,  
12 establishing, developing, and providing necessary or desirable  
13 programs, facilities, and services, including those jointly  
14 administered with state agencies;

15 (2) enter into reciprocal agreements with other  
16 states;

17 (3) establish or construct rehabilitation facilities  
18 and workshops, contract with or provide grants to agencies,  
19 organizations, or individuals as necessary to implement this  
20 chapter, make contracts or other arrangements with public and other  
21 nonprofit agencies, organizations, or institutions for the  
22 establishment of workshops and rehabilitation facilities, and  
23 operate facilities for carrying out the purposes of this chapter;

24 (4) conduct research and compile statistics relating  
25 to the provision of services to or the need for services by disabled  
26 individuals;

27 (5) provide for the establishment, supervision,

1 management, and control of small business enterprises to be  
2 operated by individuals with significant disabilities where their  
3 operation will be improved through the management and supervision  
4 of the commission;

5 (6) contract with schools, hospitals, private  
6 industrial firms, and other agencies and with doctors, nurses,  
7 technicians, and other persons for training, physical restoration,  
8 transportation, and other rehabilitation services; and

9 (7) assess the statewide need for services necessary  
10 to prepare students with disabilities for a successful transition  
11 to employment, establish collaborative relationships with each  
12 school district with education service centers to the maximum  
13 extent possible within available resources, and develop strategies  
14 to assist vocational rehabilitation counselors in identifying and  
15 reaching students in need of transition planning [~~contract with a~~  
16 ~~public or private agency to provide and pay for rehabilitative~~  
17 ~~services under the extended rehabilitation services program,~~  
18 ~~including alternative sheltered employment or community integrated~~  
19 ~~employment for a person participating in the program].~~

20 (b) Sections 111.002(7), 111.0525(a), and 111.073, Human  
21 Resources Code, are repealed.

22 SECTION 2.117. Section 111.060, Human Resources Code, is  
23 amended by adding Subsection (d) to read as follows:

24 (d) Notwithstanding any other provision of this section,  
25 any money in the comprehensive rehabilitation fund may be used for  
26 general governmental purposes if:

27 (1) the comptroller certifies that appropriations

1 from general revenue made by the preceding legislature for the  
2 current biennium exceed available general revenues and cash  
3 balances for the remainder of that biennium;

4 (2) an estimate of anticipated revenues for a  
5 succeeding biennium prepared by the comptroller in accordance with  
6 Section 49a, Article III, Texas Constitution, is less than the  
7 revenues that are estimated at the same time by the comptroller to  
8 be available for the current biennium; or

9 (3) the Legislative Budget Board otherwise determines  
10 that a state fiscal emergency exists that requires use of any money  
11 in the fund for general governmental purposes.

12 SECTION 2.118. (a) Subchapter I, Chapter 264, Family Code,  
13 is transferred to Chapter 33, Education Code, is redesignated as  
14 Subchapter E, Chapter 33, Education Code, and is amended to read as  
15 follows:

16 SUBCHAPTER E [~~I~~]. COMMUNITIES IN SCHOOLS PROGRAM

17 Sec. 33.151 [~~264.751~~]. DEFINITIONS. In this subchapter:

18 (1) "Department" [~~"Agency"~~] means the Department of  
19 Protective and Regulatory Services [~~Texas Education Agency~~].

20 (2) "Communities In Schools program" means an  
21 exemplary youth dropout prevention program.

22 (3) "Delinquent conduct" has the meaning assigned by  
23 Section 51.03, Family Code.

24 (4) "Student at risk of dropping out of school" means:  
25 (A) a student at risk of dropping out of school as  
26 defined [~~has the meaning assigned~~] by Section 29.081;

27 (B) [~~, Education Code, or means~~] a student who is

1 eligible for a free or reduced lunch; or

2 (C) a student who is in family conflict or  
3 crisis.

4 Sec. 33.152 [~~264.752~~]. STATEWIDE OPERATION OF PROGRAM. It  
5 is the intent of the legislature that the Communities In Schools  
6 program operate throughout this state. It is also the intent of the  
7 legislature that programs established under Chapter 305, Labor  
8 Code, as that chapter existed on August 31, 1999, and its  
9 predecessor statute, the Texas Unemployment Compensation Act  
10 (Article 5221b-9d, Vernon's Texas Civil Statutes), and programs  
11 established under this subchapter shall remain eligible to  
12 participate in the Communities In Schools program if funds are  
13 available and if their performance meets the criteria established  
14 by the agency [~~department~~] for renewal of their contracts.

15 Sec. 33.153 [~~264.753~~]. STATE DIRECTOR. The commissioner  
16 [~~executive director of the department~~] shall designate a state  
17 director for the Communities In Schools program.

18 Sec. 33.154 [~~264.754~~]. DUTIES OF STATE DIRECTOR. The state  
19 director shall:

20 (1) coordinate the efforts of the Communities In  
21 Schools program with other social service organizations and  
22 agencies and with public school personnel to provide services to  
23 students who are at risk of dropping out of school or engaging in  
24 delinquent conduct, including students who are in family conflict  
25 or emotional crisis;

26 (2) set standards for the Communities In Schools  
27 program and establish state performance goals, objectives, and



1 measures for the program;

2 (3) obtain information to determine accomplishment of  
3 state performance goals, objectives, and measures;

4 (4) promote and market the program in communities in  
5 which the program is not established;

6 (5) help communities that want to participate in the  
7 program establish a local funding base; and

8 (6) provide training and technical assistance for  
9 participating communities and programs.

10 Sec. 33.155 [~~264.755~~]. DEPARTMENT [~~AGENCY~~] COOPERATION;  
11 MEMORANDUM OF UNDERSTANDING. (a) The agency, the department, and  
12 Communities In Schools, Inc. shall work together to maximize the  
13 effectiveness of the Communities In Schools program.

14 (b) The agency and the department shall develop and  
15 [~~mutually~~] agree to a memorandum of understanding to clearly define  
16 the responsibilities of the agency and of the department under this  
17 subchapter. The memorandum must address:

18 (1) the roles [~~role~~] of the agency and department in  
19 encouraging local business to participate in local Communities In  
20 Schools programs;

21 (2) the role of the agency in obtaining information  
22 from participating school districts;

23 (3) the use of federal or state funds available to the  
24 agency or the department for programs of this nature; and

25 (4) other areas identified by the agency and the  
26 department that require clarification.

27 (c) The agency and the department shall adopt rules to

1 implement the memorandum and shall update the memorandum and rules  
2 annually.

3 Sec. 33.156 [~~264.756~~]. FUNDING; EXPANSION OF PARTICIPATION.

4 (a) The agency [~~department~~] shall develop and implement an  
5 equitable formula for the funding of local Communities In Schools  
6 programs. The formula may provide for the reduction of funds  
7 annually contributed by the state to a local program by an amount  
8 not more than 50 percent of the amount contributed by the state for  
9 the first year of the program. The formula must consider the  
10 financial resources of individual communities and school  
11 districts. Savings accomplished through the implementation of the  
12 formula may be used to extend services to counties and  
13 municipalities currently not served by a local program or to extend  
14 services to counties and municipalities currently served by an  
15 existing local program.

16 (b) Each local Communities In Schools program shall develop  
17 a funding plan which ensures that the level of services is  
18 maintained if state funding is reduced.

19 (c) A local Communities In Schools program may accept  
20 federal funds, state funds, private contributions, grants, and  
21 public and school district funds to support a campus participating  
22 in the program.

23 Sec. 33.157 [~~264.757~~]. PARTICIPATION IN PROGRAM. An  
24 elementary or secondary school receiving funding [~~designated~~]  
25 under Section 33.156 [~~264.756~~] shall participate in a local  
26 Communities In Schools program if the number of students enrolled  
27 in the school who are at risk of dropping out of school is equal to

1 at least 10 percent of the number of students in average daily  
2 attendance at the school, as determined by the agency.

3 Sec. 33.158 [~~264.758~~]. DONATIONS TO PROGRAM. (a) The agency  
4 [~~department~~] may accept a donation of services or money or other  
5 property that the agency [~~department~~] determines furthers the  
6 lawful objectives of the agency [~~department~~] in connection with the  
7 Communities In Schools program.

8 (b) Each donation, with the name of the donor and the  
9 purpose of the donation, must be reported in the public records of  
10 the agency [~~department~~].

11 (b) Section 302.062(g), Labor Code, is amended to read as  
12 follows:

13 (g) Block grant funding under this section does not apply  
14 to:

15 (1) the work and family policies program under Chapter  
16 81;

17 (2) a program under the skills development fund  
18 created under Chapter 303;

19 (3) the job counseling program for displaced  
20 homemakers under Chapter 304;

21 (4) the Communities In Schools program under  
22 Subchapter E [~~I~~], Chapter 33 [~~264~~], Education [~~Family~~] Code, to the  
23 extent that funds are available to the commission for that program;

24 (5) the reintegration of offenders program under  
25 Chapter 306;

26 (6) apprenticeship programs under Chapter 133,  
27 Education Code;

1           (7) the continuity of care program under Section  
2 501.095, Government Code;

3           (8) employment programs under Chapter 31, Human  
4 Resources Code;

5           (9) the senior citizens employment program under  
6 Chapter 101, Human Resources Code;

7           (10) the programs described by Section 302.021(b)(3);

8           (11) the community service program under the National  
9 and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);

10          (12) the trade adjustment assistance program under  
11 Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et  
12 seq.);

13          (13) the programs to enhance the employment  
14 opportunities of veterans; and

15          (14) the functions of the State Occupational  
16 Information Coordinating Committee.

17          (c) On September 1, 2003:

18           (1) all powers, duties, functions, and activities  
19 relating to the Communities In Schools program assigned to or  
20 performed by the Department of Protective and Regulatory Services  
21 immediately before September 1, 2003, are transferred to the Texas  
22 Education Agency;

23           (2) all funds, rights, obligations, and contracts of  
24 the Department of Protective and Regulatory Services related to the  
25 Communities In Schools program are transferred to the Texas  
26 Education Agency for the Communities In Schools program;

27           (3) all property and records in the custody of the

1 Department of Protective and Regulatory Services related to the  
2 Communities In Schools program and all funds appropriated by the  
3 legislature for the Communities In Schools program are transferred  
4 to the Texas Education Agency for the Communities In Schools  
5 program; and

6 (4) all employees of the Department of Protective and  
7 Regulatory Services who primarily perform duties related to the  
8 Communities In Schools program become employees of the Texas  
9 Education Agency, to be assigned duties related to the Communities  
10 In Schools program.

11 (d) For the 2003 and 2004 state fiscal years, all full-time  
12 equivalent positions (FTEs) authorized by the General  
13 Appropriations Act for the Communities In Schools program are  
14 transferred to the Texas Education Agency and are not included in  
15 determining the agency's compliance with any limitation on the  
16 number of full-time equivalent positions (FTEs) imposed by the  
17 General Appropriations Act.

18 (e) A reference in law or administrative rule to the  
19 Department of Protective and Regulatory Services that relates to  
20 the Communities In Schools program means the Texas Education  
21 Agency. A reference in law or administrative rule to the executive  
22 director of the Department of Protective and Regulatory Services  
23 that relates to the Communities In Schools program means the  
24 commissioner of education.

25 (f) A rule of the Department of Protective and Regulatory  
26 Services relating to the Communities In Schools program continues  
27 in effect as a rule of the commissioner of education until

1 superseded by rule of the commissioner of education. The secretary  
 2 of state is authorized to adopt rules as necessary to expedite the  
 3 implementation of this subsection.

4 (g) The transfer of the Communities In Schools program and  
 5 associated powers, duties, functions, and activities under this  
 6 section does not affect or impair any act done, any obligation,  
 7 right, order, license, permit, rule, criterion, standard, or  
 8 requirement existing, any investigation begun, or any penalty  
 9 accrued under former law, and that law remains in effect for any  
 10 action concerning those matters.

11 (h) An action brought or proceeding commenced before  
 12 September 1, 2003, including a contested case or a remand of any  
 13 action or proceeding by a reviewing court, is governed by the law  
 14 and rules applicable to the action or proceeding immediately before  
 15 September 1, 2003.

16 SECTION 2.119. (a) Sections 2(a) and (c), Article 4.11,  
 17 Insurance Code, are amended to read as follows:

18 (a) "Carrier" means any insurer, managed care organization,  
 19 or group hospital service plan transacting any such insurance  
 20 business in this state including companies operating under the  
 21 provisions of Chapters 841, 842, 843, 861, 881, 882, 883, 884, 941,  
 22 942, and 982, [3, 8, 11, 13, 15, 18, 19, 20, 20A, and 22 of the]  
 23 Insurance Code, Chapter 533, Government Code, or Title XIX of the  
 24 federal Social Security Act. The term does not include [but  
 25 excluding] local mutual aid associations, fraternal benefit  
 26 societies or associations, and societies that limit their  
 27 membership to one occupation. For purposes of computing the premium

1 tax under this article, a managed care organization shall be  
2 treated in the same manner as a health maintenance organization.

3 (c) "Gross premiums" are the total gross amount of all  
4 premiums, membership fees, assessments, dues, and any other  
5 considerations for such insurance received during the taxable year  
6 on each and every kind of such insurance policy or contract covering  
7 persons located in the State of Texas and arising from the types of  
8 insurance specified in Section 1 of this article, but deducting  
9 returned premiums, any dividends applied to purchase paid-up  
10 additions to insurance or to shorten the endowment or premium  
11 payment period, and excluding those premiums received from  
12 insurance carriers for reinsurance and there shall be no deduction  
13 for premiums paid for reinsurance. For purposes of this article, a  
14 stop-loss or excess loss insurance policy issued to a health  
15 maintenance organization, as defined under the Texas Health  
16 Maintenance Organization Act (Chapter 20A, Vernon's Texas  
17 Insurance Code), shall be considered reinsurance. Such gross  
18 premiums shall not include premiums received from the [~~Treasury of~~  
19 ~~the State of Texas or from the~~] Treasury of the United States for  
20 [~~insurance contracted for by the state or federal government for~~  
21 ~~the purpose of providing welfare benefits to designated welfare~~  
22 ~~recipients or for~~] insurance contracted for by the [~~state or~~  
23 federal government in accordance with or in furtherance of the  
24 provisions of Title XVIII of [~~2, Human Resources Code, or~~] the  
25 Federal Social Security Act (42 U.S.C. Section 1395c et seq.) and  
26 its subsequent amendments. The gross premiums receipts so reported  
27 shall not include the amount of premiums paid on group health,

1 accident, and life policies in which the group covered by the policy  
2 consists of a single nonprofit trust established to provide  
3 coverage primarily for employees of:

4 (1) a municipality, county, or hospital district in  
5 this state; or

6 (2) a county or municipal hospital, without regard to  
7 whether the employees are employees of the county or municipality  
8 or another entity operating the hospital on behalf of the county or  
9 municipality.

10 (b) The change in law made by this section applies only to a  
11 tax report originally due on or after January 1, 2004.

12 SECTION 2.120. (a) Article 4.17(a), Insurance Code, is  
13 amended to read as follows:

14 (a) The commissioner shall annually determine the rate of  
15 assessment of a maintenance tax to be paid on an annual, semiannual,  
16 or other periodic basis, as determined by the comptroller. The rate  
17 of assessment may not exceed .04 percent of the correctly reported  
18 gross premiums of life, health, and accident insurance coverages  
19 and the gross considerations for annuity and endowment contracts  
20 collected by all authorized insurers writing life, health, and  
21 accident insurance, annuity, or endowment contracts in this state.  
22 The comptroller shall collect the maintenance tax. For purposes of  
23 this article, the gross premiums on which an assessment is based may  
24 not include premiums received from [~~this state or~~] the United  
25 States for insurance contracted for by [~~this state or~~] the United  
26 States [~~for the purpose of providing welfare benefits to designated~~  
27 ~~welfare recipients or for insurance contracted for by this state or~~



1 ~~the United States]~~ in accordance with or in furtherance of Title  
2 XVIII of [2, Human Resources Code, or] the federal Social Security  
3 Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments  
4 ~~[(42 U.S.C. Section 301 et seq.)]~~.

5 (b) The change in law made by this section applies only to a  
6 tax report originally due on or after January 1, 2004.

7 SECTION 2.121. (a) Section 33(d), Texas Health Maintenance  
8 Organization Act (Article 20A.33, Vernon's Texas Insurance Code),  
9 is amended to read as follows:

10 (d) The commissioner shall annually determine the rate of  
11 assessment of a per capita maintenance tax to be paid on an annual  
12 or semiannual basis, on the correctly reported gross revenues for  
13 the issuance of health maintenance certificates or contracts  
14 collected by all authorized health maintenance organizations  
15 issuing such coverages in this state. The rate of assessment may  
16 not exceed \$2 for each enrollee. The rate of assessment may differ  
17 between basic health care plans, limited health care service plans,  
18 and single health care service plans and shall equitably reflect  
19 any differences in regulatory resources attributable to each type  
20 of plan. The comptroller shall collect the maintenance tax. For  
21 purposes of this section, the amount of maintenance tax assessed  
22 may not be computed on enrollees who as individual certificate  
23 holders or their dependents are covered by a master group policy  
24 paid for by revenues received from ~~[this state or]~~ the United States  
25 for insurance contracted for by ~~[this state or]~~ the United States  
26 ~~[for the purpose of providing welfare benefits to designated~~  
27 ~~welfare recipients or for insurance contracted for by this state or~~

1 ~~the United States]~~ in accordance with or in furtherance of Title  
2 XVIII of [2, Human Resources Code, or] the federal Social Security  
3 Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments  
4 [~~(42 U.S.C. Section 301 et seq.)~~].

5 (b) The change in law made by this section applies only to a  
6 tax report originally due on or after January 1, 2004.

7 SECTION 2.122. Section 2, Article 21.52K, Insurance Code,  
8 is amended by amending Subsections (c) and (d) and adding  
9 Subsection (g) to read as follows:

10 (c) If an individual described by Subsection (a), ~~(b)~~, (b),  
11 or (g) of this section is not eligible to enroll in the plan unless a  
12 family member of the individual is also enrolled in the plan, the  
13 issuer, on receipt of the written notice or request under  
14 Subsection (a), ~~(b)~~, or (g) of this section, shall enroll both  
15 the individual and the family member in the plan.

16 (d) Unless enrollment occurs during an established  
17 enrollment period, enrollment under this article takes effect on  
18 the first day of the calendar month that begins at least 30 days  
19 after the date written notice or request is received by the issuer  
20 under Subsection (a), ~~(b)~~, or (g) of this section.

21 (g) The issuer of a group health benefit plan shall permit  
22 an individual who is otherwise eligible for enrollment in the plan  
23 to enroll in the plan without regard to any enrollment period  
24 restriction if the individual:

25 (1) becomes ineligible for medical assistance under  
26 the state Medicaid program or enrollment in the state child health  
27 plan under Chapter 62, Health and Safety Code, after initially

1 establishing eligibility; and

2 (2) provides a written request for enrollment in the  
3 group health benefit plan not later than the 30th day after the date  
4 the individual's eligibility for the state Medicaid program or the  
5 state child health plan terminated.

6 SECTION 2.123. (a) Article 21.53F, Insurance Code, as  
7 added by Chapter 683, Acts of the 75th Legislature, Regular  
8 Session, 1997, is amended by adding Section 9 to read as follows:

9 Sec. 9. OFFER OF COVERAGE REQUIRED; CERTAIN THERAPIES FOR  
10 CHILDREN WITH DEVELOPMENTAL DELAYS. (a) For purposes of this  
11 section, rehabilitative and habilitative therapies include:

- 12 (1) occupational therapy evaluations and services;  
13 (2) physical therapy evaluations and services;  
14 (3) speech therapy evaluations and services; and  
15 (4) dietary or nutritional evaluations.

16 (b) The issuer of a health benefit plan must offer coverage  
17 that complies with this section. The individual or group policy or  
18 contract holder may reject coverage required to be offered under  
19 this subsection.

20 (c) A health benefit plan that provides coverage for  
21 rehabilitative and habilitative therapies under this section may  
22 not prohibit or restrict payment for covered services provided to a  
23 child and determined to be necessary to and provided in accordance  
24 with an individualized family service plan issued by the  
25 Interagency Council on Early Childhood Intervention under Chapter  
26 73, Human Resources Code.

27 (d) Rehabilitative and habilitative therapies described by

1 Subsection (c) of this section must be covered in the amount,  
2 duration, scope, and service setting established in the child's  
3 individualized family service plan.

4 (e) Under the coverage required to be offered under this  
5 section, a health benefit plan issuer may not:

6 (1) apply the cost of rehabilitative and habilitative  
7 therapies described by Subsection (c) of this section to an annual  
8 or lifetime maximum plan benefit or similar provision under the  
9 plan; or

10 (2) use the cost of rehabilitative or habilitative  
11 therapies described by Subsection (c) of this section as the sole  
12 justification for:

13 (A) increasing plan premiums; or

14 (B) terminating the insured's or enrollee's  
15 participation in the plan.

16 (b) The change in law made by this section applies only to a  
17 health benefit plan that is delivered, issued for delivery, or  
18 renewed on or after January 1, 2004. A health benefit plan that is  
19 delivered, issued for delivery, or renewed before January 1, 2004,  
20 is governed by the law as it existed immediately before the  
21 effective date of this section, and the former law is continued in  
22 effect for that purpose.

23 SECTION 2.124. Article 27.05, Insurance Code, is amended to  
24 read as follows:

25 Art. 27.05. EXEMPTION FROM PREMIUM TAX. The issuer of a  
26 children's health benefit plan approved under Article 27.03 of this  
27 code is not subject to the premium tax imposed by Article 4.11 of

1 this code or the tax on revenues imposed under Section 33, Texas  
2 Health Maintenance Organization Act (Article 20A.33, Vernon's  
3 Texas Insurance Code), with respect to money received for coverage  
4 provided under that plan.

5 SECTION 2.125. Chapter 27, Insurance Code, is amended by  
6 adding Article 27.07 to read as follows:

7 Art. 27.07. INAPPLICABILITY TO CERTAIN PLANS. This chapter  
8 does not apply to a health benefit plan provided under the state  
9 Medicaid program or the state child health plan.

10 SECTION 2.126. Subchapter C, Chapter 562, Occupations Code,  
11 is amended by adding Sections 562.1085 and 562.1086 to read as  
12 follows:

13 Sec. 562.1085. UNUSED DRUGS RETURNED BY CERTAIN  
14 PHARMACISTS. (a) A pharmacist who practices in or serves as a  
15 consultant for a health care facility in this state may return to a  
16 pharmacy certain unused drugs, other than a controlled substance as  
17 defined by Chapter 481, Health and Safety Code, purchased from the  
18 pharmacy as provided by board rule. The unused drugs must:

19 (1) be approved by the federal Food and Drug  
20 Administration and be:

21 (A) sealed in the manufacturer's original  
22 unopened tamper-evident packaging and either individually  
23 packaged or packaged in unit-dose packaging;

24 (B) oral or parenteral medication in sealed  
25 single-dose containers approved by the federal Food and Drug  
26 Administration;

27 (C) topical or inhalant drugs in sealed

1 units-of-use containers approved by the federal Food and Drug  
2 Administration; or

3 (D) parenteral medications in sealed  
4 multiple-dose containers approved by the federal Food and Drug  
5 Administration from which doses have not been withdrawn; and

6 (2) not be the subject of a mandatory recall by a state  
7 or federal agency or a voluntary recall by a drug seller or  
8 manufacturer.

9 (b) A pharmacist for the pharmacy shall examine a drug  
10 returned under this section to ensure the integrity of the drug  
11 product. A health care facility may not return a drug that:

12 (1) has been compounded;

13 (2) appears on inspection to be adulterated;

14 (3) requires refrigeration; or

15 (4) has less than 120 days until the expiration date or  
16 end of the shelf life.

17 (c) The pharmacy may restock and redistribute unused drugs  
18 returned under this section.

19 (d) The pharmacy shall reimburse or credit the state  
20 Medicaid program for an unused drug returned under this section.

21 (e) The board shall adopt the rules, policies, and  
22 procedures necessary to administer this section, including rules  
23 that require a health care facility to inform the Health and Human  
24 Services Commission of medicines returned to a pharmacy under this  
25 section.

26 Sec. 562.1086. LIMITATION ON LIABILITY. (a) A pharmacy that  
27 returns unused drugs and a manufacturer that accepts the unused

1 drugs under Section 562.1085 and the employees of the pharmacy or  
2 manufacturer are not liable for harm caused by the accepting,  
3 dispensing, or administering of drugs returned in strict compliance  
4 with Section 562.1085 unless the harm is caused by:

5 (1) wilful or wanton acts of negligence;

6 (2) conscious indifference or reckless disregard for  
7 the safety of others; or

8 (3) intentional conduct.

9 (b) This section does not limit, or in any way affect or  
10 diminish, the liability of a drug seller or manufacturer under  
11 Chapter 82, Civil Practice and Remedies Code.

12 (c) This section does not apply if harm results from the  
13 failure to fully and completely comply with the requirements of  
14 Section 562.1085.

15 (d) This section does not apply to a pharmacy or  
16 manufacturer that fails to comply with the insurance provisions of  
17 Chapter 84, Civil Practice and Remedies Code.

18 SECTION 2.127. Section 455.0015, Transportation Code, is  
19 amended by amending Subsection (b) and adding Subsections (c) and  
20 (d) to read as follows:

21 (b) It is the intent of the legislature that, whenever  
22 possible, and to the maximum extent feasible, the existing network  
23 of transportation providers, and in particular the fixed route  
24 components of the existing networks, be used to meet the client  
25 transportation requirements of the state's social service agencies  
26 and their agents. The legislature recognizes the contributions of  
27 nonprofit entities dedicated to providing social services and

1 related activities and encourages the continued community  
2 involvement of these entities in this area. The legislature  
3 likewise recognizes the potential cost savings and other benefits  
4 for utilizing existing private sector transportation resources.  
5 The department will contract with and promote the use of private  
6 sector transportation resources to the maximum extent feasible  
7 consistent with the goals of this subsection.

8 (c) The Texas Department of Health and the Health and Human  
9 Services Commission shall contract with the department for the  
10 department to assume all responsibilities of the Texas Department  
11 of Health and the Health and Human Services Commission relating to  
12 the provision of transportation services for clients of eligible  
13 programs. The department shall hold at least one public hearing to  
14 solicit the views of the public concerning the transition of  
15 transportation services to the department under this subsection and  
16 shall meet with and consider the views of interested persons,  
17 including persons representing transportation clients.

18 (d) The department may contract with any public or private  
19 transportation provider or with any regional transportation broker  
20 for the provision of public transportation services.

21 SECTION 2.128. Section 40.002, Human Resources Code, is  
22 amended by adding Subsection (f) to read as follows:

23 (f) The department may contract with the Texas Department of  
24 Transportation for the Texas Department of Transportation to assume  
25 all responsibilities of the department relating to the provision of  
26 transportation services for clients of eligible programs.

27 SECTION 2.129. Section 22.001, Human Resources Code, is



1 amended by adding Subsection (e) to read as follows:

2 (e) The department shall contract with the Texas Department  
3 of Transportation for the Texas Department of Transportation to  
4 assume all responsibilities of the department relating to the  
5 provision of transportation services for clients of eligible  
6 programs.

7 SECTION 2.130. Section 91.021, Human Resources Code, is  
8 amended by adding Subsection (g) to read as follows:

9 (g) The commission shall contract with the Texas Department  
10 of Transportation for the Texas Department of Transportation to  
11 assume all responsibilities of the commission relating to the  
12 provision of transportation services for clients of eligible  
13 programs.

14 SECTION 2.131. Section 101.0256, Human Resources Code, is  
15 amended to read as follows:

16 Sec. 101.0256. COORDINATED ACCESS TO LOCAL SERVICES. (a)  
17 The department and the Texas Department of Human Services shall  
18 develop standardized assessment procedures to share information on  
19 common clients served in a similar service region.

20 (b) The department shall contract with the Texas Department  
21 of Transportation for the Texas Department of Transportation to  
22 assume all responsibilities of the department relating to the  
23 provision of transportation services for clients of eligible  
24 programs.

25 SECTION 2.132. Section 111.0525, Human Resources Code, is  
26 amended by adding Subsection (d) to read as follows:

27 (d) The commission shall contract with the Texas Department

1 of Transportation for the Texas Department of Transportation to  
2 assume all responsibilities of the commission relating to the  
3 provision of transportation services for clients of eligible  
4 programs.

5 SECTION 2.133. Section 461.012(a), Health and Safety Code,  
6 is amended to read as follows:

7 (a) The commission shall:

8 (1) provide for research and study of the problems of  
9 chemical dependency in this state and seek to focus public  
10 attention on those problems through public information and  
11 education programs;

12 (2) plan, develop, coordinate, evaluate, and  
13 implement constructive methods and programs for the prevention,  
14 intervention, treatment, and rehabilitation of chemical dependency  
15 in cooperation with federal and state agencies, local governments,  
16 organizations, and persons, and provide technical assistance,  
17 funds, and consultation services for statewide and community-based  
18 services;

19 (3) cooperate with and enlist the assistance of:

20 (A) other state, federal, and local agencies;

21 (B) hospitals and clinics;

22 (C) public health, welfare, and criminal justice  
23 system authorities;

24 (D) educational and medical agencies and  
25 organizations; and

26 (E) other related public and private groups and  
27 persons;

1           (4) expand chemical dependency services for children  
2 when funds are available because of the long-term benefits of those  
3 services to the state and its citizens;

4           (5) sponsor, promote, and conduct educational  
5 programs on the prevention and treatment of chemical dependency,  
6 and maintain a public information clearinghouse to purchase and  
7 provide books, literature, audiovisuals, and other educational  
8 material for the programs;

9           (6) sponsor, promote, and conduct training programs  
10 for persons delivering prevention, intervention, treatment, and  
11 rehabilitation services and for persons in the criminal justice  
12 system or otherwise in a position to identify chemically dependent  
13 persons and their families in need of service;

14           (7) require programs rendering services to chemically  
15 dependent persons to safeguard those persons' legal rights of  
16 citizenship and maintain the confidentiality of client records as  
17 required by state and federal law;

18           (8) maximize the use of available funds for direct  
19 services rather than administrative services;

20           (9) consistently monitor the expenditure of funds and  
21 the provision of services by all grant and contract recipients to  
22 assure that the services are effective and properly staffed and  
23 meet the standards adopted under this chapter;

24           (10) make the monitoring reports prepared under  
25 Subdivision (9) a matter of public record;

26           (11) license treatment facilities under Chapter 464;

27           (12) use funds appropriated to the commission to carry

1 out this chapter and maximize the overall state allotment of  
2 federal funds;

3 (13) develop and implement policies that will provide  
4 the public with a reasonable opportunity to appear before the  
5 commission and to speak on any issue under the commission's  
6 jurisdiction;

7 (14) establish minimum criteria that peer assistance  
8 programs must meet to be governed by and entitled to the benefits of  
9 a law that authorizes licensing and disciplinary authorities to  
10 establish or approve peer assistance programs for impaired  
11 professionals;

12 (15) adopt rules governing the functions of the  
13 commission, including rules that prescribe the policies and  
14 procedures followed by the commission in administering any  
15 commission programs;

16 (16) plan, develop, coordinate, evaluate, and  
17 implement constructive methods and programs to provide healthy  
18 alternatives for youth at risk of selling controlled substances;

19 (17) submit to the federal government reports and  
20 strategies necessary to comply with Section 1926 of the federal  
21 Alcohol, Drug Abuse, and Mental Health Administration  
22 Reorganization Act, Pub. L. 102-321 (42 U.S.C. Section 300x-26);  
23 reports and strategies are to be coordinated with appropriate state  
24 governmental entities; ~~and~~

25 (18) regulate, coordinate, and provide training for  
26 alcohol awareness courses required under Section 106.115,  
27 Alcoholic Beverage Code, and may charge a fee for an activity

1 performed by the commission under this subdivision; and

2 (19) contract with the Texas Department of  
3 Transportation for the Texas Department of Transportation to assume  
4 all responsibilities of the commission relating to the provision of  
5 transportation services for clients of eligible programs.

6 SECTION 2.134. Section 533.012, Health and Safety Code, is  
7 amended to read as follows:

8 Sec. 533.012. COOPERATION OF STATE AGENCIES. (a) At the  
9 department's request, all state departments, agencies, officers,  
10 and employees shall cooperate with the department in activities  
11 that are consistent with their functions.

12 (b) The department shall contract with the Texas Department  
13 of Transportation for the Texas Department of Transportation to  
14 assume all responsibilities of the department relating to the  
15 provision of transportation services for clients of eligible  
16 programs.

17 SECTION 2.135. (a) Section 1551.159, Insurance Code, as  
18 effective June 1, 2003, is amended by amending Subsection (a) and  
19 adding Subsection (h) to read as follows:

20 (a) Subject to any applicable limit in the General  
21 Appropriations Act, the board of trustees shall use money  
22 appropriated for employer contributions to fund 80 percent of the  
23 cost of basic coverage for a child who:

24 (1) is a dependent of an employee;

25 (2) would be eligible, if the child were not the  
26 dependent of the employee, for benefits under the state child  
27 health plan established under Chapter 62, Health and Safety Code

1 ~~[the program established by the state to implement Title XXI,~~  
2 ~~Social Security Act (42 U.S.C. Section 1397aa et seq.), as~~  
3 ~~amended]; and~~

4 (3) is not eligible for the state Medicaid program.

5 (h) A child enrolled in dependent child coverage under this  
6 section is subject to the same requirements and restrictions  
7 relating to income eligibility, continuous coverage, and  
8 enrollment, including applicable waiting periods, as a child  
9 enrolled in the state child health plan under Chapter 62, Health and  
10 Safety Code.

11 (b) The change in law made by this section applies only to a  
12 child enrolled in dependent child coverage under the state  
13 employees group benefits program on and after September 1, 2003.

14 SECTION 2.136. Section 31.03, Penal Code, is amended by  
15 adding Subsection (j) to read as follows:

16 (j) With the consent of the appropriate local county or  
17 district attorney, the attorney general has concurrent  
18 jurisdiction with that consenting local prosecutor to prosecute an  
19 offense under this section that involves the state Medicaid  
20 program.

21 SECTION 2.137. Section 32.45, Penal Code, is amended by  
22 adding Subsection (d) to read as follows:

23 (d) With the consent of the appropriate local county or  
24 district attorney, the attorney general has concurrent  
25 jurisdiction with that consenting local prosecutor to prosecute an  
26 offense under this section that involves the state Medicaid  
27 program.

1 SECTION 2.138. Section 32.46, Penal Code, is amended by  
2 adding Subsection (e) to read as follows:

3 (e) With the consent of the appropriate local county or  
4 district attorney, the attorney general has concurrent  
5 jurisdiction with that consenting local prosecutor to prosecute an  
6 offense under this section that involves the state Medicaid  
7 program.

8 SECTION 2.139. Section 37.10, Penal Code, is amended by  
9 adding Subsection (i) to read as follows:

10 (i) With the consent of the appropriate local county or  
11 district attorney, the attorney general has concurrent  
12 jurisdiction with that consenting local prosecutor to prosecute an  
13 offense under this section that involves the state Medicaid  
14 program.

15 SECTION 2.140. Section 57.046, Utilities Code, is amended  
16 by adding Subsection (c) to read as follows:

17 (c) In addition to the purposes for which the qualifying  
18 entities account may be used, the board may use money in the account  
19 to award grants to the Health and Human Services Commission for  
20 technology initiatives of the commission.

21 SECTION 2.141. Articles 59.01(1) and (2), Code of Criminal  
22 Procedure, are amended to read as follows:

23 (1) "Attorney representing the state" means the  
24 prosecutor with felony jurisdiction in the county in which a  
25 forfeiture proceeding is held under this chapter or, in a  
26 proceeding for forfeiture of contraband as defined under  
27 Subdivision (2)(B)(iv) of this article, the city attorney of a

1 municipality if the property is seized in that municipality by a  
2 peace officer employed by that municipality and the governing body  
3 of the municipality has approved procedures for the city attorney  
4 acting in a forfeiture proceeding. In a proceeding for forfeiture  
5 of contraband as defined under Subdivision (2)(B)(vii) of this  
6 article, the term includes the attorney general.

7 (2) "Contraband" means property of any nature,  
8 including real, personal, tangible, or intangible, that is:

9 (A) used in the commission of:

10 (i) any first or second degree felony under  
11 the Penal Code;

12 (ii) any felony under Section 15.031(b),  
13 21.11, 38.04, 43.25, or 43.26 or Chapter 29, 30, 31, 32, 33, 33A, or  
14 35, Penal Code; or

15 (iii) any felony under The Securities Act  
16 (Article 581-1 et seq., Vernon's Texas Civil Statutes);

17 (B) used or intended to be used in the commission  
18 of:

19 (i) any felony under Chapter 481, Health  
20 and Safety Code (Texas Controlled Substances Act);

21 (ii) any felony under Chapter 483, Health  
22 and Safety Code;

23 (iii) a felony under Chapter 153, Finance  
24 Code;

25 (iv) any felony under Chapter 34, Penal  
26 Code;

27 (v) a Class A misdemeanor under Subchapter



1 B, Chapter 365, Health and Safety Code, if the defendant has been  
2 previously convicted twice of an offense under that subchapter;  
3 [~~or~~]

4 (vi) any felony under Chapter 152, Finance  
5 Code; or

6 (vii) any felony under Chapter 31, 32, or  
7 37, Penal Code, that involves the state Medicaid program, or any  
8 felony under Chapter 36, Human Resources Code;

9 (C) the proceeds gained from the commission of a  
10 felony listed in Paragraph (A) or (B) of this subdivision or a crime  
11 of violence; or

12 (D) acquired with proceeds gained from the  
13 commission of a felony listed in Paragraph (A) or (B) of this  
14 subdivision or a crime of violence.

15 SECTION 2.142. Article 59.06, Code of Criminal Procedure,  
16 is amended by adding Subsection (p) to read as follows:

17 (p) Notwithstanding Subsection (a), and to the extent  
18 necessary to protect the commission's ability to recover amounts  
19 wrongfully obtained by the owner of the property and associated  
20 damages and penalties to which the commission may otherwise be  
21 entitled by law, the attorney representing the state shall transfer  
22 to the Health and Human Services Commission all forfeited property  
23 defined as contraband under Article 59.01(2)(B)(vii). If the  
24 forfeited property consists of property other than money or  
25 negotiable instruments, the attorney representing the state may, if  
26 approved by the commission, sell the property and deliver to the  
27 commission the proceeds from the sale, minus costs attributable to

1 the sale. The sale must be conducted in a manner that is reasonably  
2 expected to result in receiving the fair market value for the  
3 property.

4 SECTION 2.143. STUDY. (a) The Medicaid and Public  
5 Assistance Fraud Oversight Task Force, with the participation of  
6 the Texas Department of Health's bureau of vital statistics and  
7 other agencies designated by the comptroller, shall study  
8 procedures and documentation requirements used by the state in  
9 confirming a person's identity for purposes of establishing  
10 entitlement to Medicaid and other benefits provided through health  
11 and human services programs.

12 (b) Not later than December 1, 2004, the Medicaid and Public  
13 Assistance Fraud Oversight Task Force, with assistance from the  
14 agencies participating in the study required by Subsection (a) of  
15 this section, shall submit a report to the legislature containing  
16 recommendations for improvements in the procedures and  
17 documentation requirements described by Subsection (a) of this  
18 section that would strengthen the state's ability to prevent fraud  
19 and abuse in the Medicaid program and other health and human  
20 services programs.

21 SECTION 2.144. STUDY: REVENUE ENHANCEMENT RELATED TO  
22 MEDICAID VENDOR DRUG REBATE. (a) A task force is created to study  
23 the prescription drug rebate system established and operated under  
24 the medical assistance program and other related programs.

25 (b) The commission shall establish a task force, composed of  
26 appropriate legislators, state agency personnel, and other  
27 appropriate personnel to study the prescription drug rebate system

1 established and operated under the medical assistance program and  
2 other related programs.

3 (c) The study must include:

4 (1) a background on the development and operation of  
5 the federal vendor drug rebate and state supplemental rebate  
6 system;

7 (2) a description of current and historical state  
8 efforts to develop and implement alternatives to the federal vendor  
9 drug rebate system;

10 (3) a review of any relevant case law or legal  
11 precedents related to the vendor drug rebate system;

12 (4) an analysis of state implementation, including  
13 attempted implementation, of an exemption of federal requirements,  
14 including the federal Social Security Act, related to vendor drug  
15 rebates, prior authorization provisions, and formulary; and

16 (5) feasibility of developing either an alternative  
17 rebate system or other mechanism to enhance the state's share of  
18 prescription drug rebates.

19 (d) The study must be completed by December 1, 2004, and  
20 presented to the governor and the presiding officers of each house,  
21 the House Committee on Appropriations, and the Senate Finance  
22 Committee.

23 SECTION 2.145. LEGISLATIVE INTENT REGARDING PROVISION OF  
24 HEALTH AND HUMAN SERVICE TRANSPORTATION THROUGH THE TEXAS  
25 DEPARTMENT OF TRANSPORTATION. It is the intent of the legislature  
26 that the provision of health and human service transportation  
27 through the Texas Department of Transportation will improve the

1 delivery of transportation services to clients and enhance their  
2 access to transportation services. Furthermore, it is the intent  
3 of the legislature that these services be provided in a manner that  
4 will generate efficiencies in operation, control costs, and permit  
5 increased levels of service. The Texas Department of  
6 Transportation shall encourage cooperation and coordination among  
7 transportation providers, regional transportation brokers, and  
8 actual and potential clients in an effort to achieve the stated  
9 legislative goals.

10 SECTION 2.146. (a) A change in law made by this article to  
11 Section 242.047, Health and Safety Code, that requires the Texas  
12 Department of Health to accept an annual accreditation review from  
13 the Joint Commission on Accreditation of Health Organizations for a  
14 nursing home in satisfaction of the requirements for certification:

15 (1) applies only to a nursing home that participates  
16 in the medical assistance program under Chapter 32, Human Resources  
17 Code, before September 1, 2003; and

18 (2) may be implemented only as a pilot program.

19 (b) A pilot program operated in accordance with this section  
20 expires September 1, 2007.

21 SECTION 2.147. (a) The Texas State Board of Pharmacy shall  
22 adopt the rules required by Section 562.1085, Occupations Code, as  
23 added by this Act, not later than December 1, 2003.

24 (b) Notwithstanding Section 562.1085, Occupations Code, as  
25 added by this Act, a pharmacy is not required to accept unused drugs  
26 from a health care facility before January 1, 2004.

27 SECTION 2.148. The Health and Human Services Commission

1 shall adopt the rules required by Sections 32.028(i) and (j), Human  
2 Resources Code, as added by this Act, not later than December 1,  
3 2003.

4 SECTION 2.149. TRANSFER OF MEDICAL TRANSPORTATION PROGRAM.

5 (a) On September 1, 2004, or on an earlier date specified by the  
6 Health and Human Services Commission:

7 (1) all powers, duties, functions, activities,  
8 obligations, rights, contracts, records, property, and  
9 appropriations or other money of the Texas Department of Health  
10 that are determined by the commissioner of health and human  
11 services to be essential to the administration of the medical  
12 transportation program are transferred to the Health and Human  
13 Services Commission;

14 (2) a rule or form adopted by the Texas Department of  
15 Health that relates to the medical transportation program is a rule  
16 or form of the Health and Human Services Commission and remains in  
17 effect until altered by the commission;

18 (3) a reference in law or an administrative rule to the  
19 Texas Department of Health that relates to the medical  
20 transportation program means the Health and Human Services  
21 Commission;

22 (4) a license, permit, or certification in effect that  
23 was issued by the Texas Department of Health and that relates to the  
24 medical transportation program is continued in effect as a license,  
25 permit, or certification of the Health and Human Services  
26 Commission; and

27 (5) a complaint, investigation, or other proceeding

1 pending before the Texas Department of Health that relates to the  
2 medical transportation program is transferred without change in  
3 status to the Health and Human Services Commission.

4 (b) The Health and Human Services Commission shall take all  
5 action necessary to provide for the transfer of the medical  
6 transportation program to the commission as soon as possible after  
7 the effective date of this section but not later than September 1,  
8 2004.

9 SECTION 2.150. CONSOLIDATION OF CERTAIN DIVISIONS AND  
10 ACTIVITIES. (a) Not later than March 1, 2004, the Health and Human  
11 Services Commission shall consolidate the Medicaid post-payment  
12 third-party recovery divisions or activities of the Texas  
13 Department of Human Services, the Medicaid vendor drug program, and  
14 the state's Medicaid claims administrator with the Medicaid  
15 post-payment third-party recovery function.

16 (b) The Health and Human Services Commission shall use the  
17 commission's Medicaid post-payment third-party recovery contractor  
18 for the consolidated division.

19 (c) The Health and Human Services Commission shall update  
20 its computer system to facilitate the consolidation.

21 SECTION 2.151. ABOLITION OF ADVISORY COMMITTEES. (a)  
22 Notwithstanding any other provision of state law, each advisory  
23 committee, as that term is defined by Section 2110.001, Government  
24 Code, created before the effective date of this section that  
25 advises the Health and Human Services Commission or a health and  
26 human services agency is abolished on the effective date of this  
27 section unless the committee:

1           (1) is required by federal law; or

2           (2) advises an agency with respect to certification or  
3 licensing programs, the regulation of entities providing health and  
4 human services, or the implementation of a duty prescribed under  
5 this article, as determined by the commissioner of health and human  
6 services.

7           (b) The commissioner of health and human services shall  
8 certify which advisory committees are exempt from abolition under  
9 Subsection (a) of this section and shall publish that certification  
10 in the Texas Register.

11           (c) An advisory committee that is created on or after the  
12 effective date of this section or that is exempt under Subsection  
13 (b) of this section from abolition shall make recommendations to  
14 the executive director of the health and human services agency the  
15 advisory committee was created to advise and to the commissioner of  
16 health and human services to assist with eliminating or minimizing  
17 overlapping functions or required duties between the health and  
18 human services agencies or between those agencies and the Health  
19 and Human Services Commission.

20           (d) This section does not apply to the telemedicine advisory  
21 committee established under Section 531.02172, Government Code, as  
22 added by Chapters 661 and 959, Acts of the 77th Legislature, Regular  
23 Session, 2001, and that committee continues in existence.

24           SECTION 2.152. Community mental health centers may  
25 coordinate with local community health centers, federally  
26 qualified health centers (FQHC), and/or disproportionate share  
27 hospitals for the purpose of accessing local, state, and federal

1 programs that could result in lower cost pharmaceuticals. In  
2 particular, community mental health centers may form a referral  
3 relationship with community health centers, federally qualified  
4 health centers (FQHC), disproportionate share hospitals, and/or  
5 other eligible entities for the purpose of obtaining federal 340B  
6 pricing for pharmaceuticals. Community mental health centers may  
7 form a referral relationship with community health centers,  
8 federally qualified health centers (FQHC), disproportionate share  
9 hospitals, and/or other eligible entities for the purpose of taking  
10 advantage of 340B or other lower cost drug programs regardless of  
11 any statewide preferred drug list or vendor drug program which may  
12 be adopted.

13 SECTION 2.153. CHILD HEALTH PLAN PROGRAM WAIVER. Not later  
14 than October 1, 2003, the Health and Human Services Commission  
15 shall request and actively pursue any necessary waivers from a  
16 federal agency or any other appropriate entity to allow families  
17 enrolled in the state Medicaid program to opt into the child health  
18 plan program under Chapter 62, Health and Safety Code, while  
19 retaining the appropriate federal match rate, the state's  
20 entitlement to federal matching funds, and the child's entitlement  
21 to Medicaid coverage. The waiver shall, on at least an annual  
22 basis, allow families eligible for Medicaid who have previously  
23 opted to enroll their children in the child health plan program  
24 under Chapter 62, Health and Safety Code, to return those children  
25 to the Medicaid program.

26 SECTION 2.154. STATE CHILD HEALTH PLAN AMENDMENT. (a) In  
27 this section, "group plan" means the group health benefit plan



1 under the health insurance premium payment reimbursement program  
2 established under Section 62.059, Health and Safety Code.

3 (b) As soon as possible after the effective date of this  
4 section, the Health and Human Services Commission shall submit for  
5 approval a plan amendment relating to the state child health plan  
6 under 42 U.S.C. Section 1397ff, as amended, as necessary to include  
7 the employers' share of required premiums for coverage of  
8 individuals enrolled in the group plan as expenditures for the  
9 purpose of determining the state children's health insurance  
10 expenditures, as that term is defined by 42 U.S.C. Section  
11 1397ee(d)(2)(B), as amended, for federal match funding for the  
12 child health plan program provided under Chapter 62, Health and  
13 Safety Code.

14 SECTION 2.155. STATE MEDICAID PLAN AMENDMENT. (a) In this  
15 section, "group plan" means the group health benefit plan under the  
16 health insurance premium payment reimbursement program for  
17 Medicaid recipients established under Section 32.0422, Human  
18 Resources Code.

19 (b) As soon as possible after the effective date of this  
20 section, the Health and Human Services Commission shall submit an  
21 amendment to the state Medicaid plan as necessary to allow this  
22 state to include the employers' share of required premiums for  
23 coverage of individuals enrolled in the group plan as expenditures  
24 for the purpose of determining this state's Medicaid program  
25 expenditures for federal match funding for the state Medicaid  
26 program.

27 SECTION 2.156. REPEAL. (a) The following are repealed:

1           (1) Sections 62.055(b) and (c), 62.056, 62.057,  
2 142.006(d), (e), and (f), 142.009(i), 142.0176, 242.0372,  
3 252.206(d), and 252.207(b), Health and Safety Code; and

4           (2) Sections 32.027(b) and (e), Human Resources Code.

5           (b) An advisory committee established under Section 62.057,  
6 Health and Safety Code, is abolished on the effective date of this  
7 section.

8           SECTION 2.157. In the event of a conflict between a  
9 provision of this Act and another Act passed by the 78th  
10 Legislature, Regular Session, 2003, that becomes law, this Act  
11 prevails and controls regardless of the relative dates of  
12 enactment.

13           SECTION 2.158. FEDERAL AUTHORIZATION OR WAIVER. If before  
14 implementing any provision of this Act a state agency determines  
15 that a waiver or authorization from a federal agency is necessary  
16 for implementation of that provision, the agency affected by the  
17 provision shall request the waiver or authorization and may delay  
18 implementing that provision until the waiver or authorization is  
19 granted.

20           SECTION 2.159. Any funds that are used by the Texas  
21 Department of Transportation to implement the transportation  
22 services provided in Sections 2.127, 2.128, 2.129, 2.130, 2.131,  
23 2.132, 2.133, and 2.134 of this Act shall be accounted for and  
24 budgeted separately from other funds appropriated to the Texas  
25 Department of Transportation for any other public transportation  
26 program or budget strategy.

27           SECTION 2.160. Section 38.001, Education Code, is amended

1 by amending Subsection (c) and adding Subsections (c-1) and (f) to  
2 read as follows:

3 (c) Immunization is not required for a person's admission to  
4 any elementary or secondary school if the person applying for  
5 admission:

6 (1) submits to the admitting official:

7 (A) an affidavit or a certificate signed by a  
8 physician who is duly registered and licensed to practice medicine  
9 in the United States, in which it is stated that, in the physician's  
10 opinion, the immunization required poses a significant risk [~~would~~  
11 ~~be injurious~~] to the health and well-being of the applicant or any  
12 member of the applicant's family or household; or

13 (B) an affidavit signed by the applicant or, if a  
14 minor, by the applicant's parent or guardian stating that the  
15 applicant declines immunization for reasons of conscience,  
16 including a religious belief [~~conflicts with the tenets and~~  
17 ~~practice of a recognized church or religious denomination of which~~  
18 ~~the applicant is an adherent or member, except that this exemption~~  
19 ~~does not apply in times of emergency or epidemic declared by the~~  
20 ~~commissioner of public health~~]; or

21 (2) is a member of the armed forces of the United  
22 States and is on active duty.

23 (c-1) An affidavit submitted under Section (c)(1)(B) must  
24 be on a form described by Section 161.0041, Health and Safety Code,  
25 and must be submitted to the admitting official not later than the  
26 90th day after the date the affidavit is notarized.

27 (f) A person who has not received the immunizations required

1 by this section for reasons of conscience, including because of the  
2 person's religious beliefs, may be excluded from school in times of  
3 emergency or epidemic declared by the commissioner of public  
4 health.

5 SECTION 2.161. Section 51.933, Education Code, is amended  
6 by amending Subsection (d) and adding Subsection (d-1) to read as  
7 follows:

8 (d) No form of immunization is required for a person's  
9 admission to an institution of higher education if the person  
10 applying for admission:

11 (1) submits to the admitting official:

12 (A) an affidavit or a certificate signed by a  
13 physician who is duly registered and licensed to practice medicine  
14 within the United States in which it is stated that, in the  
15 physician's opinion, the immunization required poses a significant  
16 risk [~~would be injurious~~] to the health and well-being of the  
17 applicant or any member of the applicant's family or household; or

18 (B) an affidavit signed by the applicant or, if a  
19 minor, by the applicant's parent or guardian stating that the  
20 applicant declines immunization for reasons of conscience,  
21 including a religious belief [~~conflicts with the tenets and~~  
22 ~~practice of a recognized church or religious denomination of which~~  
23 ~~the applicant is an adherent or member~~]; or

24 (2) is a member of the armed forces of the United  
25 States and is on active duty.

26 (d-1) An affidavit submitted under Section (d)(1)(B) must  
27 be on a form described by Section 161.0041, Health and Safety Code,

1 and must be submitted to the admitting official not later than the  
2 90th day after the date the affidavit is notarized.

3 SECTION 2.162. Section 161.004(d), Health and Safety Code,  
4 is amended to read as follows:

5 (d) A child is exempt from an immunization required by this  
6 section if:

7 (1) [~~immunization conflicts with the tenets of an~~  
8 ~~organized religion to which~~] a parent, managing conservator, or  
9 guardian states that the immunization is being declined for reasons  
10 of conscience, including a religious belief [belongs]; or

11 (2) the immunization is medically contraindicated  
12 based on the opinion of [an examination of the child by] a physician  
13 licensed by any state in the United States who has examined the  
14 child.

15 SECTION 2.163. Subchapter A, Chapter 161, Health and Safety  
16 Code, is amended by adding Section 161.0041 to read as follows:

17 Sec. 161.0041. IMMUNIZATION EXEMPTION AFFIDAVIT FORM. (a)  
18 A person claiming an exemption from a required immunization based  
19 on reasons of conscience, including a religious belief, under  
20 Section 161.004 of this code, Section 38.001 or 51.933, Education  
21 Code, or Section 42.043, Human Resources Code, must complete an  
22 affidavit on a form provided by the department stating the reason  
23 for the exemption.

24 (b) The affidavit must be signed by the person claiming the  
25 exemption or, if the person is a minor, the person's parent,  
26 managing conservator, or guardian, and the affidavit must be  
27 notarized.

1       (c) A person claiming an exemption from a required  
2 immunization under this section may only obtain the affidavit form  
3 by submitting a written request for the affidavit form to the  
4 department.

5       (d) The department shall develop a blank affidavit form that  
6 contains a seal or other security device to prevent reproduction of  
7 the form. The affidavit form shall contain a statement indicating  
8 that the person or, if a minor, the person's parent, managing  
9 conservator, or guardian understands the benefits and risks of  
10 immunizations and the benefits and risks of not being immunized.

11       (e) The department shall maintain a record of the total  
12 number of affidavit forms sent out each year and shall report that  
13 information to the legislature each year. The department may not  
14 maintain a record of the names of individuals who request an  
15 affidavit under this section.

16       SECTION 2.164. Section 42.043, Human Resources Code, is  
17 amended by amending Subsection (d) and adding Subsection (d-1) to  
18 read as follows:

19       (d) No immunization may be required for admission to a  
20 facility regulated under this chapter if a person applying for a  
21 child's admission submits one of the following affidavits:

22           (1) an affidavit signed by a licensed physician  
23 stating that the immunization poses a significant risk [~~would be~~  
24 ~~injurious~~] to the health and well-being of the child or a member of  
25 the child's family or household; or

26           (2) an affidavit signed by the child's parent or  
27 guardian stating that the applicant declines immunization for

1 reasons of conscience, including a religious belief [~~conflicts with~~  
2 ~~the tenets and practices of a recognized religious organization of~~  
3 ~~which the applicant is an adherent or a member~~].

4 (d-1) An affidavit submitted under Section (d)(2) must be on  
5 a form described by Section 161.0041, Health and Safety Code, and  
6 must be submitted not later than the 90th day after the date the  
7 affidavit is notarized.

8 SECTION 2.165. (a) Chapter 51, Government Code, is amended  
9 by adding Subchapter M to read as follows:

10 SUBCHAPTER M. ADDITIONAL FILING FEE FOR FAMILY PROTECTION

11 Sec. 51.961. FAMILY PROTECTION FEE. (a) The commissioners  
12 court of a county may adopt a family protection fee in an amount not  
13 to exceed \$15.

14 (b) Except as provided by Subsection (c), the district clerk  
15 or county clerk shall collect the family protection fee at the time  
16 a suit for dissolution of a marriage under Chapter 6, Family Code,  
17 is filed. The fee is in addition to any other fee collected by the  
18 district clerk or county clerk.

19 (c) The clerk may not collect a fee under this section from a  
20 person who is protected by an order issued under:

21 (1) Subtitle B, Title 4, Family Code; or

22 (2) Article 17.292, Code of Criminal Procedure.

23 (d) The clerk shall pay a fee collected under this section  
24 to the appropriate officer of the county in which the suit is filed  
25 for deposit in the county treasury to the credit of the family  
26 protection account. The account may be used by the commissioners  
27 court of the county only to fund a service provider located in that

1 county or an adjacent county. The commissioners court may provide  
2 funding to a nonprofit organization that provides services  
3 described by Subsection (e).

4 (e) A service provider who receives funds under Subsection  
5 (d) may provide family violence prevention, intervention, mental  
6 health, counseling, legal, and marriage preservation services to  
7 families that are at risk of experiencing or that have experienced  
8 family violence or the abuse or neglect of a child.

9 (f) In this section, "family violence" has the meaning  
10 assigned by Section 71.004, Family Code.

11 (b) Subchapter M, Chapter 51, Government Code, as added by  
12 this section, applies only to a filing fee collected for a suit for  
13 the dissolution of a marriage under Chapter 6, Family Code, on or  
14 after the effective date of this section. A filing fee collected  
15 for a suit for the dissolution of a marriage under Chapter 6, Family  
16 Code, before the effective date of this section is governed by the  
17 law as it existed immediately before the effective date of this  
18 section, and that law is continued in effect for that purpose.

19 SECTION 2.166. (a) Chapter 531, Government Code, is  
20 amended by adding Subchapter L to read as follows:

21 SUBCHAPTER L. PROVISION OF SERVICES FOR CERTAIN CHILDREN

22 WITH MULTIAGENCY NEEDS

23 Sec. 531.421. DEFINITIONS. In this subchapter:

24 (1) "Children with severe emotional disturbances"  
25 includes:

26 (A) children who are at risk of incarceration or  
27 placement in a residential mental health facility;



1           (B) children for whom a court may appoint the  
2 Department of Protective and Regulatory Services as managing  
3 conservator;

4           (C) children who are students in a special  
5 education program under Subchapter A, Chapter 29, Education Code;  
6 and

7           (D) children who have a substance abuse disorder  
8 or a developmental disability.

9           (2) "Community resource coordination group" means a  
10 coordination group established under a memorandum of understanding  
11 adopted under Section 531.055, as added by Chapter 114, Acts of the  
12 77th Legislature, Regular Session, 2001.

13           (3) "Consortium" means the consortium that oversees  
14 the Texas Integrated Funding Initiative under Subchapter G, Chapter  
15 531, as added by Chapter 446, Acts of the 76th Legislature, Regular  
16 Session, 1999.

17           (4) "Systems of care services" means a comprehensive  
18 state system of mental health services and other necessary and  
19 related services that is organized as a coordinated network to meet  
20 the multiple and changing needs of children with severe emotional  
21 disturbances and their families.

22           Sec. 531.422. EVALUATIONS BY COMMUNITY RESOURCE  
23 COORDINATION GROUPS. (a) Each community resource coordination  
24 group shall evaluate the provision of systems of care services in  
25 the community that the group serves. Each evaluation must:

26           (1) describe and prioritize services needed by  
27 children with severe emotional disturbances in the community;

1           (2) review and assess the systems of care services  
2 that are available in the community to meet those needs;

3           (3) assess the integration of the provision of those  
4 services; and

5           (4) identify any barriers to the effective provision  
6 of those services.

7           (b) Each community resource coordination group shall create  
8 a report that includes the evaluation in Subsection (a) and makes  
9 related recommendations, including:

10           (1) suggested policy and statutory changes at agencies  
11 that provide systems of care services; and

12           (2) recommendations for overcoming barriers to the  
13 provision of systems of care services and improving the integration  
14 of those services.

15           (c) Each community resource coordination group shall submit  
16 the report described by Subsection (b) to the consortium. The  
17 consortium shall provide a deadline to each group for submitting  
18 the reports. The time frame for completing the reports must be  
19 coordinated with any regional reviews by the commission of the  
20 delivery of related services.

21           Sec. 531.423. SUMMARY REPORT BY TEXAS INTEGRATED FUNDING  
22 INITIATIVE CONSORTIUM. (a) The consortium shall create a summary  
23 report based on the evaluations in the reports submitted to the  
24 consortium by community resource coordination groups under Section  
25 531.422. The consortium's report must include recommendations for  
26 policy and statutory changes at each agency that is involved in the  
27 provision of systems of care services and the outcome expected from

1 implementing each recommendation.

2 (b) The consortium shall coordinate, where appropriate, the  
3 recommendations in the report created under this section with  
4 recommendations in the assessment developed under S.B. No. 491,  
5 Acts of the 78th Legislature, Regular Session, 2003, and with the  
6 continuum of care developed under S.B. No. 490, Acts of the 78th  
7 Legislature, Regular Session, 2003.

8 (c) The consortium may include in the report created under  
9 this section recommendations for the statewide expansion of sites  
10 participating in the Texas Integrated Funding Initiative under  
11 Subchapter G, Chapter 531, as added by Chapter 446, Acts of the 76th  
12 Legislature, Regular Session, 1999, and the integration of services  
13 provided at those sites with services provided by community  
14 resource coordination groups.

15 (d) The consortium shall provide a copy of the report  
16 created under this section to each agency for which the report makes  
17 a recommendation and to other agencies as appropriate.

18 Sec. 531.424. AGENCY IMPLEMENTATION OF RECOMMENDATIONS. An  
19 agency described by Section 531.423(a) shall, as appropriate, adopt  
20 rules, policy changes, and memoranda of understanding with other  
21 agencies to implement the recommendations in the report created  
22 under Section 531.423.

23 (b) The consortium that oversees the Texas Integrated  
24 Funding Initiative under Subchapter G, Chapter 531, Government  
25 Code, as added by Chapter 446, Acts of the 76th Legislature, Regular  
26 Session, 1999, in cooperation with the Health and Human Services  
27 Commission and the Texas Department of Health, shall report to the

1 governor and the 79th Legislature not later than January 11, 2005,  
2 on:

3 (1) recommendations in the report under Section  
4 531.423, Government Code, as added by this section, including  
5 recommendations for statutory changes; and

6 (2) agency implementation of recommendations under  
7 Section 531.424, Government Code, as added by this section.

8 SECTION 2.167. Subdivisions (2) and (7), Section 81.003,  
9 Health and Safety Code, are amended to read as follows:

10 (2) "Health authority" means:

11 (A) a physician appointed as a health authority  
12 ~~[such]~~ under Chapter 121 (Local Public Health Reorganization Act)  
13 or the health authority's designee; or

14 (B) a physician appointed as a regional director  
15 under Chapter 121 (Local Public Health Reorganization Act) who  
16 performs the duties of a health authority or the regional  
17 director's designee.

18 (7) "Publichealth disaster" means:

19 (A) a declaration by the governor of a state of  
20 disaster; and

21 (B) a determination by the commissioner that  
22 there exists an immediate threat from a communicable disease that:

23 (i) poses a high risk of death or serious  
24 long-term disability to a large number of people; and

25 (ii) creates a substantial risk of public  
26 exposure because of the disease's high level of contagion or the  
27 method by which the disease is transmitted [~~"Regional director"~~]

1 ~~means a physician appointed as such under Chapter 121 (Local Public~~  
2 ~~Health Reorganization Act)].~~

3 SECTION 2.168. Section 81.004, Health and Safety Code, is  
4 amended by adding Subsection (d) to read as follows:

5 (d) A designee of the commissioner may exercise a power  
6 granted to or perform a duty imposed on the commissioner under this  
7 chapter except as otherwise required by law.

8 SECTION 2.169. Subsection (d), Section 81.023, Health and  
9 Safety Code, is transferred to Subchapter A, Chapter 81, Health and  
10 Safety Code, redesignated as Section 81.011, Health and Safety  
11 Code, and amended to read as follows:

12 Sec. 81.011. REQUEST FOR INFORMATION. [~~(d)~~] In times of  
13 emergency or epidemic declared by the commissioner, the department  
14 [~~board~~] is authorized to request information pertaining to names,  
15 dates of birth, and most recent addresses of individuals from the  
16 driver's license records of the Department of Public Safety for the  
17 purpose of notification to individuals of the need to receive  
18 certain immunizations or diagnostic, evaluation, or treatment  
19 services for suspected communicable diseases.

20 SECTION 2.170. Section 81.041, Health and Safety Code, is  
21 amended by adding Subsection (f) to read as follows:

22 (f) In a public health disaster, the commissioner may  
23 require reports of communicable diseases or other health conditions  
24 from providers without board rule or action. The commissioner  
25 shall issue appropriate instructions relating to complying with the  
26 reporting requirements of this section.

27 SECTION 2.171. Subsection (a), Section 81.042, Health and

1 Safety Code, is amended to read as follows:

2 (a) A report under Subsection (b), (c), or (d) shall be made  
3 to the local health authority [~~or, if there is no local health~~  
4 ~~authority, the regional director~~].

5 SECTION 2.172. Section 81.043, Health and Safety Code, is  
6 amended to read as follows:

7 Sec. 81.043. RECORDS AND REPORTS OF HEALTH AUTHORITY [~~AND~~  
8 ~~REGIONAL DIRECTOR~~]. (a) Each health authority [~~or regional~~  
9 ~~director~~] shall keep a record of each case of a reportable disease  
10 that is reported to the authority [~~or director~~].

11 (b) A health authority [~~or regional director~~] shall report  
12 reportable diseases to the department's central office at least as  
13 frequently as the interval set by board rule.

14 SECTION 2.173. Section 81.046, Health and Safety Code, is  
15 amended by amending Subsection (b) and adding Subsection (f) to  
16 read as follows:

17 (b) Reports, records, and information relating to cases or  
18 suspected cases of diseases or health conditions are not public  
19 information under Chapter 552, Government Code, and may not be  
20 released or made public on subpoena or otherwise except as provided  
21 by Subsections (c), [~~and~~] (d), and (f).

22 (f) Reports, records, and information relating to cases or  
23 suspected cases of diseases or health conditions may be released to  
24 the extent necessary during a public health disaster to law  
25 enforcement personnel solely for the purpose of protecting the  
26 health or life of the person identified in the report, record, or  
27 information. Only the minimum necessary information may be

1 released under this subsection, as determined by the health  
2 authority or the department.

3 SECTION 2.174. Section 81.064, Health and Safety Code, is  
4 amended by amending Subsection (a) and adding Subsection (c) to  
5 read as follows:

6 (a) The department or [~~commissioner, the commissioner's~~  
7 ~~designee,~~] a health authority[~~, or a health authority's designee~~]  
8 may enter at reasonable times and inspect within reasonable limits  
9 a public place in the performance of that person's duty to prevent  
10 or control the entry into or spread in this state of communicable  
11 disease by enforcing this chapter or the rules of the board adopted  
12 under this chapter.

13 (c) Evidence gathered during an inspection by the  
14 department or health authority under this section may not be used in  
15 a criminal proceeding other than a proceeding to assess a criminal  
16 penalty under this chapter.

17 SECTION 2.175. Section 81.065, Health and Safety Code, is  
18 amended to read as follows:

19 Sec. 81.065. RIGHT OF ENTRY. (a) For an investigation or  
20 inspection, the commissioner, an employee of the department, or a  
21 health authority has the right of entry on land or in a building,  
22 vehicle, watercraft, or aircraft and the right of access to an  
23 individual, animal, or object that is in isolation, detention,  
24 restriction, or quarantine instituted by the commissioner, an  
25 employee of the department, or a health authority or instituted  
26 voluntarily on instructions of a private physician.

27 (b) Evidence gathered during an entry by the commissioner,

1 department, or health authority under this section may not be used  
2 in a criminal proceeding other than a proceeding to assess a  
3 criminal penalty under this chapter.

4 SECTION 2.176. Subsection (a), Section 81.066, Health and  
5 Safety Code, is amended to read as follows:

6 (a) A person commits an offense if the person knowingly  
7 conceals or attempts to conceal from the department [~~board~~], a  
8 health authority, or a peace officer, during the course of an  
9 investigation under this chapter, the fact that:

10 (1) the person has, has been exposed to, or is the  
11 carrier of a communicable disease that is a threat to the public  
12 health; or

13 (2) a minor child or incompetent adult of whom the  
14 person is a parent, managing conservator, or guardian has, has been  
15 exposed to, or is the carrier of a communicable disease that is a  
16 threat to the public health.

17 SECTION 2.177. Subsection (a), Section 81.067, Health and  
18 Safety Code, is amended to read as follows:

19 (a) A person commits an offense if the person knowingly  
20 conceals, removes, or disposes of an infected or contaminated  
21 animal, object, vehicle, watercraft, or aircraft that is the  
22 subject of an investigation under this chapter by the department  
23 [~~board~~], a health authority, or a peace officer.

24 SECTION 2.178. Section 81.068, Health and Safety Code, is  
25 amended to read as follows:

26 Sec. 81.068. REFUSING ENTRY OR INSPECTION; CRIMINAL  
27 PENALTY. (a) A person commits an offense if the person knowingly



1 refuses or attempts to refuse entry to the department [~~board~~], a  
2 health authority, or a peace officer on presentation of a valid  
3 search warrant to investigate, inspect, or take samples on premises  
4 controlled by the person or by an agent of the person acting on the  
5 person's instruction.

6 (b) A person commits an offense if the person knowingly  
7 refuses or attempts to refuse inspection under Section 81.064 or  
8 entry or access under Section 81.065.

9 (c) An offense under this section is a Class A misdemeanor.

10 SECTION 2.179. Section 81.082, Health and Safety Code, is  
11 amended to read as follows:

12 Sec. 81.082. ADMINISTRATION OF CONTROL MEASURES. (a) A  
13 health authority has supervisory authority and control over the  
14 administration of communicable disease control measures in the  
15 health authority's jurisdiction unless specifically preempted by  
16 the department [~~board~~]. Control measures imposed by a health  
17 authority must be consistent with, and at least as stringent as, the  
18 control measure standards in rules adopted by the board.

19 (b) A communicable disease control measure imposed by a  
20 health authority in the health authority's jurisdiction may be  
21 amended, revised, or revoked by the department [~~board~~] if the  
22 department [~~board~~] finds that the modification is necessary or  
23 desirable in the administration of a regional or statewide public  
24 health program or policy. A control measure imposed by the  
25 department may not be modified or discontinued until the department  
26 authorizes the action.

27 (c) The control measures may be imposed on an individual,

1 animal, place, or object, as appropriate.

2 (d) A declaration of a public health disaster may continue  
3 for not more than 30 days. A public health disaster may be renewed  
4 one time by the commissioner for an additional 30 days.

5 (e) The governor may terminate a declaration of a public  
6 health disaster at any time.

7 (f) In this section, "control measures" includes:

- 8 (1) immunization;
- 9 (2) detention;
- 10 (3) restriction;
- 11 (4) disinfection;
- 12 (5) decontamination;
- 13 (6) isolation;
- 14 (7) quarantine;
- 15 (8) disinfestation;
- 16 (9) chemoprophylaxis;
- 17 (10) preventive therapy;
- 18 (11) prevention; and
- 19 (12) education.

20 SECTION 2.180. Subsection (e), Section 81.083, Health and  
21 Safety Code, is amended to read as follows:

22 (e) An individual may be subject to court orders under  
23 Subchapter G if the individual is infected or is reasonably  
24 suspected of being infected with a communicable disease that  
25 presents an immediate threat to the public health and:

- 26 (1) the individual, or the individual's parent, legal  
27 guardian, or managing conservator if the individual is a minor,

1 does not comply with the written orders of the department or a  
2 health authority under this section; or ~~and~~

3 (2) a public health disaster exists, regardless of  
4 whether the department or health authority has issued a written  
5 order and the individual has indicated that the individual will not  
6 voluntarily comply with control measures ~~[is infected or is~~  
7 ~~reasonably suspected of being infected with a communicable disease~~  
8 ~~that presents an immediate threat to the public health]~~.

9 SECTION 2.181. Section 81.084, Health and Safety Code, is  
10 amended by amending Subsection (b) and adding Subsections (d-1) and  
11 (k) to read as follows:

12 (b) The department or health authority shall send notice of  
13 its action by registered or certified mail or by personal delivery  
14 to the person who owns or controls the property. If the property is  
15 land or a structure or an animal or other property on the land, the  
16 department or health authority shall also post the notice on the  
17 land and at a place convenient to the public in ~~on~~ the county  
18 courthouse ~~door~~. If the property is infected or contaminated as a  
19 result of a public health disaster, the department or health  
20 authority is not required to provide notice under this subsection.

21 (d-1) In a public health disaster, the department or health  
22 authority by written order may require a person who owns or controls  
23 property to impose control measures that are technically feasible  
24 to disinfect or decontaminate the property or, if technically  
25 feasible control measures are not available, may order the person  
26 who owns or controls the property:

27 (1) to destroy the property, other than land, in a

1 manner that disinfects or decontaminates the property to prevent  
2 the spread of infection or contamination;

3 (2) if the property is land, to securely fence the  
4 perimeter of the land or any part of the land that is infected or  
5 contaminated; or

6 (3) to securely seal off an infected or contaminated  
7 structure or other property on land to prevent entry into the  
8 infected or contaminated area until the department or health  
9 authority authorizes entry into the structure or property.

10 (k) In a public health disaster, the department or a health  
11 authority may impose additional control measures the department or  
12 health authority considers necessary and most appropriate to  
13 arrest, control, and eradicate the threat to the public health.

14 SECTION 2.182. Section 81.085, Health and Safety Code, is  
15 amended by amending Subsections (a), (b), (c), (e), (f), and (h),  
16 and adding Subsection (i) to read as follows:

17 (a) If an outbreak of communicable disease occurs in this  
18 state, the commissioner or one or more health authorities may  
19 impose an area quarantine coextensive with the area affected. The  
20 commissioner may impose an area quarantine, if the commissioner has  
21 reasonable cause to believe that individuals or property in the  
22 area may be infected or contaminated with a communicable disease,  
23 for the period necessary to determine whether an outbreak of  
24 communicable disease has occurred. A health authority may impose  
25 the quarantine only within the boundaries of the health authority's  
26 jurisdiction.

27 (b) A health authority may not impose an area quarantine

1 until the authority consults with [~~and obtains the approval of~~] the  
2 department. A health authority that imposes an area quarantine  
3 shall give written notice to and shall consult with [~~commissioner~~  
4 ~~and of~~] the governing body of each county and municipality in the  
5 health authority's jurisdiction that has territory in the affected  
6 area as soon as practicable.

7 (c) The department may impose additional disease control  
8 measures in a quarantine area that the department considers  
9 necessary and most appropriate to arrest, control, and eradicate  
10 the threat to the public health. Absent preemptive action by the  
11 department [~~board~~] under this chapter or by the governor under  
12 Chapter 418, Government Code (Texas Disaster Act of 1975), a health  
13 authority may impose in a quarantine area under the authority's  
14 jurisdiction additional disease control measures that the health  
15 authority considers necessary and most appropriate to arrest,  
16 control, and eradicate the threat to the public health.

17 (e) The department or health authority may use all  
18 reasonable means of communication to inform persons in the  
19 quarantine area of the department's [~~board's~~] or health authority's  
20 orders and instructions during the period of area quarantine. The  
21 department or health authority shall publish at least once each  
22 week during the area quarantine period, in a newspaper of general  
23 circulation in the area, a notice of the orders or instructions in  
24 force with a brief explanation of their meaning and effect. Notice  
25 by publication is sufficient to inform persons in the area of their  
26 rights, duties, and obligations under the orders or instructions.

27 (f) The department [~~commissioner~~] or, with the department's

1 ~~[commissioner's]~~ consent, a health authority may terminate an area  
2 quarantine.

3 (h) A person commits an offense if the person knowingly  
4 fails or refuses to obey a rule, order, or instruction of the  
5 department ~~[board]~~ or an order or instruction of a health authority  
6 issued under a department ~~[board]~~ rule and published during an area  
7 quarantine under this section. An offense under this subsection is  
8 a felony of the third degree.

9 (i) On request of the department during a public health  
10 disaster, an individual shall disclose the individual's  
11 immunization information. If the individual does not have updated  
12 or appropriate immunizations, the department may take appropriate  
13 action during a quarantine to protect that individual and the  
14 public from the communicable disease.

15 SECTION 2.183. Subsections (b) and (i), Section 81.086,  
16 Health and Safety Code, are amended to read as follows:

17 (b) If the department or health authority has reasonable  
18 cause to believe that a carrier or conveyance has departed from or  
19 traveled through an area infected or contaminated with a  
20 communicable disease, the department or health authority may order  
21 the owner, operator, or authorized agent in control of the carrier  
22 or conveyance to:

23 (1) stop the carrier or conveyance at a port of entry  
24 or place of first landing or first arrival in this state; and

25 (2) provide ~~[a statement in a form approved by the~~  
26 ~~board that includes information required by board rules, including]~~  
27 information on passengers and cargo manifests~~[, and]~~ that includes

1 the details of:

2 (A) any illness suspected of being communicable  
3 that occurred during the journey;

4 (B) any condition on board the carrier or  
5 conveyance during the journey that may lead to the spread of  
6 disease; and

7 (C) any control measures imposed on the carrier  
8 or conveyance, its passengers or crew, or its cargo or any other  
9 object on board during the journey.

10 (i) The department or health authority may require an  
11 individual transported by carrier or conveyance who the department  
12 or health authority has reasonable cause to believe has been  
13 exposed to or is the carrier of a communicable disease to be  
14 isolated from other travelers and to disembark with the  
15 individual's personal effects and baggage at the first location  
16 equipped with adequate investigative and disease control  
17 facilities, whether the person is in transit through this state or  
18 to an intermediate or ultimate destination in this state. The  
19 department or health authority may investigate and, if necessary,  
20 isolate or involuntarily hospitalize the individual until the  
21 department or health authority approves the discharge as authorized  
22 by Section 81.083 [~~81.084~~].

23 SECTION 2.184. Subsection (a), Section 81.088, Health and  
24 Safety Code, is amended to read as follows:

25 (a) A person commits an offense if the person knowingly or  
26 intentionally:

27 (1) removes, alters, or attempts to remove or alter an

1 object the person knows is a quarantine device, notice, or security  
2 item in a manner that diminishes the [~~device's~~] effectiveness of of  
3 the device, notice, or item; or

4 (2) destroys an object the person knows is a  
5 quarantine device, notice, or security item.

6 SECTION 2.185. Subsection (a), Section 81.089, Health and  
7 Safety Code, is amended to read as follows:

8 (a) A person commits an offense if, before notifying the  
9 department [~~board~~] or health authority at a port of entry or a place  
10 of first landing or first arrival in this state, the person  
11 knowingly or intentionally:

12 (1) transports or causes to be transported into this  
13 state an object the person knows or suspects may be infected or  
14 contaminated with a communicable disease that is a threat to the  
15 public health;

16 (2) transports or causes to be transported into this  
17 state an individual who the person knows has or is the carrier of a  
18 communicable disease that is a threat to the public health; or

19 (3) transports or causes to be transported into this  
20 state a person, animal, or object in a private or common carrier or  
21 a private conveyance that the person knows is or suspects may be  
22 infected or contaminated with a communicable disease that is a  
23 threat to the public health.

24 SECTION 2.186. Subsection (d), Section 81.151, Health and  
25 Safety Code, is amended to read as follows:

26 (d) A copy of written orders made under Section 81.083, if  
27 applicable, and a medical evaluation must be filed with the



1 application, except that a copy of the written orders need not be  
2 filed with an application for outpatient treatment.

3 SECTION 2.187. Subsection (c), Section 81.152, Health and  
4 Safety Code, is amended to read as follows:

5 (c) Any application must contain the following information  
6 according to the applicant's information and belief:

7 (1) the person's name and address;

8 (2) the person's county of residence in this state;

9 (3) a statement that the person is infected with or is  
10 reasonably suspected of being infected with a communicable disease  
11 that presents a threat to public health and that the person meets  
12 the criteria of this chapter for court orders for the management of  
13 a person with a communicable disease; and

14 (4) a statement, to be included only in an application  
15 for inpatient treatment, that the person fails or refuses to comply  
16 with written orders of the department or health authority under  
17 Section 81.083, if applicable.

18 SECTION 2.188. Subsection (a), Section 81.162, Health and  
19 Safety Code, is amended to read as follows:

20 (a) The judge or designated magistrate may issue a  
21 protective custody order if the judge or magistrate determines:

22 (1) that the health authority or department has stated  
23 its opinion and the detailed basis for its opinion that the person  
24 is infected with or is reasonably suspected of being infected with a  
25 communicable disease that presents an immediate threat to the  
26 public health; and

27 (2) that the person fails or refuses to comply with the

1 written orders of the health authority or the department under  
2 Section 81.083, if applicable.

3 SECTION 2.189. Section 161.011, Health and Safety Code, is  
4 amended to read as follows:

5 Sec. 161.011. PERMISSION REQUIRED. A person, including an  
6 officer or agent of this state or of an instrumentality or political  
7 subdivision of this state, may not enter a private residence to  
8 conduct a health inspection without first receiving:

9 (1) permission obtained from a lawful adult occupant  
10 of the residence; or

11 (2) an authorization to inspect the residence for a  
12 specific public health purpose by a magistrate or by an order of a  
13 court of competent jurisdiction on a showing of a probable  
14 violation of a state health law, a control measure under Chapter 81,  
15 or a health ordinance of a political subdivision.

16 SECTION 2.190. Subsection (d), Article 49.10, Code of  
17 Criminal Procedure, is amended to read as follows:

18 (d) A justice of the peace may not order a person to perform  
19 an autopsy on the body of a deceased person whose death was caused  
20 by Asiatic cholera, bubonic plague, typhus fever, or smallpox. A  
21 justice of the peace may not order a person to perform an autopsy on  
22 the body of a deceased person whose death was caused by a  
23 communicable disease during a public health disaster.

24 SECTION 2.191. Sections 10 and 10a, Article 49.25, Code of  
25 Criminal Procedure, are amended to read as follows:

26 Sec. 10. DISINTERMENTS AND CREMATIONS. When a body upon  
27 which an inquest ought to have been held has been interred, the

1 medical examiner may cause it to be disinterred for the purpose of  
2 holding such inquest.

3 Before any body, upon which an inquest is authorized by the  
4 provisions of this Article, can be lawfully cremated, an autopsy  
5 shall be performed thereon as provided in this Article, or a  
6 certificate that no autopsy was necessary shall be furnished by the  
7 medical examiner. Before any dead body can be lawfully cremated,  
8 the owner or operator of the crematory shall demand and be furnished  
9 with a certificate, signed by the medical examiner of the county in  
10 which the death occurred showing that an autopsy was performed on  
11 said body or that no autopsy thereon was necessary. It shall be the  
12 duty of the medical examiner to determine whether or not, from all  
13 the circumstances surrounding the death, an autopsy is necessary  
14 prior to issuing a certificate under the provisions of this  
15 section. No autopsy shall be required by the medical examiner as a  
16 prerequisite to cremation in case death is caused by the  
17 pestilential diseases of Asiatic cholera, bubonic plague, typhus  
18 fever, or smallpox. All certificates furnished to the owner or  
19 operator of a crematory by any medical examiner, under the terms of  
20 this Article, shall be preserved by such owner or operator of such  
21 crematory for a period of two years from the date of the cremation  
22 of said body. A medical examiner is not required to perform an  
23 autopsy on the body of a deceased person whose death was caused by a  
24 communicable disease during a public health disaster.

25 Sec. 10a. The body of a deceased person shall not be  
26 cremated within 48 [~~forty-eight~~] hours after the time of death as  
27 indicated on the regular death certificate, unless the death

1 certificate indicates death was caused by the pestilential diseases  
2 of Asiatic cholera, bubonic plague, typhus fever, or smallpox, or  
3 unless the time requirement is waived in writing by the county  
4 medical examiner or, in counties not having a county medical  
5 examiner, a justice of the peace. In a public health disaster, the  
6 commissioner of public health may designate other communicable  
7 diseases for which cremation within 48 hours of the time of death is  
8 authorized.

9 SECTION 2.192. (a) Section 104.011(a), Health and Safety  
10 Code, is amended to read as follows:

11 (a) The statewide health coordinating council is composed  
12 of 17 members determined as follows:

13 (1) the commissioner of health and human services or a  
14 representative designated by the commissioner;

15 (2) the presiding officer of the Texas Higher  
16 Education Coordinating Board or a representative designated by the  
17 presiding officer;

18 (3) the presiding officer of the department or a  
19 representative designated by the presiding officer;

20 (4) ~~[the presiding officer of the Texas Health Care~~  
21 ~~Information Council or a representative designated by the presiding~~  
22 ~~officer,~~

23 ~~[(5)]~~ the presiding officer of the Texas Department of  
24 Mental Health and Mental Retardation or a representative designated  
25 by the presiding officer; and

26 (5) ~~[(6)]~~ the following members appointed by the  
27 governor:

1 (A) three health care professionals from the  
2 allied health, dental, medical, mental health, [~~nursing,~~] and  
3 pharmacy professions, no two of whom may be from the same  
4 profession;

5 (B) one registered nurse;

6 (C) two representatives of a university or  
7 health-related institution of higher education;

8 (D) [~~(C)~~] one representative of a junior or  
9 community college with a nursing program;

10 (E) [~~(D)~~] one hospital administrator;

11 (F) [~~(E)~~] one managed care administrator; and

12 (G) [~~(F)~~] four public members.

13 (b) The changes in law made by this section do not affect the  
14 entitlement of a member serving on the statewide health  
15 coordinating council immediately before the effective date of this  
16 section to continue to carry out the council's functions for the  
17 remainder of the member's term. Any vacancy that occurs after the  
18 effective date of this section shall be filled in a manner that  
19 complies with Section 104.011(a), Health and Safety Code, as  
20 amended by this section.

21 SECTION 2.193. Section 142.001, Health and Safety Code, is  
22 amended by amending Subdivisions (6), (13), and (22) and adding  
23 Subdivision (22-a) to read as follows:

24 (6) "Certified agency" means a home and community  
25 support services agency, or a portion of the agency, that:

26 (A) provides a home health service; and

27 (B) is certified by an official of the Department

1 of Health and Human Services as in compliance with conditions of  
2 participation in Title XVIII, Social Security Act (42 U.S.C.  
3 Section 1395 et seq.).

4 (13) "Home health service" means the provision of one  
5 or more of the following health services required by an individual  
6 in a residence or independent living environment:

7 (A) nursing, including blood pressure monitoring  
8 and diabetes treatment;

9 (B) physical, occupational, speech, or  
10 respiratory therapy;

11 (C) medical social service;

12 (D) intravenous therapy;

13 (E) dialysis;

14 (F) service provided by unlicensed personnel  
15 under the delegation or supervision of a licensed health  
16 professional;

17 (G) the furnishing of medical equipment and  
18 supplies, excluding drugs and medicines; or

19 (H) nutritional counseling.

20 (22) "Personal assistance service" means routine  
21 ongoing care or services required by an individual in a residence or  
22 independent living environment that enable the individual to engage  
23 in the activities of daily living or to perform the physical  
24 functions required for independent living, including respite  
25 services. The term includes:

26 (A) personal care;

27 (B) health-related services performed under

1 circumstances that are defined as not constituting the practice of  
2 professional nursing by the Board of Nurse Examiners through a  
3 memorandum of understanding with the department in accordance with  
4 Section 142.016; and

5 (C) health-related tasks provided by unlicensed  
6 personnel under the delegation of a registered nurse or that a  
7 registered nurse determines do not require delegation.

8 (22-a) "Personal care" means the provision of one or  
9 more of the following services required by an individual in a  
10 residence or independent living environment:

11 (A) bathing;

12 (B) dressing;

13 (C) grooming;

14 (D) feeding;

15 (E) exercising;

16 (F) toileting;

17 (G) positioning;

18 (H) assisting with self-administered  
19 medications;

20 (I) routine hair and skin care; and

21 (J) transfer or ambulation.

22 SECTION 2.194. Section 142.002, Health and Safety Code, is  
23 amended by adding Subsection (f) to read as follows:

24 (f) A person who is not licensed to provide personal  
25 assistance services under this chapter may not indicate or imply  
26 that the person is licensed to provide personal assistance services  
27 by the use of the words "personal assistance services" or in any

1 other manner.

2 SECTION 2.195. Section 142.0062(a), Health and Safety Code,  
3 is amended to read as follows:

4 (a) A home and community support services agency or its  
5 employees who are registered nurses or licensed vocational nurses  
6 may purchase, store, or transport for the purpose of administering  
7 to the agency's employees, home health or hospice patients, or  
8 patient family members under physician's standing orders the  
9 following dangerous drugs:

10 (1) hepatitis B vaccine;

11 (2) influenza vaccine; ~~and~~

12 (3) tuberculin purified protein derivative for  
13 tuberculosis testing; and

14 (4) pneumococcal polysaccharide vaccine.

15 SECTION 2.196. Sections 142.016(a) and (b), Health and  
16 Safety Code, are amended to read as follows:

17 (a) The Board of Nurse Examiners and the department shall  
18 adopt a memorandum of understanding governing the circumstances  
19 under which the provision of health-related tasks or services do  
20 not constitute the practice of professional nursing. The agencies  
21 periodically ~~annually~~ shall review and shall renew or modify the  
22 memorandum as necessary.

23 (b) The Board of Nurse Examiners and the department shall  
24 consult with an advisory committee in developing, modifying, or  
25 renewing the memorandum of understanding. The advisory committee  
26 shall be appointed by the Board of Nurse Examiners and the  
27 department and at a minimum shall include:



1           (1) one representative from the Board of Nurse  
2 Examiners and one representative from the department to serve as  
3 cochairmen;

4           (2) one representative from the Texas Department of  
5 Mental Health and Mental Retardation;

6           (3) [~~one representative from the Texas Department of~~  
7 ~~Human Services,~~

8           [~~(4)~~] one representative from the Texas Nurses  
9 Association;

10          (4) [~~(5)~~] one representative from the Texas  
11 Association for Home Care, Incorporated, or its successor;

12          (5) [~~(6)~~] one representative from the Texas Hospice  
13 Organization, Incorporated, or its successor;

14          (6) [~~(7)~~] one representative of the Texas Respite  
15 Resource Network or its successor; and

16          (7) [~~(8)~~] two representatives of organizations such  
17 as the Personal Assistance Task Force or the Disability Consortium  
18 that advocate for clients in community-based settings.

19          SECTION 2.197. Sections 142.018(b) and (c), Health and  
20 Safety Code, are amended to read as follows:

21          (b) A home and community support services agency that has  
22 cause to believe that a person receiving services from the agency  
23 has been abused, exploited, or neglected by an employee of the  
24 agency shall report the information to:

25               (1) the department; and

26               (2) the Department of Protective and Regulatory  
27 Services or other appropriate state agency as required by Section

1 48.051 [~~Sections 48.036 and 48.082~~], Human Resources Code.

2 (c) This section does not affect the duty or authority of  
3 any state agency to conduct an investigation of alleged abuse,  
4 exploitation, or neglect as provided by other law. An  
5 investigation of alleged abuse, exploitation, or neglect may be  
6 conducted without an on-site survey, as appropriate.

7 SECTION 2.198. Section 250.001(3), Health and Safety Code,  
8 is amended to read as follows:

9 (3) "Facility" means:

10 (A) a nursing home, custodial care home, or other  
11 institution licensed by the Texas Department of Human Services  
12 under Chapter 242;

13 (B) an assisted living facility licensed by the  
14 Texas Department of Human Services under Chapter 247;

15 (C) a home and community support services  
16 [~~health~~] agency licensed under Chapter 142;

17 (D) an adult day care facility licensed by the  
18 Texas Department of Human Services under Chapter 103, Human  
19 Resources Code;

20 (E) a facility for persons with mental  
21 retardation licensed under Chapter 252;

22 (F) [~~an unlicensed attendant care agency that~~  
23 ~~contracts with the Texas Department of Human Services;~~

24 [~~(G)~~] an adult foster care provider that  
25 contracts with the Texas Department of Human Services;

26 (G) [~~(H)~~] a facility that provides mental health  
27 services and that is operated by or contracts with the Texas

1 Department of Mental Health and Mental Retardation; ~~[or]~~

2 (H) [~~J~~] a local mental health or mental  
3 retardation authority designated under Section 533.035; or

4 (I) a person exempt from licensing under Section  
5 142.003(a)(19).

6 SECTION 2.199. Section 431.116, Health and Safety Code, is  
7 amended by adding Subsections (f)-(i) to read as follows:

8 (f) Notwithstanding any other state law, pricing  
9 information disclosed by manufacturers or labelers under this  
10 section may be provided by the department only to the Medicaid  
11 vendor drug purchase program for its sole use. The Medicaid vendor  
12 drug purchase program may use the information only as necessary to  
13 administer its drug programs, including Medicaid drug programs.

14 (g) Notwithstanding any other state law, pricing  
15 information disclosed by manufacturers or labelers under this  
16 section is confidential and, except as necessary to permit the  
17 attorney general to enforce state and federal laws, may not be  
18 disclosed by the Health and Human Services Commission or any other  
19 state agency in a form that discloses the identity of a specific  
20 manufacturer or labeler or the prices charged by a specific  
21 manufacturer or labeler for a specific drug.

22 (h) The attorney general shall treat information obtained  
23 under this section in the same manner as information obtained by the  
24 attorney general through a civil investigative demand under Section  
25 36.054, Human Resources Code.

26 (i) Notwithstanding any other state law, the penalties for  
27 unauthorized disclosure of confidential information under Chapter

1 552, Government Code, apply to unauthorized disclosure of  
2 confidential information under this section.

3 SECTION 2.200. Section 534.003(a), Health and Safety Code,  
4 is amended to read as follows:

5 (a) The board of trustees of a community center established  
6 by an organizational combination of local agencies is composed of  
7 not fewer than five or more than 13 [~~nine~~] members.

8 SECTION 2.201. (a) Section 31.032(d), Human Resources  
9 Code, is amended to read as follows:

10 (d) In determining whether an applicant is eligible for  
11 assistance, the department shall exclude from the applicant's  
12 available resources:

13 (1) \$1,000 [~~\$2,000~~] for the applicant's household,  
14 including a household in which there is [~~or \$3,000 if there is~~] a  
15 person with a disability or a person who is at least 60 years of age  
16 [~~in the applicant's household~~]; and

17 (2) the fair market value of the applicant's ownership  
18 interest in a motor vehicle, but not more than the amount determined  
19 according to the following schedule:

20 (A) \$4,550 on or after September 1, 1995, but  
21 before October 1, 1995;

22 (B) \$4,600 on or after October 1, 1995, but  
23 before October 1, 1996;

24 (C) \$5,000 on or after October 1, 1996, but  
25 before October 1, 1997; and

26 (D) \$5,000 plus or minus an amount to be  
27 determined annually beginning on October 1, 1997, to reflect

1 changes in the new car component of the Consumer Price Index for All  
2 Urban Consumers published by the Bureau of Labor Statistics.

3 (b) Section 31.032(d), Human Resources Code, as amended by  
4 this section, applies to a person receiving financial assistance on  
5 or after the effective date of this section, regardless of the date  
6 on which eligibility for financial assistance was determined.

7 SECTION 2.202. (a) Subchapter B, Chapter 32, Human  
8 Resources Code, is amended by adding Section 32.066 to read as  
9 follows:

10 Sec. 32.066. CONSUMER-DIRECTED SERVICES PROGRAM. (a) In  
11 this section:

12 (1) "Consumer" means a participant in the  
13 consumer-directed services program established under this section  
14 who receives a stipend under the program.

15 (2) "Home and community-based services" include:

16 (A) personal care services;

17 (B) a home modification and assistive device that  
18 may increase the consumer's independence;

19 (C) respite services, as defined by Section  
20 142.001, Health and Safety Code; and

21 (D) personal assistance services, as defined by  
22 Section 142.001, Health and Safety Code.

23 (3) "Medical assistance waiver program" means:

24 (A) the community-based alternatives program;

25 (B) the community living assistance and support  
26 services program;

27 (C) the deaf-blind/multiple disabilities

1 program;

2 (D) the consolidated waiver pilot program; or

3 (E) the medically dependent children program.

4 (b) The department by rule shall establish a  
5 consumer-directed services program in which certain individuals  
6 enrolled in a medical assistance waiver program are given a monthly  
7 stipend to direct the delivery of home and community-based services  
8 provided to the individual under the waiver program.

9 (c) The department shall work in conjunction with the Texas  
10 Rehabilitation Commission, the comptroller, and any other  
11 appropriate agency to develop the consumer-directed services  
12 program.

13 (d) In establishing the consumer-directed services program,  
14 the department shall:

15 (1) ensure that the amount of a consumer's stipend is  
16 based on the assessed functional needs of a consumer and the  
17 financial resources available to the medical assistance waiver  
18 program providing services to the consumer;

19 (2) develop purchasing guidelines to assist consumers  
20 in using the stipend to purchase necessary and cost-effective home  
21 and community-based services;

22 (3) design the program in a manner in which a private  
23 entity or local governmental entity may apply with the department  
24 for approval to act as the fiscal intermediary for a consumer for  
25 the limited purpose of:

26 (A) managing the consumer's stipend;

27 (B) computing federal and state employment

1 taxes;

2 (C) preparing and filing income tax forms and  
3 reports; and

4 (D) distributing money to a service provider;

5 (4) ensure that a consumer is the employer of and  
6 retains control over the selection, management, and dismissal of an  
7 individual providing home and community-based services; and

8 (5) develop a system to monitor the program to ensure:

9 (A) adherence to existing applicable program  
10 standards;

11 (B) appropriate use of funds; and

12 (C) consumer satisfaction with the delivery of  
13 services.

14 (e) The Texas Rehabilitation Commission and comptroller  
15 shall provide information to the department as necessary to  
16 facilitate the development and implementation of the  
17 consumer-directed services program.

18 (f) The department may not implement the consumer-directed  
19 services program within the consolidated waiver pilot program  
20 before January 2, 2004.

21 (g) The department, in consultation with the Centers for  
22 Medicare and Medicaid Services, shall:

23 (1) determine which state or other government-funded  
24 programs are appropriate for inclusion in the consumer-directed  
25 services program; and

26 (2) provide for the inclusion of cost-sharing  
27 provisions as practicable.

1       (h) Not later than February 1 of each year, the department  
2 shall submit to the governor, the lieutenant governor, and the  
3 clerks of the standing committees of the senate and house of  
4 representatives with primary jurisdiction over long-term care  
5 services a report on the effectiveness, including the  
6 cost-effectiveness, of the consumer-directed services program.  
7 The report must include recommendations for improvements to the  
8 program.

9       (i) This section expires September 1, 2007.

10       (b) The state agency responsible for implementing the  
11 consumer-directed services program required by Section 32.066,  
12 Human Resources Code, as added by this section, shall request and  
13 actively pursue any necessary waivers or authorizations from the  
14 Centers for Medicare and Medicaid Services or other appropriate  
15 entities to enable the agency to implement the program not later  
16 than January 1, 2004. The agency may delay implementing the program  
17 until the necessary waivers or authorizations are granted.

18       SECTION 2.203. Section 533.007, Government Code, is amended  
19 by adding Subsections (g), (h), (i), (j), and (k) to read as  
20 follows:

21       (g) To ensure appropriate access to an adequate provider  
22 network, each managed care organization that contracts with the  
23 commission to provide health care services to recipients in a  
24 health care service region shall submit to the commission, in the  
25 format and manner prescribed by the commission, a report detailing  
26 the number, type, and scope of services provided by out-of-network  
27 providers to recipients enrolled in a managed care plan provided by



1 the managed care organization. If, as determined by the  
2 commission, a managed care organization exceeds maximum limits  
3 established by the commission for out-of-network access to health  
4 care services, or if, based on an investigation by the commission of  
5 a provider complaint regarding reimbursement, the commission  
6 determines that a managed care organization did not reimburse an  
7 out-of-network provider based on a reasonable reimbursement  
8 methodology, the commission shall initiate a corrective action plan  
9 requiring the managed care organization to maintain an adequate  
10 provider network, provide reimbursement to support that network,  
11 and educate recipients enrolled in managed care plans provided by  
12 the managed care organization regarding the proper use of the  
13 provider network under the plan.

14 (h) The corrective action plan required by Subsection (g)  
15 must include at least one of the following elements:

16 (1) a requirement that reimbursements paid by the  
17 managed care organization to out-of-network providers for a health  
18 care service provided to a recipient enrolled in a managed care plan  
19 provided by the managed care organization equal the allowable rate  
20 for the service, as determined under Sections 32.028 and 32.0281,  
21 Human Resources Code, for all health care services provided during  
22 the period:

23 (A) the managed care organization is not in  
24 compliance with the utilization benchmarks determined by the  
25 commission; or

26 (B) the managed care organization is not  
27 reimbursing out-of-network providers based on a reasonable

1 methodology, as determined by the commission;

2 (2) an immediate freeze on the enrollment of  
3 additional recipients in a managed care plan provided by the  
4 managed care organization, to continue until the commission  
5 determines that the provider network under the managed care plan  
6 can adequately meet the needs of additional recipients; and

7 (3) other actions the commission determines are  
8 necessary to ensure that recipients enrolled in a managed care plan  
9 provided by the managed care organization have access to  
10 appropriate health care services and that providers are properly  
11 reimbursed for providing medically necessary health care services  
12 to those recipients.

13 (i) Not later than the 60th day after the date a provider  
14 files a complaint with the commission regarding reimbursement for  
15 or overuse of out-of-network providers by a managed care  
16 organization, the commission shall provide to the provider a report  
17 regarding the conclusions of the commission's investigation. The  
18 report must include:

19 (1) a description of the corrective action, if any,  
20 required of the managed care organization that was the subject of  
21 the complaint; and

22 (2) if applicable, a conclusion regarding the amount  
23 of reimbursement owed to an out-of-network provider.

24 (j) If, after an investigation, the commission determines  
25 that additional reimbursement is owed to a provider, the managed  
26 care organization shall, not later than the 90th day after the date  
27 the provider filed the complaint, pay the additional reimbursement

1 or provide to the provider a reimbursement payment plan under which  
2 the managed care organization must pay the entire amount of the  
3 additional reimbursement not later than the 120th day after the  
4 date the provider filed the complaint. If the managed care  
5 organization does not pay the entire amount of the additional  
6 reimbursement on or before the 90th day after the date the provider  
7 filed the complaint, the commission may require the managed care  
8 organization to pay interest on the unpaid amount. If required by  
9 the commission, interest accrues at a rate of 18 percent simple  
10 interest per year on the unpaid amount from the 90th day after the  
11 date the provider filed the complaint until the date the entire  
12 amount of the additional reimbursement is paid.

13 (k) The commission shall pursue any appropriate remedy  
14 authorized in the contract between the managed care organization  
15 and the commission if the managed care organization fails to comply  
16 with a corrective action plan under Subsection (g).

17 SECTION 2.204. Subchapter B, Chapter 32, Human Resources  
18 Code, is amended by adding Section 32.067 to read as follows:

19 Sec. 32.067. DELIVERY OF COMPREHENSIVE CARE SERVICES TO  
20 CERTAIN RECIPIENTS OF MEDICAL ASSISTANCE. (a) In this section,  
21 "certified agency" and "home health service" have the meanings  
22 assigned by Section 142.001, Health and Safety Code.

23 (b) The department shall assure that any agency licensed to  
24 provide home health services under Chapter 142, Health and Safety  
25 Code, and not only a certified agency licensed under that chapter,  
26 may provide home health services to individuals enrolled in the  
27 Texas Health Steps Comprehensive Care Program.

1 SECTION 2.205. The section heading to Section 403.1066,  
2 Government Code, is amended to read as follows:

3 Sec. 403.1066. PERMANENT HOSPITAL FUND FOR CAPITAL  
4 IMPROVEMENTS AND THE TEXAS CENTER FOR INFECTIOUS DISEASE [~~COMMUNITY~~  
5 ~~HOSPITAL CAPITAL IMPROVEMENT FUND~~].

6 SECTION 2.206. Sections 403.1066(a) and (c), Government  
7 Code, are amended to read as follows:

8 (a) The permanent hospital [~~community hospital capital~~  
9 ~~improvement~~] fund for capital improvements and the Texas Center for  
10 Infectious Disease is a dedicated account in the general revenue  
11 fund. The fund is composed of:

12 (1) money transferred to the fund at the direction of  
13 the legislature;

14 (2) payments of interest and principal on loans and  
15 fees collected under this section;

16 (3) gifts and grants contributed to the fund; and

17 (4) the available earnings of the fund determined in  
18 accordance with Section 403.1068.

19 (c) The available earnings of the fund may be appropriated  
20 to the Texas Department of Health for the purpose of providing  
21 services at the Texas Center for Infectious Disease and grants,  
22 loans, or loan guarantees to public or nonprofit community  
23 hospitals with 125 beds or fewer located in an urban area of the  
24 state.

25 SECTION 2.207. (a) Section 32.024(w), Human Resources Code,  
26 is amended to read as follows:

27 (w) The department shall set a personal needs allowance of

1 not less than \$45 [~~\$60~~] a month for a resident of a convalescent or  
2 nursing home or related institution licensed under Chapter 242,  
3 Health and Safety Code, personal care facility, ICF-MR facility, or  
4 other similar long-term care facility who receives medical  
5 assistance. The department may send the personal needs allowance  
6 directly to a resident who receives Supplemental Security Income  
7 (SSI) (42 U.S.C. Section 1381 et seq.). This subsection does not  
8 apply to a resident who is participating in a medical assistance  
9 waiver program administered by the department.

10 (b) Section 32.024(w), Human Resources Code, as amended by  
11 this section, applies only to a personal needs allowance paid on or  
12 after the effective date of this Act.

13 SECTION 2.208. Section 281.002, Health and Safety Code, is  
14 amended by adding Subsection (c) to read as follows:

15 (c) A county with at least 190,000 inhabitants that has  
16 within its boundaries a municipality that owns a hospital or  
17 hospital system for indigent or needy persons that is operated by or  
18 on behalf of the municipality may create a countywide hospital  
19 district to assume ownership of the hospital or hospital system and  
20 to furnish medical aid and hospital care to indigent and needy  
21 persons residing in the district.

22 SECTION 2.209. Section 281.004, Health and Safety Code, is  
23 amended to read as follows:

24 Sec. 281.004. BALLOT PROPOSITIONS. (a) Except as provided  
25 by Subsection (a-1) or (b), the ballot for an election under this  
26 chapter shall be printed to provide for voting for or against the  
27 proposition: "The creation of a hospital district and the levy of a

1 tax not to exceed 75 cents on each \$100 of the taxable value of  
2 property taxable by the district."

3 (a-1) The ballot for an election under this chapter held in  
4 a county with a population of more than 800,000 that is not  
5 included in the boundaries of a hospital district before September  
6 1, 2003, shall be printed to provide for voting for or against the  
7 proposition: "The creation of a hospital district and the levy of a  
8 tax not to exceed 25 cents on each \$100 of the taxable value of  
9 property taxable by the district."

10 (b) If the county or a municipality in the county has any  
11 outstanding bonds issued for hospital purposes, the ballot for an  
12 election under this chapter shall contain the proposition  
13 prescribed by Subsection (a) or (a-1), as appropriate, followed by  
14 " ~~[be printed to provide for voting for or against the proposition:~~  
15 ~~"The creation of a hospital district, the levy of a tax not to~~  
16 ~~exceed 75 cents on each \$100 of the taxable value of property~~  
17 ~~taxable by the district]~~, and the assumption by the district of all  
18 outstanding bonds previously issued for hospital purposes by  
19 \_\_\_\_\_ County and by any municipality in the county."

20 SECTION 2.210. Section 281.021, Health and Safety Code, is  
21 amended by adding Subsection (d) to read as follows:

22 (d) If a district is created under this chapter in a county  
23 with a population of more than 800,000 that was not included in the  
24 boundaries of a hospital district before September 1, 2003, the  
25 district shall be governed by a nine-member board of hospital  
26 managers, appointed as follows:

27 (1) the commissioners court of the county shall

1 appoint four members;

2 (2) the governing body of the municipality with the  
3 largest population in the county shall appoint four members; and

4 (3) the commissioners court and the governing body of  
5 the municipality described by Subdivision (2) shall jointly appoint  
6 one member.

7 SECTION 2.211. Section 281.022, Health and Safety Code, is  
8 amended by adding Subsection (c) to read as follows:

9 (c) The members of a board of hospital managers appointed  
10 under Section 281.021(d) serve staggered four-year terms, with as  
11 near as possible to one-fourth of the members' terms expiring each  
12 year. The terms of the members appointed under that section are as  
13 follows:

14 (1) the members appointed solely by the governing body  
15 of the municipality with the largest population in the county shall  
16 draw lots to determine which member serves a one-year term, which  
17 member serves a two-year term, which member serves a three-year  
18 term, and which member serves a four-year term;

19 (2) the members appointed solely by the commissioners  
20 court of the county shall draw lots to determine which member serves  
21 a one-year term, which member serves a two-year term, which member  
22 serves a three-year term, and which member serves a four-year term;  
23 and

24 (3) the member appointed jointly by the governing body  
25 of the municipality described by Subdivision (1) and the  
26 commissioners court serves a four-year term.

27 SECTION 2.212. Section 281.041, Health and Safety Code, is

1 amended by amending Subsections (a) and (b) and adding Subsections  
2 (e) and (f) to read as follows:

3 (a) Except as provided by Subsection (e), on ~~On~~ the  
4 creation of a district under this chapter and the appointment and  
5 qualification of the district board, the county owning the hospital  
6 or hospital system, ~~or~~ the county and municipality jointly  
7 operating a hospital or hospital system, or the municipality owning  
8 a hospital or hospital system shall execute and deliver to the  
9 district board a written instrument conveying to the district the  
10 title to land, buildings, and equipment jointly or separately owned  
11 by the county and municipality and used to provide medical services  
12 or hospital care, including geriatric care, to indigent or needy  
13 persons of the county or municipality.

14 (b) On the creation of a district under this chapter and the  
15 appointment and qualification of the district board, the county  
16 owning the hospital or hospital system, ~~or~~ the county and  
17 municipality jointly operating a hospital or hospital system, or  
18 the municipality owning a hospital or hospital system shall, on the  
19 receipt of a certificate executed by the board's chairman stating  
20 that a depository for the district has been chosen and qualified,  
21 transfer to the district:

22 (1) all joint or separate county and municipal funds  
23 that are the proceeds of any bonds assumed by the district under  
24 Section 281.044; and

25 (2) all unexpended joint or separate county and  
26 municipal funds that have been established or appropriated by the  
27 county or municipality to support and maintain the hospital



1 facilities for the year in which the district is created, to be used  
2 by the district to operate and maintain those facilities for the  
3 remainder of the year.

4 (e) A county or municipality transferring property or funds  
5 under this section is not required to transfer to the district:

6 (1) a medical facility used primarily for the  
7 treatment of inmates of a jail or any other correctional  
8 facilities, including juvenile justice facilities;

9 (2) property owned by the municipality that is used in  
10 connection with the provision of utility services, including  
11 electricity, water, wastewater, and sewer services;

12 (3) any real property or other assets related to a  
13 medical clinic facility on which construction has begun, but has  
14 not been completed, by the date on which the board members have been  
15 appointed and qualified to serve;

16 (4) a building and related land owned by the county or  
17 municipality that are used for purposes related or unrelated to the  
18 hospital or hospital system, except that:

19 (A) if the county or municipality retains  
20 ownership of the building and related land, the county or  
21 municipality shall lease the space used for hospital or hospital  
22 system purposes to the district for an initial term of three years  
23 unless a shorter term is otherwise agreed to by the district and the  
24 transferring entity; or

25 (B) if the county or municipality transfers the  
26 building and related land to the district, the district shall lease  
27 to the transferring entity the space not used for hospital or

1 hospital system purposes for an initial term of three years unless a  
2 shorter term is otherwise agreed to by the district and the  
3 transferring entity;

4 (5) any or all of the public health services and  
5 related facilities of the county or municipality, other than a  
6 hospital or hospital district, unless the transfer of the public  
7 health services or a related facility to the district is mutually  
8 agreed to by the district and the transferring entity; or

9 (6) an ambulance service, emergency medical service,  
10 search and rescue service, or medical transport service that is  
11 owned or operated by the county or municipality, unless the  
12 transfer of all or part of the service and related buildings and  
13 equipment to the district is mutually agreed to by the district and  
14 the transferring entity.

15 (f) A transfer of an asset under this section, including a  
16 federally qualified health center, that would violate federal or  
17 state law unless a waiver or other authorization or approval is  
18 granted by a federal or state agency may not occur until the  
19 required waiver, authorization, or approval is obtained. A  
20 facility designated as a federally qualified health center under 42  
21 U.S.C. Section 1396d(1)(2)(B), as amended, may not be transferred  
22 to the district until the district board has confirmed that the  
23 transfer will not jeopardize the federal designation of that  
24 facility.

25 SECTION 2.213. Section 281.043, Health and Safety Code, is  
26 amended to read as follows:

27 Sec. 281.043. ASSUMPTION OF CONTRACT OBLIGATIONS. On the

1 creation of the district, the district assumes, without prejudice  
2 to the rights of third parties, any outstanding contract  
3 obligations legally incurred by the county or municipality, or  
4 both, for the construction, support, ~~or~~ maintenance, or operation  
5 of hospital facilities and the provision of health care services or  
6 hospital care, including mental health care, to indigent residents  
7 of the county or municipality before the creation of the district.

8 SECTION 2.214. Subchapter C, Chapter 281, Health and Safety  
9 Code, is amended by adding Section 281.0461 to read as follows:

10 Sec. 281.0461. STUDY. (a) This section applies only to a  
11 district created in a county with a population of more than 800,000  
12 that was not included in the boundaries of a hospital district  
13 before September 1, 2003.

14 (b) The board shall contract with an independent and  
15 disinterested person or entity to conduct a study to:

16 (1) examine the necessity of increased indigent,  
17 pediatric, trauma, and mental health care in the geographical area  
18 served by the district over the 5-year, 15-year, and 30-year  
19 periods following the date of the district's creation;

20 (2) examine the necessity of an increased number of  
21 health care specialists and nurses to adequately serve the district  
22 over the 5-year, 15-year, and 30-year periods following the date of  
23 the district's creation; and

24 (3) determine whether additional education and  
25 training programs will be required to address the issues studied  
26 under this section.

27 SECTION 2.215. The heading to Subchapter G, Chapter 281,

1 Health and Safety Code, is amended to read as follows:

2 SUBCHAPTER G. TAXES [~~TO PAY BONDS~~]

3 SECTION 2.216. Section 281.121(b), Health and Safety Code,  
4 is amended to read as follows:

5 (b) The tax amount:

6 (1) must be sufficient to create an interest and  
7 sinking fund to pay the principal of and interest on the bonds as  
8 they mature; and

9 (2) may not exceed 75 cents on each \$100 of the taxable  
10 value of property taxable by the district, or the rate authorized in  
11 the election to create the district.

12 SECTION 2.217. Subchapter G, Chapter 281, Health and Safety  
13 Code, is amended by adding Sections 281.122 and 281.123 to read as  
14 follows:

15 Sec. 281.122. REDUCTION IN AD VALOREM TAX RATE BY  
16 GOVERNMENTAL ENTITY. (a) This section applies only to a district  
17 created in a county with a population of more than 800,000 that was  
18 not included in the boundaries of a hospital district before  
19 September 1, 2003.

20 (b) The commissioners court of the county and the governing  
21 body of the municipality with the largest population in the county,  
22 in determining the ad valorem tax rate of the county or  
23 municipality, as appropriate, for the first year in which the  
24 district imposes ad valorem taxes on property in the district,  
25 shall:

26 (1) take into account the decrease in the amount the  
27 county or municipality will spend for health care purposes in that

1 year because the district is providing health care services  
2 previously provided or paid for by the county or municipality; and

3 (2) reduce the ad valorem tax rate adopted for the  
4 county or municipality, as appropriate, in accordance with the  
5 amount of the decrease.

6 (c) The commissioners court of the county and the governing  
7 body of the municipality with the largest population in the county  
8 shall retain an independent auditor to verify that the ad valorem  
9 tax rate of the county or municipality, as appropriate, has been  
10 reduced as required by Subsection (b).

11 Sec. 281.123. SALES AND USE TAX PROHIBITED FOR CERTAIN  
12 DISTRICTS. (a) This section applies only to a district created in  
13 a county with a population of more than 800,000 that was not  
14 included in the boundaries of a hospital district before September  
15 1, 2003.

16 (b) The board may not impose a sales and use tax under  
17 Subchapter E, Chapter 285, or any other law.

18 SECTION 2.218. EFFECTIVE DATE. Except as otherwise  
19 provided by this article, this article takes effect September 1,  
20 2003.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2292 was passed by the House on April 24, 2003, by the following vote: Yeas 74, Nays 31, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2292 on May 29, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2292 on June 1, 2003, by the following vote: Yeas 87, Nays 58, 1 present, not voting; and that the House adopted H.C.R. No. 305 authorizing certain corrections in H.B. No. 2292 on June 2, 2003, by a non-record vote.

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Chief Clerk of the House

H.B. No. 2292

I certify that H.B. No. 2292 was passed by the Senate, with amendments, on May 28, 2003, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2292 on June 1, 2003, by a viva-voce vote; and that the Senate adopted H.C.R. No. 305 authorizing certain corrections in H.B. No. 2292 on June 2, 2003, by a viva-voce vote.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor