

By: Wohlgemuth

H.B. No. 2850

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the provision of health and human services in this  
3 state, including the powers and duties of the Health and Human  
4 Services Commission and other state agencies.

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

6 ARTICLE 1. HEALTH AND HUMAN SERVICES COMMISSION

7 SECTION 1.01. Section 531.001(4), Government Code, as  
8 amended by Chapters 53, 957, and 1420, Acts of the 77th Legislature,  
9 Regular Session, 2001, is reenacted and amended to read as follows:

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

11 (A) Interagency Council on Early Childhood  
12 Intervention;

13 (B) Texas Department on Aging;

14 (C) Texas Commission on Alcohol and Drug Abuse;

15 (D) Texas Commission for the Blind;

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

18 (F) Texas Department of Health;

19 (G) Texas Department of Human Services;

20 (H) Texas Department of Mental Health and Mental  
21 Retardation;

22 (I) Texas Rehabilitation Commission;

23 (J) Department of Protective and Regulatory  
24 Services; ~~and~~

- 1 (K) Texas Health Care Information Council;
- 2 (L) Department of Community and Long-Term Care
- 3 Services;
- 4 (M) Department of Health and Mental Health
- 5 Services;
- 6 (N) Department of Rehabilitative Services; and
- 7 (O) Texas Youth Commission.

8 SECTION 1.02. Effective September 1, 2004, Section  
9 531.001(4), Government Code, as amended by Chapters 53, 957, and  
10 1420, Acts of the 77th Legislature, Regular Session, 2001, is  
11 reenacted and amended to read as follows:

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

13 (A) Department of Community and Long-Term Care  
14 Services [~~Interagency Council on Early Childhood Intervention~~];

15 (B) Department of Health and Mental Health  
16 Services [~~Texas Department on Aging~~];

17 (C) Department of Protective and Regulatory  
18 Services [~~Texas Commission on Alcohol and Drug Abuse~~];

19 (D) Department of Rehabilitative Services [~~Texas~~  
20 ~~Commission for the Blind~~]; and

21 (E) Texas Youth Commission [~~Texas Commission for~~  
22 ~~the Deaf and Hard of Hearing~~];

23 [~~(F) Texas Department of Health,~~

24 [~~(G) Texas Department of Human Services,~~

25 [~~(H) Texas Department of Mental Health and Mental~~  
26 ~~Retardation,~~

27 [~~(I) Texas Rehabilitation Commission,~~

1                   ~~[(J) Department of Protective and Regulatory~~  
2 ~~Services; and~~

3                   ~~[(K) Texas Health Care Information Council].~~

4           SECTION 1.03. Section 531.004, Government Code, is amended  
5 to read as follows:

6           Sec. 531.004. SUNSET PROVISION. The Health and Human  
7 Services Commission is subject to Chapter 325 (Texas Sunset Act).  
8 Unless continued in existence as provided by that chapter, the  
9 commission is abolished and this chapter expires September 1, 2009  
10 ~~[2007]~~.

11           SECTION 1.04. Section 531.0055, Government Code, is amended  
12 to read as follows:

13           Sec. 531.0055. COMMISSIONER: GENERAL RESPONSIBILITY FOR  
14 ~~[RELATING TO CERTAIN FUNCTIONS OF]~~ HEALTH AND HUMAN SERVICES  
15 AGENCIES. (a) In this section and in Section 531.0056, "executive  
16 director" ~~[+~~

17                   ~~[(1) "Agency director"]~~ means the ~~[director,~~  
18 executive director or chief administrative officer ~~[, or~~  
19 ~~commissioner]~~ of a health and human services agency.

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

23           (b) The commission shall:

24                   (1) supervise the administration and operation of the  
25 Medicaid program, including the administration and operation of the  
26 Medicaid managed care system in accordance with Section 531.021;

27                   (2) perform information systems planning and

1 supervise information systems [~~planning and~~] management for health  
2 and human services agencies under Section 531.0273;

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

7 (4) implement Texas Integrated Enrollment Services as  
8 required by Subchapter F, except that notwithstanding Subchapter F,  
9 determining eligibility for benefits or services from the following  
10 programs is the responsibility of and must be centralized by the  
11 commission:

12 (A) community-based support and services  
13 programs;

14 (B) long-term care services programs;

15 (C) the financial assistance program under  
16 Chapter 31, Human Resources Code; and

17 (D) the nutritional assistance programs under  
18 Chapter 33, Human Resources Code.

19 (c) The [~~After implementation of the commission's duties~~  
20 ~~under Subsection (b), the~~] commission shall implement the powers  
21 and duties given to the commission under Sections 531.0246,  
22 531.0247, 2155.144, [~~as added by Chapter 1045, Acts of the 75th~~  
23 ~~Legislature, Regular Session, 1997,~~] and 2167.004.

24 (d) After implementation of the commission's duties under  
25 Subsections (b) and (c), the commission shall implement the powers  
26 and duties given to the commission under Section 531.0248. Nothing  
27 in the priorities established by this section is intended to limit

1 the authority of the commission to work simultaneously to achieve  
2 the multiple tasks assigned to the commission in this section, when  
3 such an approach is beneficial in the judgment of the commission.  
4 The commission shall plan and implement an efficient and effective  
5 system of administrative support services for health and human  
6 services agencies. The term "administrative support services"  
7 includes, but is not limited to, strategic planning, audit, legal,  
8 human resources, and accounting services.

9 (e) Notwithstanding any other law, the commissioner shall  
10 adopt rules and policies for the operation of and provision of  
11 health and human services by the health and human services  
12 agencies. In addition, the commissioner, as necessary to perform  
13 the functions described by Subsections (b), (c), and (d) in  
14 implementation of applicable [the] policies established for an  
15 agency by the commissioner [each agency's policymaking body],  
16 shall:

17 (1) manage and direct the operations of each health  
18 and human services agency; and

19 (2) supervise and direct the activities of each  
20 executive [agency] director.

21 (f) The operational authority and responsibility of the  
22 commissioner for purposes of Subsection (e) at each health and  
23 human services agency includes authority over and responsibility  
24 for the:

25 (1) management of the daily operations of the agency,  
26 including the organization and management of the agency and agency  
27 operating procedures;

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

3           (3) personnel and employment policies;

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

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

8           (6) location of agency facilities; and

9           (7) coordination of agency activities with activities  
10 of other state agencies, including other health and human services  
11 agencies.

12           (g) Notwithstanding any other law, the operational  
13 authority and responsibility of the commissioner for purposes of  
14 Subsection (e) at each health and human services agency includes  
15 the authority and responsibility to adopt or approve, subject to  
16 applicable limitations, any rate of payment or similar provision  
17 required by law to be adopted or approved by the agency.

18           (h) For each health and human services agency, the  
19 commissioner shall implement a program to evaluate and supervise  
20 the daily operations of the agency. The program must include  
21 measurable performance objectives for each executive [~~agency~~]  
22 director and adequate reporting requirements to permit the  
23 commissioner to perform the duties assigned to the commissioner  
24 under this section.

25           (i) To facilitate the operations of a health and human  
26 services agency in accordance with this section, the commissioner  
27 may delegate a specific power or duty given under Subsection (f) or

1 (g) to an executive [~~agency~~] director. The executive director acts  
2 on behalf of and reports to the commissioner in performing the  
3 delegated function.

4 (j) The commissioner shall [~~may~~] adopt rules to implement  
5 the commissioner's authority under this section.

6 (k) The commissioner and each executive [~~agency~~] director  
7 shall enter into a memorandum of understanding in the manner  
8 prescribed by Section 531.0161 that:

9 (1) clearly defines the responsibilities of the  
10 executive [~~agency~~] director and the commissioner, including:

11 (A) the responsibility of the executive director  
12 to report to and implement policies of the commissioner; and

13 (B) the extent to which the executive director  
14 acts as a liaison between the agency and the commission;

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

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

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

27 [~~(1) the policymaking authority of the policymaking~~

1 ~~body; and~~

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

3 SECTION 1.05. Section 531.0056, Government Code, is amended  
4 to read as follows:

5 Sec. 531.0056. EMPLOYMENT OF EXECUTIVE ~~[AGENCY]~~ DIRECTOR.

6 (a) The commissioner shall hire an executive director for each  
7 health and human services agency ~~[This section applies only to an~~  
8 ~~agency director employed by the commissioner].~~

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

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

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

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



1 (f) The commissioner shall submit the evaluation~~[, along~~  
2 ~~with any recommendation regarding the employment of the agency~~  
3 ~~director,]~~ to the ~~[agency's policymaking body and the]~~ governor not  
4 later than January 1 of each 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 1.06. Subchapter A, Chapter 531, Government Code,  
13 is amended by adding Section 531.0161 to read as follows:

14 Sec. 531.0161. MEMORANDUM OF UNDERSTANDING. (a) The  
15 memorandum of understanding under Section 531.0055(k) must be  
16 adopted by the commissioner by rule in accordance with the  
17 procedures prescribed by Subchapter B, Chapter 2001, for adopting  
18 rules, except that the requirements of Section 2001.033(a)(1)(A) or  
19 (C) do not apply with respect to any part of the memorandum of  
20 understanding that:

21 (1) concerns only internal management or organization  
22 within or among health and human services agencies and does not  
23 affect private rights or procedures; or

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

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

1 SECTION 1.07. Chapter 531, Government Code, is amended by  
2 adding Subchapter K to read as follows:

3 SUBCHAPTER K. TEXAS AGING COUNCIL

4 Sec. 531.401. DEFINITIONS. In this subchapter:

5 (1) "Council" means the Texas Aging Council.

6 (2) "Advisory committee" means the Texas Aging Council  
7 Advisory Committee.

8 Sec. 531.402. COUNCIL; STAFF. (a) The Texas Aging Council  
9 is a division within the commission.

10 (b) The commissioner shall employ staff as necessary to  
11 carry out the duties of the council.

12 Sec. 531.403. GENERAL FUNCTIONS. The council shall operate  
13 the office of the state long-term care ombudsman under Subchapter  
14 D, Chapter 101, Human Resources Code, and shall perform other  
15 duties as assigned by the commissioner.

16 Sec. 531.404. ADVISORY COMMITTEE. (a) The governor shall  
17 appoint an advisory committee to assist the council in performing  
18 its duties. The commissioner shall appoint to the advisory  
19 committee five persons with demonstrated interest in programs and  
20 services for the aging.

21 (b) The governor shall appoint one member of the advisory  
22 committee as presiding officer, and the members of the committee  
23 shall elect additional officers as necessary.

24 (c) A member of the advisory committee serves at the will of  
25 the governor.

26 (d) The advisory committee is subject to Chapter 2110.

27 SECTION 1.08. Sections 531.0057, 531.034, and 531.0345,

1 Government Code, are repealed.

2 ARTICLE 2. HEALTH AND HUMAN SERVICES AGENCIES

3 SECTION 2.01. The Health and Safety Code is amended by  
4 adding Title 12 to read as follows:

5 TITLE 12. HEALTH AND MENTAL HEALTH

6 CHAPTER 1001. DEPARTMENT OF HEALTH AND MENTAL HEALTH SERVICES

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 1001.001. DEFINITIONS. In this chapter:

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

11 (2) "Commissioner" means the commissioner of health  
12 and human services.

13 (3) "Department" means the Department of Health and  
14 Mental Health Services.

15 (4) "Executive director" means the executive director  
16 of the department.

17 Sec. 1001.002. AGENCY. The department is an agency of the  
18 state.

19 Sec. 1001.003. SUNSET PROVISION. The department is subject  
20 to Chapter 325, Government Code (Texas Sunset Act). Unless  
21 continued in existence as provided by that chapter, the department  
22 is abolished and this chapter expires September 1, 2009.

23 [Sections 1001.004-1001.020 reserved for expansion]

24 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

25 Sec. 1001.021. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

26 (a) The commissioner shall prepare information of public interest  
27 describing the functions of the department and the procedures by

1 which complaints are filed with and resolved by the department. The  
2 commission shall make the information available to the public and  
3 appropriate state governmental entities.

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

8 Sec. 1001.022. PUBLIC ACCESS AND TESTIMONY. The  
9 commissioner shall develop and implement policies that provide the  
10 public with a reasonable opportunity to appear before the  
11 commissioner and to speak on any issue under the jurisdiction of the  
12 department.

13 Sec. 1001.023. POLICYMAKING AND MANAGEMENT  
14 RESPONSIBILITIES. The commissioner shall develop and the  
15 department shall implement policies that clearly delineate the  
16 policymaking responsibilities of the commissioner from the  
17 management responsibilities of the commission, the executive  
18 director, and the staff of the department.

19 Sec. 1001.024. ANNUAL REPORT. (a) The executive director  
20 shall file annually with the governor, the presiding officer of  
21 each house of the legislature, and the commissioner a complete and  
22 detailed written report accounting for all funds received and  
23 disbursed by the department during the preceding fiscal year.

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

26 Sec. 1001.025. OFFICES. The department shall maintain its  
27 central office in Austin. The department may maintain offices in

1 other areas of the state as necessary.

2 [Sections 1001.026-1001.050 reserved for expansion]

3 SUBCHAPTER C. PERSONNEL

4 Sec. 1001.051. EXECUTIVE DIRECTOR. (a) The commissioner  
5 shall appoint an executive director of the department, who is to be  
6 selected according to education, training, experience, and  
7 demonstrated ability.

8 (b) The executive director serves at the pleasure of the  
9 commissioner.

10 (c) The executive director shall act as the department's  
11 chief administrative officer and as a liaison between the  
12 department and commission.

13 (d) The executive director shall administer this chapter  
14 and other laws relating to the department under operational  
15 policies established by the commissioner and in accordance with the  
16 memorandum of understanding under Section 531.0055(k), Government  
17 Code, between the executive director and the commissioner, as  
18 adopted by rule.

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

22 (b) The commissioner shall prepare and by rule adopt  
23 personnel standards.

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

26 (d) The commissioner shall develop and the department shall  
27 implement policies that clearly define the responsibilities of the

1 staff of the department.

2 Sec. 1001.053. INFORMATION ABOUT QUALIFICATIONS AND  
3 STANDARDS OF CONDUCT. The executive director or the executive  
4 director's designee shall provide to department employees, as often  
5 as necessary, information regarding the requirements for  
6 employment under this chapter or rules adopted by the commissioner,  
7 including information regarding a person's responsibilities under  
8 applicable laws relating to standards of conduct for state  
9 employees.

10 Sec. 1001.054. MERIT PAY. Subject to rules adopted by the  
11 commissioner, the executive director or the executive director's  
12 designee shall develop a system of annual performance evaluations.  
13 All merit pay for department employees must be given under the  
14 system established under this section or under rules adopted by the  
15 commissioner.

16 Sec. 1001.055. CAREER LADDER. The executive director or  
17 the executive director's designee shall develop an intra-agency  
18 career ladder program. The program must require intra-agency  
19 postings of all nonentry-level positions concurrently with any  
20 public posting.

21 Sec. 1001.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)  
22 Subject to rules adopted by the commissioner, the executive  
23 director or the executive director's designee shall prepare and  
24 maintain a written policy statement that implements a program of  
25 equal employment opportunity to ensure that all personnel decisions  
26 are made without regard to race, color, disability, sex, religion,  
27 age, or national origin.

1        (b) Unless the following are included in a policy statement  
2 adopted by the commissioner that is applicable to the department,  
3 the policy statement must include:

4            (1) personnel policies, including policies relating  
5 to recruitment, evaluation, selection, training, and promotion of  
6 personnel, that show the intent of the department to avoid the  
7 unlawful employment practices described by Chapter 21, Labor Code;  
8 and

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

13        (c) The policy statement must be:

14            (1) updated annually;

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

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

18        Sec. 1001.057. STATE EMPLOYEE INCENTIVE PROGRAM. The  
19 executive director or the executive director's designee shall  
20 provide to department employees information and training on the  
21 benefits and methods of participation in the state employee  
22 incentive program.

23        [Sections 1001.058-1001.070 reserved for expansion]

24        SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

25        Sec. 1001.071. GENERAL DUTIES OF DEPARTMENT RELATED TO  
26 HEALTH CARE. The department is responsible for administering human  
27 services programs regarding the public health, including:

- 1           (1) implementing the state's health care delivery  
2 programs;
- 3           (2) operating state health facilities, hospitals, and  
4 health care systems;
- 5           (3) developing and providing health care services, as  
6 directed by law;
- 7           (4) providing for the prevention and control of  
8 communicable diseases;
- 9           (5) providing public education on health-related  
10 matters, as directed by law;
- 11           (6) compiling and reporting health-related  
12 information, as directed by law;
- 13           (7) acting as the lead agency for implementation of  
14 state policies regarding the human immunodeficiency virus and  
15 acquired immunodeficiency syndrome and administering programs  
16 related to the human immunodeficiency virus and acquired  
17 immunodeficiency syndrome;
- 18           (8) administering state programs related to cancer,  
19 including the Texas Cancer Plan;
- 20           (9) investigating the causes of injuries and methods  
21 of prevention;
- 22           (10) administering a grant program to provide  
23 appropriated money to counties, municipalities, public health  
24 districts, and other political subdivisions for their use to  
25 provide or pay for essential public health services;
- 26           (11) administering the registration of vital  
27 statistics;



1           (12) implementing established standards and  
2 procedures for the management and control of sanitation and for  
3 health protection measures;

4           (13) enforcing regulations regarding radioactive  
5 materials;

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

8           (15) enforcing regulations regarding food service  
9 establishments, retail food stores, mobile food units, and roadside  
10 food vendors; and

11           (16) enforcing regulations regarding controlling  
12 hazardous substances in households and workplaces.

13           Sec. 1001.072. GENERAL DUTIES OF DEPARTMENT RELATED TO  
14 MENTAL HEALTH. The department is responsible for administering  
15 human services programs regarding mental health, including:

16           (1) administering and coordinating mental health  
17 services at the local and state level;

18           (2) operating the state's mental health facilities;  
19 and

20           (3) providing early childhood intervention services  
21 for children with developmental delay.

22           Sec. 1001.073. GENERAL DUTIES OF DEPARTMENT RELATED TO  
23 SUBSTANCE ABUSE. The department is responsible for administering  
24 human services programs regarding substance abuse, including:

25           (1) administering and coordinating substance abuse  
26 prevention and treatment programs at the state and local level;

27           (2) operating the state's facilities for substance

1 abuse prevention and treatment; and

2 (3) providing public education on substance abuse  
3 issues, as directed by law.

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

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

8 (2) the date the complaint is received by the  
9 department;

10 (3) the subject matter of the complaint;

11 (4) the name of each person contacted in relation to  
12 the complaint;

13 (5) a summary of the results of the review or  
14 investigation of the complaint; and

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

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

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

27 Sec. 1001.075. RULES. The commissioner may adopt rules

1 reasonably necessary for the department to administer this chapter,  
2 consistent with the memorandum of understanding under Section  
3 531.0055(k), Government Code, between the executive director and  
4 the commissioner, as adopted by rule.

5 SECTION 2.02. Section 40.002, Human Resources Code, is  
6 amended to read as follows:

7 Sec. 40.002. DEPARTMENT OF PROTECTIVE AND REGULATORY  
8 SERVICES; GENERAL DUTIES OF DEPARTMENT [~~RESPONSIBILITY~~]. (a) The  
9 Department of Protective and Regulatory Services is composed of  
10 [~~the board,~~] the executive director, an administrative staff, and  
11 other officers and employees necessary to efficiently carry out the  
12 purposes of this chapter.

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

15 (1) provide [~~providing~~] protective services for  
16 children and elderly and disabled persons, including  
17 investigations of alleged abuse, neglect, or exploitation in  
18 facilities of the Texas Department of Mental Health and Mental  
19 Retardation or its successor agency;

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

23 (3) license, register, and enforce regulations  
24 applicable to [~~regulating~~] child-care facilities and child-care  
25 administrators; [~~and~~]

26 (4) implement [~~implementing~~] and manage [~~managing~~]  
27 programs intended to provide early intervention or prevent at-risk

1 behaviors that lead to child abuse, delinquency, running away,  
2 truancy, and dropping out of school;

3 (5) implement programs intended to prevent family  
4 violence and provide services to victims of family violence;

5 (6) perform licensing and enforcement activities and  
6 functions for all health and human services agencies, including  
7 licensing and enforcement activities related to:

8 (A) home and community support services under  
9 Chapter 142, Health and Safety Code; and

10 (B) convalescent and nursing homes and related  
11 institutions under Chapter 242, Health and Safety Code; and

12 (7) administer long-term care quality outreach  
13 programs and services.

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

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

19 (2) other federal law for which the department has  
20 administrative responsibility.

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

26 (e) If the department determines that a provision of state  
27 law governing the department conflicts with a provision of federal

1 law, the commissioner of health and human services [~~department~~] may  
2 adopt policies and rules necessary to allow the state to receive and  
3 spend federal matching funds to the fullest extent possible in  
4 accordance with the federal statutes, this subtitle, and the state  
5 constitution and within the limits of appropriated funds.

6 SECTION 2.03. Section 40.027, Human Resources Code, is  
7 amended to read as follows:

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

13 (b) The executive director serves at the pleasure of the  
14 commissioner.

15 (c) The executive director shall act as the department's  
16 chief administrative officer and as a liaison between the  
17 department and commission.

18 (d) The executive director shall administer this chapter  
19 and other laws relating to the department under operational  
20 policies established [~~is the executive head of the department. The~~  
21 ~~executive director shall perform the duties assigned~~] by the  
22 commissioner and in accordance with the memorandum of understanding  
23 under Section 531.0055(k), Government Code, between the executive  
24 director and the commissioner, as adopted by rule [~~of health and~~  
25 ~~human services and state law~~].

26 SECTION 2.04. Subchapter C, Chapter 61, Human Resources  
27 Code, is amended by adding Section 61.0301 to read as follows:

1           Sec. 60.0301. GENERAL DUTIES OF COMMISSION.

2 Notwithstanding any other law, the commission shall:

3           (1) administer the state's correctional facilities for  
4 children;

5           (2) provide a program of constructive training to  
6 rehabilitate and reestablish in society children adjudged  
7 delinquent by the courts of this state and committed to the  
8 commission;

9           (3) provide active parole supervision for children  
10 until discharge from the commission's custody;

11           (4) make probation services available to children  
12 throughout the state;

13           (5) improve the effectiveness of probation services  
14 for children;

15           (6) provide alternatives to the commitment of children  
16 by providing financial aid to juvenile boards to establish and  
17 improve probation services;

18           (7) improve communications among state and local  
19 entities within the juvenile justice system; and

20           (8) promote delinquency prevention and early  
21 intervention programs and activities for children.

22           SECTION 2.05. Section 61.017, Human Resources Code, is  
23 amended to read as follows:

24           Sec. 61.017. EXECUTIVE DIRECTOR. (a) The commissioner of  
25 health and human services [~~commission~~] shall appoint [~~employ~~] an  
26 executive director, who is to be selected according to education,  
27 training, experience, and demonstrated ability [~~, selected by the~~

1 ~~board, to serve at the will of the board].~~

2 (b) The executive director serves at the pleasure of the  
3 commissioner [~~shall devote full time to the work of the~~  
4 ~~commission~~].

5 (c) The executive director shall act as the commission's  
6 chief administrative officer and as a liaison between the  
7 commission and the Health and Human Services Commission [~~is~~  
8 ~~entitled to actual expenses while on commission business~~].

9 (d) The executive director shall administer this chapter  
10 and other laws relating to the commission under operational  
11 policies established by the commissioner and in accordance with the  
12 memorandum of understanding under Section 531.0055(k), Government  
13 Code, between the executive director and the commissioner, as  
14 adopted by rule.

15 SECTION 2.06. Title 7, Human Resources Code, is amended by  
16 adding Chapter 117 to read as follows:

17 CHAPTER 117. DEPARTMENT OF REHABILITATIVE SERVICES

18 SUBCHAPTER A. GENERAL PROVISIONS

19 Sec. 117.001. DEFINITIONS. In this chapter:

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

22 (2) "Commissioner" means the commissioner of health  
23 and human services.

24 (3) "Department" means the Department of  
25 Rehabilitative Services.

26 (4) "Executive director" means the executive director  
27 of the department.

1       Sec. 117.002. AGENCY. The department is an agency of the  
2 state.

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

7           [Sections 117.004-117.020 reserved for expansion]

8                   SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

9       Sec. 117.021. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

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

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

19       Sec. 117.022. PUBLIC ACCESS AND TESTIMONY. The  
20 commissioner shall develop and implement policies that provide the  
21 public with a reasonable opportunity to appear before the  
22 commissioner and to speak on any issue under the jurisdiction of the  
23 department.

24       Sec. 117.023. POLICYMAKING AND MANAGEMENT  
25 RESPONSIBILITIES. The commissioner shall develop and the  
26 department shall implement policies that clearly delineate the  
27 policymaking responsibilities of the commissioner from the



1 management responsibilities of the commission, the executive  
2 director, and the staff of the department.

3 Sec. 117.024. ANNUAL REPORT. (a) The executive director  
4 shall file annually with the governor, the presiding officer of  
5 each house of the legislature, and the commissioner a complete and  
6 detailed written report accounting for all funds received and  
7 disbursed by the department during the preceding fiscal year.

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

10 Sec. 117.025. OFFICES. The department shall maintain its  
11 central office in Austin. The department may maintain offices in  
12 other areas of the state as necessary.

13 [Sections 117.026-117.050 reserved for expansion]

14 SUBCHAPTER C. PERSONNEL

15 Sec. 117.051. EXECUTIVE DIRECTOR. (a) The commissioner  
16 shall appoint an executive director, who is to be selected  
17 according to education, training, experience, and demonstrated  
18 ability.

19 (b) The executive director serves at the pleasure of the  
20 commissioner.

21 (c) The executive director shall act as the department's  
22 chief administrative officer and as a liaison between the  
23 department and commission.

24 (d) The executive director shall administer this chapter  
25 under operational policies established by the commissioner and in  
26 accordance with the memorandum of understanding under Section  
27 531.0055(k), Government Code, between the executive director and

1 the commissioner, as adopted by rule.

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

5 (b) The commissioner shall prepare and by rule adopt  
6 personnel standards.

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

9 (d) The commissioner shall develop and the department shall  
10 implement policies that clearly define the responsibilities of the  
11 staff of the department.

12 Sec. 117.053. INFORMATION ABOUT QUALIFICATIONS AND  
13 STANDARDS OF CONDUCT. The executive director or the executive  
14 director's designee shall provide to department employees, as often  
15 as necessary, information regarding the requirements for  
16 employment under this chapter or rules adopted by the commissioner,  
17 including information regarding a person's responsibilities under  
18 applicable laws relating to standards of conduct for state  
19 employees.

20 Sec. 117.054. MERIT PAY. Subject to rules adopted by the  
21 commissioner, the executive director or the executive director's  
22 designee shall develop a system of annual performance evaluations.  
23 All merit pay for department employees must be given under the  
24 system established under this section or under rules adopted by the  
25 commissioner.

26 Sec. 117.055. CAREER LADDER. The executive director or the  
27 executive director's designee shall develop an intra-agency career

1 ladder program. The program must require intra-agency postings of  
2 all nonentry-level positions concurrently with any public posting.

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

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

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

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

22 (c) The policy statement must be:

23 (1) updated annually;  
24 (2) reviewed by the state Commission on Human Rights  
25 for compliance with Subsection (b)(1); and  
26 (3) filed with the governor's office.

27 Sec. 117.057. STATE EMPLOYEE INCENTIVE PROGRAM. The

1 executive director or the executive director's designee shall  
2 provide to department employees information and training on the  
3 benefits and methods of participation in the state employee  
4 incentive program.

5 [Sections 117.058-117.070 reserved for expansion]

6 SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

7 Sec. 117.071. GENERAL DUTIES OF DEPARTMENT. The department  
8 is responsible for administering programs to provide  
9 rehabilitation and related services to persons with disabilities,  
10 including:

11 (1) providing physical and vocational rehabilitation  
12 services, including extended and comprehensive rehabilitation  
13 services;

14 (2) administering disability determination processes;

15 (3) providing transitional planning services;

16 (4) coordinating and administering disability support  
17 services programs to facilitate persons with disabilities in  
18 achieving maximum personal independence; and

19 (5) operating blindness education programs.

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

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

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

26 (3) the subject matter of the complaint;

27 (4) the name of each person contacted in relation to

1 the complaint;

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

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

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

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

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

21 SECTION 2.07. The Human Resources Code is amended by adding  
22 Title 11 to read as follows:

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

24 CHAPTER 161. DEPARTMENT OF COMMUNITY AND LONG-TERM CARE SERVICES

25 SUBCHAPTER A. GENERAL PROVISIONS

26 Sec. 161.001. DEFINITIONS. In this chapter:

27 (1) "Commission" means the Health and Human Services

1 Commission.

2 (2) "Commissioner" means the commissioner of health  
3 and human services.

4 (3) "Department" means the Department of Community and  
5 Long-Term Care Services.

6 (4) "Executive director" means the executive director  
7 of the department.

8 Sec. 161.002. AGENCY. The department is an agency of the  
9 state.

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

14 [Sections 161.004-161.020 reserved for expansion]

15 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

16 Sec. 161.021. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

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

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

26 Sec. 161.022. PUBLIC ACCESS AND TESTIMONY. The  
27 commissioner shall develop and implement policies that provide the

1 public with a reasonable opportunity to appear before the  
2 commissioner and to speak on any issue under the jurisdiction of the  
3 department.

4 Sec. 161.023. POLICYMAKING AND MANAGEMENT  
5 RESPONSIBILITIES. The commissioner shall develop and the  
6 department shall implement policies that clearly delineate the  
7 policymaking responsibilities of the commissioner from the  
8 management responsibilities of the commission, the executive  
9 director, and the staff of the department.

10 Sec. 161.024. ANNUAL REPORT. (a) The executive director  
11 shall file annually with the governor, the presiding officer of  
12 each house of the legislature, and the commissioner a complete and  
13 detailed written report accounting for all funds received and  
14 disbursed by the department during the preceding fiscal year.

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

17 Sec. 161.025. OFFICES. The department shall maintain its  
18 central office in Austin. The department may maintain offices in  
19 other areas of the state as necessary.

20 [Sections 161.026-161.050 reserved for expansion]

21 SUBCHAPTER C. PERSONNEL

22 Sec. 161.051. EXECUTIVE DIRECTOR. (a) The commissioner  
23 shall appoint an executive director, who is to be selected  
24 according to education, training, experience, and demonstrated  
25 ability.

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

1       (c) The executive director shall act as the department's  
2 chief administrative officer and as a liaison between the  
3 department and commission.

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

9       Sec. 161.052. PERSONNEL. (a) The department may employ,  
10 compensate, and prescribe the duties of personnel necessary and  
11 suitable to administer this chapter.

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

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

16       (d) The commissioner shall develop and the department shall  
17 implement policies that clearly define the responsibilities of the  
18 staff of the department.

19       Sec. 161.053. INFORMATION ABOUT QUALIFICATIONS AND  
20 STANDARDS OF CONDUCT. The executive director or the executive  
21 director's designee shall provide to department employees, as often  
22 as necessary, information regarding the requirements for  
23 employment under this chapter or rules adopted by the commissioner,  
24 including information regarding a person's responsibilities under  
25 applicable laws relating to standards of conduct for state  
26 employees.

27       Sec. 161.054. MERIT PAY. Subject to rules adopted by the



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

6 Sec. 161.055. CAREER LADDER. The executive director or the  
7 executive director's designee shall develop an intra-agency career  
8 ladder program. The program must require intra-agency postings of  
9 all nonentry-level positions concurrently with any public posting.

10 Sec. 161.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)  
11 Subject to rules adopted by the commissioner, the executive  
12 director or the executive director's designee shall prepare and  
13 maintain a written policy statement that implements a program of  
14 equal employment opportunity to ensure that all personnel decisions  
15 are made without regard to race, color, disability, sex, religion,  
16 age, or national origin.

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

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

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

1 compliance with state and federal law.

2 (c) The policy statement must be:

3 (1) updated annually;

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

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

7 Sec. 161.057. STATE EMPLOYEE INCENTIVE PROGRAM. The  
8 executive director or the executive director's designee shall  
9 provide to department employees information and training on the  
10 benefits and methods of participation in the state employee  
11 incentive program.

12 [Sections 161.058-161.070 reserved for expansion]

13 SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

14 Sec. 161.071. GENERAL DUTIES OF DEPARTMENT. The department  
15 shall:

16 (1) administer and coordinate programs to provide  
17 community-based care and support services to promote independent  
18 living for populations that would otherwise be institutionalized;

19 (2) provide institutional care services;

20 (3) manage and operate institutional facilities in  
21 this state, including nursing facilities and state schools; and

22 (4) design, propose for adoption by rule, and  
23 facilitate integrated service delivery systems.

24 Sec. 161.072. INFORMATION REGARDING COMPLAINTS. (a) The  
25 department shall maintain a file on each written complaint filed  
26 with the department. The file must include:

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

1           (2) the date the complaint is received by the  
2 department;

3           (3) the subject matter of the complaint;

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

6           (5) a summary of the results of the review or  
7 investigation of the complaint; and

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

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

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

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

25           SECTION 2.08. APPOINTMENTS OF EXECUTIVE DIRECTORS. As soon  
26 as possible after the effective date of this article, the  
27 commissioner of health and human services shall appoint the

1 executive directors of:

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

5 (2) the Department of Protective and Regulatory  
6 Services in accordance with Section 40.027, Human Resources Code,  
7 as amended by this article;

8 (3) the Texas Youth Commission in accordance with  
9 Section 61.017, Human Resources Code, as amended by this article;

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

13 (5) the Department of Community and Long-Term Care  
14 Services in accordance with Chapter 161, Human Resources Code, as  
15 added by this article.

16 SECTION 2.09. LIMITATION ON ACTIVITIES. (a) The  
17 Department of Health and Mental Health Services, the Department of  
18 Protective and Regulatory Services, the Texas Youth Commission, the  
19 Department of Rehabilitative Services, and the Department of  
20 Community and Long-Term Care Services may, before September 1,  
21 2004:

22 (1) operate all or any part of a health and human  
23 services program operated by the agency on September 1, 2003, if  
24 applicable and except as provided by Subsection (b) of this  
25 section;

26 (2) operate all or any part of a health and human  
27 services program transferred to the agency by the commissioner of

1 health and human services in accordance with Article 3 of this Act;  
2 and

3 (3) perform the powers, duties, functions, and  
4 activities that relate to preparing for the transfer of powers,  
5 duties, functions, programs, and activities to the agency in  
6 accordance with Article 3 of this Act.

7 (b) A health and human services agency, as defined by  
8 Section 531.001, Government Code, as amended by Section 1.01 of  
9 this Act, from which a power, duty, function, program, or activity  
10 is transferred in accordance with Article 3 of this Act may not  
11 perform the power, duty, function, or activity or operate the  
12 program on or after the date of the transfer.

13 SECTION 2.10. CREATION OF AGENCIES. The Department of  
14 Health and Mental Health Services, the Department of Rehabilitative  
15 Services, and the Department of Community and Long-Term Care  
16 Services are created on September 1, 2003.

17 ARTICLE 3. INTERAGENCY TRANSFERS OF PROPERTY,  
18 RECORDS, OBLIGATIONS, FUNDS, FUNCTIONS, PROGRAMS,  
19 AND ACTIVITIES

20 SECTION 3.01. TRANSFERS TO THE HEALTH AND HUMAN SERVICES  
21 COMMISSION. (a) On or before September 1, 2004, as determined by  
22 the commissioner of health and human services, the following  
23 powers, duties, functions, programs, and activities, other than  
24 those transferred under Section 3.04(a)(2) of this article, are  
25 transferred to the Health and Human Services Commission:

26 (1) all powers, duties, functions, programs, and  
27 activities of the Texas Department of Human Services related to:

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

3 (B) the financial assistance program under  
4 Chapter 31, Human Resources Code; and

5 (C) the nutritional assistance programs under  
6 Chapter 33, Human Resources Code;

7 (2) all powers, duties, functions, programs, and  
8 activities related to the following programs administered by a  
9 state agency or entity abolished by Section 4.01 of this Act:

10 (A) the children's health insurance program  
11 under Chapter 62, Health and Safety Code; and

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

14 (3) all powers, duties, functions, programs, and  
15 activities of the Texas Health Care Information Council; and

16 (4) except as provided by Section 3.06 of this Act, all  
17 powers, duties, functions, programs, and activities of the Texas  
18 Department on Aging.

19 (b) On September 1, 2003, all rulemaking and policymaking  
20 authority for the provision of health and human services in this  
21 state is transferred to the Health and Human Services Commission.

22 (c) On the appropriate dates specified by Subsections (a)  
23 and (b) of this section:

24 (1) all obligations and contracts of a state agency or  
25 entity that are related to a power, duty, function, program, or  
26 activity transferred under Subsection (a) or (b) of this section  
27 are transferred to the Health and Human Services Commission;

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

7           (3) all complaints, investigations, or contested  
8 cases that are pending before a state agency or entity or the  
9 governing body of the agency or entity and that are related to a  
10 power, duty, function, program, or activity transferred under  
11 Subsection (a) or (b) of this section are transferred without  
12 change in status to the Health and Human Services Commission.

13           (d) A rule or form adopted by a state agency or entity that  
14 relates to a power, duty, function, program, or activity  
15 transferred under Subsection (a) or (b) of this section is a rule or  
16 form of the Health and Human Services Commission and remains in  
17 effect until altered by the commission.

18           (e) A reference in law to a state agency or entity, or to the  
19 governing body of the agency or entity, that relates to a power,  
20 duty, function, program, or activity transferred under Subsection  
21 (a) or (b) of this section means the Health and Human Services  
22 Commission.

23           (f) A license, permit, or certification in effect that was  
24 issued by a state agency or entity and that relates to a power,  
25 duty, function, program, or activity transferred under Subsection  
26 (a) or (b) of this section is continued in effect as a license,  
27 permit, or certification of the Health and Human Services

1 Commission.

2 SECTION 3.02. TRANSFERS TO THE DEPARTMENT OF HEALTH AND  
3 MENTAL HEALTH SERVICES. (a) On or before September 1, 2004, as  
4 determined by the commissioner of health and human services, the  
5 following powers, duties, functions, programs, and activities,  
6 other than those related to rulemaking or policymaking or those  
7 transferred under Section 3.04(a)(2) of this article, are  
8 transferred to the Department for Health and Mental Health:

9 (1) except as provided by Section 3.01 of this  
10 article, all powers, duties, functions, programs, and activities of  
11 the Texas Department of Health;

12 (2) except as provided by Section 3.06 of this  
13 article, all powers, duties, functions, programs, and activities of  
14 the Texas Department of Mental Health and Mental Retardation;

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

17 (4) all powers, duties, functions, programs, and  
18 activities of the Texas Cancer Council; and

19 (5) all powers, duties, functions, programs, and  
20 activities of the Interagency Council on Early Childhood  
21 Intervention.

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

23 (1) all obligations and contracts of an entity listed  
24 in Subsection (a) of this section that are related to a power, duty,  
25 function, program, or activity transferred under that subsection  
26 are transferred to the Department of Health and Mental Health  
27 Services;



1           (2) all property and records in the custody of an  
2 entity listed in Subsection (a) of this section that are related to  
3 a power, duty, function, program, or activity transferred under  
4 that subsection and all funds appropriated by the legislature for  
5 the power, duty, function, program, or activity shall be  
6 transferred to the Department of Health and Mental Health Services;  
7 and

8           (3) all complaints, investigations, or contested  
9 cases that are pending before an entity or the governing body of an  
10 entity listed in Subsection (a) of this section and that are related  
11 to a power, duty, function, program, or activity transferred under  
12 that subsection are transferred without change in status to the  
13 Department of Health and Mental Health Services.

14           (c) A rule or form adopted by an entity listed in Subsection  
15 (a) of this section that relates to a power, duty, function,  
16 program, or activity transferred under that subsection is a rule or  
17 form of the Department of Health and Mental Health Services and  
18 remains in effect until altered by the commissioner of health and  
19 human services.

20           (d) A reference in law to an entity listed in Subsection (a)  
21 of this section that relates to a power, duty, function, program, or  
22 activity transferred under that subsection means the Department of  
23 Health and Mental Health Services. A reference in law to the  
24 governing body of an entity listed in Subsection (a) of this section  
25 means the Health and Human Services Commission or the commissioner  
26 of health and human services, as appropriate.

27           (e) A license, permit, or certification in effect that was

1 issued by an entity listed in Subsection (a) of this section and  
2 that relates to a power, duty, function, program, or activity  
3 transferred under that subsection is continued in effect as a  
4 license, permit, or certification of the Department of Health and  
5 Mental Health Services.

6 SECTION 3.03. TRANSFERS TO THE DEPARTMENT OF REHABILITATIVE  
7 SERVICES. (a) On or before September 1, 2004, as determined by the  
8 commissioner of health and human services, the following powers,  
9 duties, functions, programs, and activities, other than those  
10 related to rulemaking or policymaking or those transferred under  
11 Section 3.04(a)(2) of this article, are transferred to the  
12 Department of Rehabilitative Services:

13 (1) all powers, duties, functions, programs, and  
14 activities of the Texas Commission for the Deaf and Hard of Hearing;

15 (2) except as provided by Section 3.06 of this Act, all  
16 powers, duties, functions, programs, and activities of the Texas  
17 Rehabilitation Commission; and

18 (3) except as provided by Section 3.06 of this Act, all  
19 powers, duties, functions, programs, and activities of the Texas  
20 Commission for the Blind.

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

22 (1) all obligations and contracts of an entity listed  
23 in Subsection (a) of this section that are related to a power, duty,  
24 function, program, or activity transferred under that subsection  
25 are transferred to the Department of Rehabilitative Services;

26 (2) all property and records in the custody of an  
27 entity listed in Subsection (a) of this section that are related to

1 a power, duty, function, program, or activity transferred under  
2 that subsection and all funds appropriated by the legislature for  
3 the power, duty, function, program, or activity shall be  
4 transferred to the Department of Rehabilitative Services; and

5 (3) all complaints, investigations, or contested  
6 cases that are pending before an entity or the governing body of an  
7 entity listed in Subsection (a) of this section and that are related  
8 to a power, duty, function, program, or activity transferred under  
9 that subsection are transferred without change in status to the  
10 Department of Rehabilitative Services.

11 (c) A rule or form adopted by an entity listed in Subsection  
12 (a) of this section that relates to a power, duty, function,  
13 program, or activity transferred under that subsection is a rule or  
14 form of the Department of Rehabilitative Services and remains in  
15 effect until altered by the commissioner of health and human  
16 services.

17 (d) A reference in law to an entity listed in Subsection (a)  
18 of this section that relates to a power, duty, function, program, or  
19 activity transferred under that subsection means the Department of  
20 Rehabilitative Services. A reference in law to the governing body  
21 of an entity listed in Subsection (a) of this section means the  
22 Health and Human Services Commission or the commissioner of health  
23 and human services, as appropriate.

24 (e) A license, permit, or certification in effect that was  
25 issued by an entity listed in Subsection (a) of this section and  
26 that relates to a power, duty, function, program, or activity  
27 transferred under that subsection is continued in effect as a

1 license, permit, or certification of the Department of  
2 Rehabilitative Services.

3 SECTION 3.04. TRANSFERS TO THE DEPARTMENT OF PROTECTIVE AND  
4 REGULATORY SERVICES. (a) On or before September 1, 2004, as  
5 determined by the commissioner of health and human services, the  
6 following powers, duties, functions, programs, and activities,  
7 other than those related to rulemaking or policymaking, are  
8 transferred to the Department of Protective and Regulatory  
9 Services:

10 (1) all powers, duties, functions, programs, and  
11 activities of the Texas Department of Human Services related to:

12 (A) preventing family violence and providing  
13 services to victims of family violence;

14 (B) licensing of and enforcing regulations  
15 applicable to home and community support services under Chapter  
16 142, Health and Safety Code;

17 (C) notwithstanding any other provision of this  
18 article, licensing of and enforcing regulations applicable to  
19 convalescent and nursing homes and related institutions under  
20 Chapter 242, Health and Safety Code; and

21 (D) providing long-term care quality outreach;  
22 and

23 (2) all powers, duties, functions, programs, and  
24 activities of the health and human services agencies, as that term  
25 was defined in Section 531.001, Government Code, immediately before  
26 the effective date of this article, related to licensing and  
27 enforcement activities and functions not listed in Subdivision (1).

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

2 (1) all obligations and contracts of an entity listed  
3 in Subsection (a) of this section that are related to a power, duty,  
4 function, program, or activity transferred under that subsection  
5 are transferred to the Department of Protective and Regulatory  
6 Services;

7 (2) all property and records in the custody of an  
8 entity listed in Subsection (a) of this section that are related to  
9 a power, duty, function, program, or activity transferred under  
10 that subsection and all funds appropriated by the legislature for  
11 the power, duty, function, program, or activity shall be  
12 transferred to the Department of Protective and Regulatory  
13 Services; and

14 (3) all complaints, investigations, or contested  
15 cases that are pending before an entity or the governing body of an  
16 entity listed in Subsection (a) of this section and that are related  
17 to a power, duty, function, program, or activity transferred under  
18 that subsection are transferred without change in status to the  
19 Department of Protective and Regulatory Services.

20 (c) A rule or form adopted by an entity listed in Subsection  
21 (a) of this section that relates to a power, duty, function,  
22 program, or activity transferred under that subsection is a rule or  
23 form of the Department of Protective and Regulatory Services and  
24 remains in effect until altered by the commissioner of health and  
25 human services.

26 (d) A reference in law to an entity listed in Subsection (a)  
27 of this section that relates to a power, duty, function, program, or

1 activity transferred under that subsection means the Department of  
2 Protective and Regulatory Services. A reference in law to the  
3 governing body of an entity listed in Subsection (a) of this section  
4 means the Health and Human Services Commission or the commissioner  
5 of health and human services, as appropriate.

6 (e) A license, permit, or certification in effect that was  
7 issued by an entity listed in Subsection (a) of this section and  
8 that relates to a power, duty, function, program, or activity  
9 transferred under that subsection is continued in effect as a  
10 license, permit, or certification of the Department of Protective  
11 and Regulatory Services.

12 SECTION 3.05. TRANSFERS TO THE TEXAS YOUTH COMMISSION. (a)  
13 On or before September 1, 2004, as determined by the commissioner of  
14 health and human services, all powers, duties, functions, programs,  
15 and activities of the Texas Juvenile Probation Commission, other  
16 than those related to rulemaking or policymaking or those  
17 transferred under Section 3.04(a)(2) of this article, are  
18 transferred to the Texas Youth Commission.

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

20 (1) all obligations and contracts of the Texas  
21 Juvenile Probation Commission that are related to a power, duty,  
22 function, program, or activity transferred under Subsection (a) of  
23 this section are transferred to the Texas Youth Commission;

24 (2) all property and records in the custody of the  
25 Texas Juvenile Probation Commission that are related to a power,  
26 duty, function, program, or activity transferred under Subsection  
27 (a) of this section and all funds appropriated by the legislature

1 for the power, duty, function, program, or activity shall be  
2 transferred to the Texas Youth Commission; and

3 (3) all complaints, investigations, or contested  
4 cases that are pending before the Texas Juvenile Probation  
5 Commission and that are related to a power, duty, function,  
6 program, or activity transferred under Subsection (a) of this  
7 section are transferred without change in status to the Texas Youth  
8 Commission.

9 (c) A rule or form adopted by the Texas Juvenile Probation  
10 Commission that relates to a power, duty, function, program, or  
11 activity transferred under Subsection (a) of this section is a rule  
12 or form of the Texas Youth Commission and remains in effect until  
13 altered by the commissioner of health and human services.

14 (d) A reference in law to the Texas Juvenile Probation  
15 Commission that relates to a power, duty, function, program, or  
16 activity transferred under Subsection (a) of this section means the  
17 Texas Youth Commission. A reference in law to the governing board  
18 of the Texas Juvenile Probation Commission means the Health and  
19 Human Services Commission or the commissioner of health and human  
20 services, as appropriate.

21 (e) A license, permit, or certification in effect that was  
22 issued by the Texas Juvenile Probation Commission and that relates  
23 to a power, duty, function, program, or activity transferred under  
24 Subsection (a) of this section is continued in effect as a license,  
25 permit, or certification of the Texas Youth Commission.

26 SECTION 3.06. TRANSFERS TO THE DEPARTMENT OF COMMUNITY AND  
27 LONG-TERM CARE SERVICES. (a) On or before September 1, 2004, as

1 determined by the commissioner of health and human services, the  
2 following powers, duties, functions, programs, and activities,  
3 other than those related to rulemaking or policymaking or those  
4 transferred under Section 3.04(a)(2) of this article, are  
5 transferred to the Department of Community and Long-Term Care  
6 Services:

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

12 (2) from the Texas Rehabilitation Commission, all  
13 powers, duties, functions, programs, and activities related to  
14 independent living centers and services;

15 (3) from the Texas Commission for the Blind, all  
16 powers, duties, functions, programs, and activities related to  
17 independent living skills;

18 (4) from the Texas Department on Aging, all powers,  
19 duties, functions, programs, and activities related to  
20 nutritional, independence productivity, and connections programs  
21 and services; and

22 (5) from the Texas Department of Human Services, all  
23 powers, duties, functions, programs, and activities related to:

24 (A) community-based care services;

25 (B) in-home and family support services;

26 (C) nursing facility and hospice care services;

27 and



1 (D) integrated service delivery services.

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

3 (1) all obligations and contracts of an entity listed  
4 in Subsection (a) of this section that are related to a power, duty,  
5 function, program, or activity transferred under that subsection  
6 are transferred to the Department of Community and Long-Term Care  
7 Services;

8 (2) all property and records in the custody of an  
9 entity listed in Subsection (a) of this section that are related to  
10 a power, duty, function, program, or activity transferred under  
11 that subsection and all funds appropriated by the legislature for  
12 the power, duty, function, program, or activity shall be  
13 transferred to the Department of Community and Long-Term Care  
14 Services; and

15 (3) all complaints, investigations, or contested  
16 cases that are pending before an entity or the governing body of an  
17 entity listed in Subsection (a) of this section and that are related  
18 to a power, duty, function, program, or activity transferred under  
19 that subsection are transferred without change in status to the  
20 Department of Community and Long-Term Care Services.

21 (c) A rule or form adopted by an entity listed in Subsection  
22 (a) of this section that relates to a power, duty, function,  
23 program, or activity transferred under that subsection is a rule or  
24 form of the Department of Community and Long-Term Care Services and  
25 remains in effect until altered by the commissioner of health and  
26 human services.

27 (d) A reference in law to an entity listed in Subsection (a)

1 of this section that relates to a power, duty, function, program, or  
2 activity transferred under that subsection means the Department of  
3 Community and Long-Term Care Services. A reference in law to the  
4 governing body of an entity listed in Subsection (a) of this section  
5 means the Health and Human Services Commission or the commissioner  
6 of health and human services.

7 (e) A license, permit, or certification in effect that was  
8 issued by an entity listed in Subsection (a) of this section and  
9 that relates to a power, duty, function, program, or activity  
10 transferred under that subsection is continued in effect as a  
11 license, permit, or certification of the Department of Community  
12 and Long-Term Care Services.

13 SECTION 3.07. FACILITATION OF TRANSFERS BY COMMISSIONER OF  
14 HEALTH AND HUMAN SERVICES. To facilitate the transfer of powers,  
15 duties, functions, programs, and activities among the state's  
16 health and human services agencies, the Health and Human Services  
17 Commission, and other agencies as provided by this article with a  
18 minimal negative effect on the delivery of health and human  
19 services in this state, the commissioner of health and human  
20 services shall:

21 (1) for each power, duty, function, program, or  
22 activity transferred under this article, determine:

23 (A) the relevant agency actions that constitute  
24 the power, duty, function, program, or activity;

25 (B) the pertinent records and property used by a  
26 state agency for the power, duty, function, program, or activity;

27 (C) each state agency employee whose primary

1 duties involve the power, duty, function, program, or activity and  
2 whether:

3 (i) the employee becomes an employee of a  
4 health and human services agency, as that term is defined in Section  
5 531.001, Government Code, as amended by Section 1.02 of this Act, to  
6 be assigned duties by the executive director of that agency, or an  
7 employee of the Health and Human Services Commission, to be  
8 assigned duties by the commissioner of health and human services;

9 (ii) the employee must reapply with a  
10 health and human services agency, as that term is defined in Section  
11 531.001, Government Code, as amended by Section 1.02 of this Act, or  
12 with the Health and Human Services Commission, as applicable, for a  
13 comparable employment position; or

14 (iii) the employment position will be  
15 eliminated;

16 (D) the funds and obligations that are related to  
17 the power, duty, function, program, or activity; and

18 (E) the date on which the power, duty, function,  
19 program, or activity will transfer in accordance with this Act; and

20 (2) oversee and assist the entities listed in Sections  
21 3.01, 3.02, 3.03, 3.04, 3.05, and 3.06 of this article in  
22 transferring the powers, duties, functions, programs, activities,  
23 records, property, funds, obligations, and employees in accordance  
24 with this article.

25 SECTION 3.08. APPLICABILITY OF FORMER LAW. An action  
26 brought or proceeding commenced before the effective date of a  
27 transfer prescribed by this article, including a contested case or

1 a remand of an action or proceeding by a reviewing court, is  
2 governed by the laws and rules applicable to the action or  
3 proceeding before the transfer.

4 ARTICLE 4. MISCELLANEOUS PROVISIONS

5 SECTION 4.01. ABOLITION OF STATE AGENCIES AND ENTITIES.

6 (a) The following state agencies and entities are abolished:

- 7 (1) the Board of Protective and Regulatory Services;
- 8 (2) the governing board of the Texas Youth Commission;
- 9 (3) the Interagency Council on Early Childhood  
10 Intervention;
- 11 (4) Texas Commission for the Blind;
- 12 (5) Texas Commission for the Deaf and Hard of Hearing;
- 13 (6) Texas Commission on Alcohol and Drug Abuse;
- 14 (7) Texas Department of Health;
- 15 (8) Texas Department of Human Services;
- 16 (9) Texas Department of Mental Health and Mental  
17 Retardation;
- 18 (10) Texas Department on Aging;
- 19 (11) Texas Health Care Information Council; and
- 20 (12) Texas Rehabilitation Commission.

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

1 that law remains in effect for any action concerning those matters.

2 SECTION 4.02. REPEAL. Article 2, Chapter 1505, Acts of the  
3 76th Legislature, Regular Session, 1999, is repealed.

4 SECTION 4.03. REQUIRED WAIVER OR AUTHORIZATION. If before  
5 implementing any provision of this Act a state agency determines  
6 that a waiver or authorization from a federal agency is necessary  
7 for implementation of that provision, the agency affected by the  
8 provision shall request the waiver or authorization and may delay  
9 implementing that provision until the waiver or authorization is  
10 granted.

11 SECTION 4.04. EFFECTIVE DATE. Except as otherwise provided  
12 by this Act, this Act takes effect September 1, 2003.