

By: Nelson

S.B. No. 285

A BILL TO BE ENTITLED

AN ACT

relating to the administration and functions of the Texas Department of Human Services.

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

SECTION 1. Subsections (d), (h), and (j), Section 21.003, Human Resources Code, are amended to read as follows:

(d) The governor shall designate a member of [~~After the biennial appointment of new members,~~] the board as the [~~shall elect a] presiding officer of the board to serve in that capacity at the pleasure of the governor [~~who shall preside over meetings of the board~~].~~

(h) A person is not eligible for appointment to the board if the person or the person's spouse:

(1) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the department; [~~or~~]

(2) uses or receives a substantial amount [~~more than 25 percent~~] of tangible goods, services, or money [~~the person's or the spouse's professional income in funds~~] from the department, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses;

(3) is registered, certified, or licensed by a regulatory agency in the field of nursing facility administration

1 or medical permits; or

2 (4) is employed by or participates in the management
3 of a business entity or other organization regulated by or
4 receiving money from the department.

5 (j) A person may not be a member of the board or act as
6 general counsel to the board or the department if the person [who]
7 is required to register as a lobbyist under Chapter 305, Government
8 Code, because [by virtue] of the person's activities for
9 compensation [in or] on behalf of a profession related to the
10 operation of the department [board, may not serve as a member of the
11 board or act as general counsel to the board].

12 SECTION 2. Section 21.0031, Human Resources Code, is
13 amended to read as follows:

14 Sec. 21.0031. RESTRICTIONS ON BOARD MEMBERSHIP AND
15 EMPLOYMENT. (a) ~~[An officer, employee, or paid consultant of a~~
16 ~~trade association in the field of human services may not be a member~~
17 ~~or employee of the board or department.]~~ A person ~~[who is the~~
18 ~~spouse of any officer, employee, or paid consultant of a trade~~
19 ~~association in the field of human services]~~ may not be a member of
20 the board and may not be a department [an] employee employed in a
21 "bona fide executive, administrative, or professional capacity,"
22 as that phrase is used for purposes of establishing an exemption to
23 the overtime provisions of the federal Fair Labor Standards Act of
24 1938 (29 U.S.C. Section 201 et seq.), and its subsequent
25 amendments, if:

26 (1) the person is an officer, employee, or paid
27 consultant of a Texas trade association in the field of human

1 services; or

2 (2) the person's spouse is an officer, manager, or paid
3 consultant of a Texas trade association in the field of human
4 services [~~of the department, including an employee exempt from the~~
5 ~~state's classification plan, who is compensated at or above the~~
6 ~~amount prescribed by the General Appropriations Act for step 1,~~
7 ~~salary group 17, of the position classification salary schedule].~~

8 (b) In [~~For the purposes of~~] this section, "Texas [~~a~~] trade
9 association" means [~~is~~] a [~~nonprofit,~~] cooperative[~~,~~] and
10 voluntarily joined statewide association of business or
11 professional competitors in this state, including a nonprofit
12 association, designed to assist its members and its industry or
13 profession in dealing with mutual business or professional problems
14 and in promoting their common interests.

15 SECTION 3. Section 21.0032, Human Resources Code, is
16 amended to read as follows:

17 Sec. 21.0032. GROUNDS FOR REMOVAL. (a) It is a ground for
18 removal from the board that [~~if~~] a member:

19 (1) does not have at the time of taking office
20 [~~appointment~~] the qualifications required by Section 21.003 [~~of~~
21 ~~this code for appointment to the board~~];

22 (2) does not maintain during [~~the member's~~] service on
23 the board the qualifications required by Section 21.003 [~~of this~~
24 ~~code for appointment to the board~~];

25 (3) is ineligible for membership under [~~violates a~~
26 ~~prohibition established by Subsection (j) of~~] Section 21.003(h) or
27 (j) [~~21.003~~] or under [~~by~~] Section 21.0031 [~~of this code~~];

1 (4) cannot, because of illness or disability, [~~is~~
2 ~~unable to~~] discharge the member's duties for a substantial part of
3 the member's term [~~for which the member was appointed because of~~
4 ~~illness or disability~~]; or

5 (5) is absent from more than half [~~one-half~~] of the
6 regularly scheduled board meetings that the member is eligible to
7 attend during a [each] calendar year without an excuse approved[~~7~~
8 ~~except when the absence is excused~~] by a majority vote of the board.

9 (b) The validity of an action of the board is not affected by
10 the fact that it is [~~was~~] taken when a ground for removal of a board
11 member exists [~~of the board existed~~].

12 (c) If the commissioner has knowledge that a potential
13 ground for removal exists, the commissioner shall notify the
14 presiding officer [~~chairman~~] of the board of the potential ground.
15 The presiding officer [~~chairman of the board~~] shall then notify the
16 governor and the attorney general that a potential ground for
17 removal exists. If the potential ground for removal involves the
18 presiding officer, the commissioner shall notify the next highest
19 ranking officer of the board, who shall then notify the governor and
20 the attorney general that a potential ground for removal exists.

21 SECTION 4. Section 21.0051, Human Resources Code, is
22 amended by amending Subsections (a) and (c) and adding Subsection
23 (f) to read as follows:

24 (a) The board shall develop and implement [~~adopt~~] policies
25 that clearly separate the policy-making [~~define the respective~~]
26 responsibilities of the board and the management responsibilities
27 of the commissioner and the staff of the department.

1 (c) The commissioner or the commissioner's designee shall
2 prepare and maintain a written policy statement that implements ~~to~~
3 ~~assure implementation of~~ a program of equal employment opportunity
4 to ensure that ~~[by which]~~ all personnel decisions ~~[transactions]~~
5 are made without regard to race, color, disability ~~[handicap]~~, sex,
6 religion, age, or national origin. The policy statement must
7 include:

8 (1) personnel policies, including policies relating
9 to recruitment, evaluation, selection, ~~[appointment,]~~ training,
10 and promotion of personnel, that show the intent of the department
11 to avoid the unlawful employment practices described by Chapter 21,
12 Labor Code; and

13 (2) an ~~[a comprehensive]~~ analysis of the extent to
14 which the composition of the department's personnel is in
15 accordance with ~~[work force that meets]~~ federal and state law and a
16 description of reasonable methods to achieve compliance with
17 federal and state law ~~[guidelines;~~

18 ~~[(3) procedures by which a determination can be made~~
19 ~~of significant underutilization in the department work force of all~~
20 ~~persons of whom federal or state guidelines encourage a more~~
21 ~~equitable balance; and~~

22 ~~[(4) reasonable methods to appropriately address~~
23 ~~areas of significant underutilization in the department work force~~
24 ~~of all persons of whom federal or state guidelines encourage a more~~
25 ~~equitable balance].~~

26 (f) The policy statement under Subsection (c) must:

27 (1) be updated annually;

1 (2) be reviewed by the state Commission on Human
2 Rights for compliance with Subsection (c)(1); and

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

4 SECTION 5. Chapter 21, Human Resources Code, is amended by
5 adding Section 21.0053 to read as follows:

6 Sec. 21.0053. 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 SECTION 6. Chapter 21, Human Resources Code, is amended by
11 adding Section 21.00605 to read as follows:

12 Sec. 21.00605. REGIONAL BUSINESS PLANNING. (a) The
13 department shall develop a business plan for each service region
14 that:

15 (1) addresses the department's statewide goals and
16 states the region's specific objectives and strategies to meet the
17 goals;

18 (2) includes region-specific targets for
19 client-centered outcome measures; and

20 (3) requires regional administrators to report at
21 least annually to the state office on the region's progress in
22 achieving the goals and objectives contained in the region's
23 business plan.

24 (b) The department shall develop standard client-centered
25 outcome measures and use the standard measures in all regional
26 business plans.

27 (c) The department must seek public input in the development

1 of regional business plans and regional strategies.

2 SECTION 7. Subsection (a), Section 21.011, Human Resources
3 Code, is amended to read as follows:

4 (a) On or before December 31 of each year the commissioner
5 shall prepare and submit to the board a full report on the operation
6 and administration of the department together with the
7 commissioner's ~~[his]~~ recommendations for changes. The report must
8 include information relating to the status of the client-centered
9 outcome measures developed by the department under Section
10 21.00605(b) and the department's progress in improving those
11 outcome measures. The board shall submit the report to the governor
12 and the legislature.

13 SECTION 8. Section 21.015, Human Resources Code, is amended
14 by amending Subsections (c) and (d) and adding Subsection (f) to
15 read as follows:

16 (c) The ~~[If a written complaint is filed with the department~~
17 ~~that relates to an individual or entity regulated by the department~~
18 ~~or to a service provided by the department, the]~~ department, at
19 least ~~[as frequently as]~~ quarterly ~~[and]~~ until final disposition of
20 the complaint, shall notify the person filing the complaint and
21 each person who is a subject of the complaint ~~[complainant, the~~
22 ~~service provider, and the individual or entity regulated by the~~
23 ~~department]~~ of the status of the investigation ~~[complaint]~~ unless
24 the notice would jeopardize an undercover investigation ~~[or~~
25 ~~potential criminal prosecution]~~.

26 (d) The department shall maintain a ~~[keep an information]~~
27 file on ~~[about]~~ each written complaint filed with the department

1 ~~[that relates to an individual or entity regulated by the~~
2 ~~department or to a service provided by the department]~~. The file
3 must include:

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

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

7 (3) the subject matter of the complaint;

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

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

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

15 (f) The department shall provide to the person filing the
16 complaint and to each person who is a subject of the complaint a
17 copy of the department's policies and procedures relating to
18 complaint investigation and resolution. The department may delay
19 providing the information to a person who is a subject of the
20 complaint if providing the information would jeopardize an
21 investigation.

22 SECTION 9. Section 21.016, Human Resources Code, is amended
23 to read as follows:

24 Sec. 21.016. PUBLIC TESTIMONY. The board shall develop and
25 implement ~~[adopt]~~ policies that provide the public with a
26 reasonable opportunity to appear before the board and to speak on
27 any issue under the jurisdiction of the department ~~[board]~~.

1 SECTION 10. Chapter 21, Human Resources Code, is amended by
2 adding Sections 21.018 and 21.019 to read as follows:

3 Sec. 21.018. POLICY ON TECHNOLOGICAL SOLUTIONS. The board
4 shall develop and implement a policy that requires the commissioner
5 and the staff of the department to research and propose appropriate
6 technological solutions to improve the ability of the department to
7 perform its mission. The technological solutions must include
8 measures to ensure that the public is able to easily find
9 information about the department through the Internet and that
10 persons who have a reason to use the department's services are able
11 to use the Internet to interact with the department and to access
12 any services that can be provided effectively through the Internet.
13 The policy shall also ensure that proposed technological solutions
14 are cost-effective and developed through the department's planning
15 processes.

16 Sec. 21.019. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION
17 PROCEDURES. (a) The board shall develop and implement a policy to
18 encourage the use of:

19 (1) negotiated rulemaking procedures under Chapter
20 2008, Government Code, for the adoption of department rules; and

21 (2) appropriate alternative dispute resolution
22 procedures under Chapter 2009, Government Code, to assist in the
23 resolution of internal and external disputes under the department's
24 jurisdiction.

25 (b) The department's procedures relating to alternative
26 dispute resolution must conform, to the extent possible, to any
27 model guidelines issued by the State Office of Administrative

1 Hearings for the use of alternative dispute resolution by state
2 agencies.

3 (c) The board shall designate a trained person to:

4 (1) coordinate the implementation of the policy
5 adopted under Subsection (a);

6 (2) serve as a resource for any training needed to
7 implement the procedures for negotiated rulemaking or alternative
8 dispute resolution; and

9 (3) collect data concerning the effectiveness of those
10 procedures, as implemented by the department.

11 SECTION 11. Chapter 22, Human Resources Code, is amended by
12 adding Section 22.040 to read as follows:

13 Sec. 22.040. DETERMINATION OF ELIGIBILITY FOR COMMUNITY
14 CARE SERVICES FOR ELDERLY PERSONS OR PERSONS WITH DISABILITIES.

15 The department by rule shall develop and implement a plan to assist
16 elderly persons or persons with disabilities requesting community
17 care services in receiving those services as quickly as possible
18 when those services become available. The plan must require the
19 department to:

20 (1) forecast participant openings that will become
21 available in a community care program serving the elderly person or
22 person with a disability during the next fiscal quarter because of
23 program expansion or case closures;

24 (2) contact an individual on an interest list and
25 begin the program eligibility determination process at least 30
26 days before an opening is forecasted to become available in the
27 program; and

1 (3) ensure that an individual determined to be
2 eligible for services does not begin receiving services until after
3 the opening actually becomes available.

4 SECTION 12. Section 31.0128, Human Resources Code, is
5 amended by adding Subsection (e) to read as follows:

6 (e) On the department's formulation of recommendations and
7 strategies under Section 31.0129(b), the department and the Texas
8 Workforce Commission shall, as necessary, revise and update a
9 memorandum of understanding and coordinated interagency case
10 management plan under this section to include the recommendations
11 and strategies.

12 SECTION 13. Subchapter A, Chapter 31, Human Resources Code,
13 is amended by adding Section 31.0129 to read as follows:

14 Sec. 31.0129. COORDINATED PLAN TO IMPROVE INTERAGENCY
15 TRANSITIONS. (a) The department, the Texas Workforce Commission,
16 and representatives of local workforce development boards shall
17 conduct a survey of best practices used to transition clients
18 between local department offices and workforce centers.

19 (b) The department shall:

20 (1) analyze information collected by a survey under
21 Subsection (a); and

22 (2) formulate recommendations and strategies to
23 improve practices used to transition clients between local
24 department offices and workforce centers.

25 (c) Using existing resources, the department and local
26 workforce development boards shall adopt policies to implement the
27 recommendations and strategies contained in the revised and updated

1 memorandum of understanding under Section 31.0128.

2 SECTION 14. Section 242.610, Health and Safety Code, is
3 amended by amending Subsections (b), (d), and (g) and adding
4 Subsections (h) through (m) to read as follows:

5 (b) The department shall prepare and conduct, at the site of
6 the training program, an examination for the issuance of a permit.
7 The results of the examination shall be reported in accordance with
8 Section 242.6101.

9 (d) Subject to Subsections (h)-(m), the [The] department
10 shall issue a permit or renew a permit to an applicant who:

11 (1) meets the minimum requirements adopted under
12 Section 242.608;

13 (2) successfully completes the examination or the
14 continuing education requirements; and

15 (3) pays a nonrefundable application fee determined by
16 the board.

17 (g) The board by rule may adopt a system under which permits
18 expire on various dates during the year. For the year in which the
19 permit expiration date is changed, the department shall prorate
20 permit fees on a monthly basis so that each permit holder pays only
21 that portion of the permit fee that is allocable to the number of
22 months during which the permit is valid. On renewal of the permit
23 on the new expiration date, the total permit renewal fee is payable
24 ~~[The department may shorten the term of a permit to provide for the~~
25 ~~staggered renewal of permits. If a permit is issued for a term that~~
26 ~~is less than one year, the fee assessed under Section 242.611 must~~
27 ~~be prorated appropriately].~~

1 (h) A person who is otherwise eligible to renew a permit may
2 renew an unexpired permit by paying the required renewal fee to the
3 department before the expiration date of the permit. A person whose
4 permit has expired may not engage in activities that require a
5 permit until the permit has been renewed.

6 (i) A person whose permit has been expired for 90 days or
7 less may renew the permit by paying to the department a renewal fee
8 that is equal to 1-1/2 times the normally required renewal fee.

9 (j) A person whose permit has been expired for more than 90
10 days but less than one year may renew the permit by paying to the
11 department a renewal fee that is equal to two times the normally
12 required renewal fee.

13 (k) A person whose permit has been expired for one year or
14 more may not renew the permit. The person may obtain a new permit by
15 complying with the requirements and procedures, including the
16 examination requirements, for obtaining an original permit.

17 (l) A person who was issued a permit in this state, moved to
18 another state, currently holds a valid permit or license issued by
19 the other state, and has been in practice in that state for the two
20 years preceding the date of application may obtain a new permit
21 without reexamination. The person must pay to the department a fee
22 that is equal to two times the normally required renewal fee for the
23 permit.

24 (m) Not later than the 30th day before the date a person's
25 permit is scheduled to expire, the department shall send written
26 notice of the impending expiration to the person at the person's
27 last known address according to the records of the department.

1 SECTION 15. Subchapter N, Chapter 242, Health and Safety
2 Code, is amended by adding Section 242.6101 to read as follows:

3 Sec. 242.6101. RESULTS OF EXAMINATION FOR ISSUANCE OF
4 PERMIT. (a) Not later than the 30th day after the date a person
5 takes an examination for the issuance of a permit under this
6 subchapter, the department shall notify the person of the results
7 of the examination.

8 (b) If the examination is graded or reviewed by a testing
9 service:

10 (1) the department shall notify the person of the
11 results of the examination not later than the 14th day after the
12 date the department receives the results from the testing service;
13 and

14 (2) if notice of the examination results will be
15 delayed for longer than 90 days after the examination date, the
16 department shall notify the person of the reason for the delay
17 before the 90th day.

18 (c) The department may require a testing service to notify a
19 person of the results of the person's examination.

20 (d) If requested in writing by a person who fails an
21 examination for the issuance of a permit administered under this
22 subchapter, the department shall furnish the person with an
23 analysis of the person's performance on the examination.

24 SECTION 16. Section 242.611, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 242.611. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO
27 ADMINISTER MEDICATION. The board shall set the fees in amounts

1 reasonable and necessary to recover the amount projected by the
2 department as required to administer its functions. Except as
3 otherwise provided by Section 242.610, the ~~[The]~~ fees may not
4 exceed:

5 (1) \$25 for a combined permit application and
6 examination fee; and

7 (2) \$15 for a renewal permit application fee.

8 SECTION 17. Section 242.612, Health and Safety Code, is
9 amended by amending Subsection (a) and adding Subsection (c) to
10 read as follows:

11 (a) The board shall revoke, ~~[For the violation of this~~
12 ~~subchapter or a rule adopted under this subchapter, the department~~
13 ~~may:~~

14 ~~[(1)]~~ suspend, ~~[revoke,~~ or refuse to renew a permit
15 or shall reprimand a permit holder for a violation of this
16 subchapter or a rule of the board adopted under this subchapter. In
17 addition, the board may~~+~~

18 ~~[(2)]~~ suspend a permit in an emergency~~+~~ or

19 ~~[(3)]~~ rescind training program approval.

20 (c) The board may place on probation a person whose permit
21 is suspended. If a permit suspension is probated, the board may
22 require the person:

23 (1) to report regularly to the department on matters
24 that are the basis of the probation;

25 (2) to limit practice to the areas prescribed by the
26 board; or

27 (3) to continue or review professional education until

1 the person attains a degree of skill satisfactory to the board in
2 those areas that are the basis of the probation.

3 SECTION 18. The changes made by this Act to Subsection (a),
4 Section 21.011, Human Resources Code, apply only to a report on the
5 operations and administration of the Texas Department of Human
6 Services that is required to be submitted to the governor and the
7 legislature under that section after December 31, 2003.

8 SECTION 19. The Texas Department of Human Services shall
9 develop a business plan for each service region, in accordance with
10 Section 21.00605, Human Resources Code, as added by this Act, not
11 later than September 1, 2004.

12 SECTION 20. The Texas Department of Human Services shall
13 formulate recommendations and strategies in accordance with
14 Subsection (b), Section 31.0129, Human Resources Code, as added by
15 this Act, not later than September 1, 2004.

16 SECTION 21. Not later than December 1, 2004, the Texas
17 Department of Human Services and the Texas Workforce Commission
18 shall, as necessary, update the memorandum of understanding and
19 coordinated interagency case management plan required under
20 Section 31.0128, Human Resources Code, as amended by this Act.

21 SECTION 22. This Act takes effect September 1, 2003.