

By: Janek

S.B. No. 1421

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; providing civil and  
5 criminal penalties.

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

7 ARTICLE 1. HEALTH AND HUMAN SERVICES COMMISSION

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

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

12 (A) Department for Children and Families  
13 [~~Interagency Council on Early Childhood Intervention~~];

14 (B) [~~Texas~~] Department on Aging;

15 (C) Department for Persons with Disabilities  
16 [~~Texas Commission on Alcohol and Drug Abuse~~]; and

17 (D) Department for Health and Mental Health  
18 [~~Texas Commission for the Blind~~];

19 [~~(E) Texas Commission for the Deaf and Hard of~~  
20 ~~Hearing~~];

21 [~~(F) Texas Department of Health~~];

22 [~~(G) Texas Department of Human Services~~];

23 [~~(H) Texas Department of Mental Health and Mental~~  
24 ~~Retardation~~];

1                   ~~[(I) Texas Rehabilitation Commission,~~  
2                   ~~[(J) Department of Protective and Regulatory~~  
3 ~~Services, and~~  
4                   ~~[(K) Texas Health Care Information Council].~~

5           SECTION 1.02. Section 531.004, Government Code, is amended  
6 to read as follows:

7           Sec. 531.004. SUNSET PROVISION. The Health and Human  
8 Services Commission is subject to Chapter 325 (Texas Sunset Act).  
9 Unless continued in existence as provided by that chapter, the  
10 commission is abolished and this chapter expires September 1, 2009  
11 [~~2007~~].

12           SECTION 1.03. Section 531.0055, Government Code, is amended  
13 to read as follows:

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

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

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

24           (b) The commission shall:

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

1           (2) perform [~~supervise~~] information systems planning  
2 and management for health and human services agencies under Section  
3 531.0273, with the provision of information technology services at  
4 health and human services agencies considered to be a centralized  
5 administrative support service either performed by commission  
6 personnel or performed under a contract with the commission;

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

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

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

17                   (B) the financial assistance program under  
18 Chapter 31, Human Resources Code, including the earned income  
19 disregard;

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

22                   (D) the nutritional assistance programs under  
23 Chapter 33, Human Resources Code.

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

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

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

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

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

27 (2) supervise and direct the activities of each agency

1 director.

2 (f) The operational authority and responsibility of the  
3 commissioner for purposes of Subsection (e) at each health and  
4 human services agency includes authority over and responsibility  
5 for the:

6 (1) management of the daily operations of the agency,  
7 including the organization and management of the agency and agency  
8 operating procedures;

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

11 (3) personnel and employment policies;

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

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

16 (6) location of agency facilities; and

17 (7) coordination of agency activities with activities  
18 of other state agencies, including other health and human services  
19 agencies.

20 (g) Notwithstanding any other law, the operational  
21 authority and responsibility of the commissioner for purposes of  
22 Subsection (e) at each health and human services agency includes  
23 the authority and responsibility to adopt or approve, subject to  
24 applicable limitations, any rate of payment or similar provision  
25 required by law to be adopted or approved by the agency.

26 (h) For each health and human services agency, the  
27 commissioner shall implement a program to evaluate and supervise

1 the daily operations of the agency. The program must include  
2 measurable performance objectives for each agency director and  
3 adequate reporting requirements to permit the commissioner to  
4 perform the duties assigned to the commissioner under this section.

5 (i) To facilitate the operations of a health and human  
6 services agency in accordance with this section, the commissioner  
7 may delegate a specific power or duty given under Subsection (f) or  
8 (g) to an agency director. The agency director acts on behalf of  
9 and reports to the commissioner in performing the delegated  
10 function.

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

13 (k) The commissioner and each agency director shall enter  
14 into a memorandum of understanding in the manner prescribed by  
15 Section 531.0164 that:

16 (1) clearly defines the responsibilities of the agency  
17 director and the commissioner, including:

18 (A) the responsibility of the agency director to  
19 report to and implement policies of the commissioner; and

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

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

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

26 (l) Notwithstanding any other law, the commissioner  
27 [~~provision of this section, a policymaking body~~] has the authority

1 ~~[provided by law]~~ to adopt policies and rules governing the  
2 delivery of services to persons who are served by each health and  
3 human services ~~[the]~~ agency and the rights and duties of persons who  
4 are served or regulated by each ~~[the]~~ agency. ~~[The commissioner and~~  
5 ~~each policymaking body shall enter into a memorandum of~~  
6 ~~understanding that clearly defines:~~

7 ~~[(1) the policymaking authority of the policymaking~~  
8 ~~body; and~~

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

10 SECTION 1.04. Section 531.0056, Government Code, is amended  
11 to read as follows:

12 Sec. 531.0056. EMPLOYMENT OF AGENCY DIRECTOR. (a) The  
13 commissioner shall hire an agency director for each health and  
14 human services agency ~~[This section applies only to an agency~~  
15 ~~director employed by the commissioner].~~

16 (b) The agency director shall serve at the pleasure of the  
17 commissioner ~~[An agency director employed by the commissioner may~~  
18 ~~be employed only with the concurrence of the agency's policymaking~~  
19 ~~body and the approval of the governor].~~

20 (c) In addition to the requirements of ~~[As established in]~~  
21 Section 531.0055(k)(1), the memorandum of understanding between  
22 the commissioner and agency director required by that section must  
23 ~~[shall enter into a memorandum of understanding that]~~ clearly  
24 define ~~[defines]~~ the ~~[responsibilities of the agency director and~~  
25 ~~may establish]~~ terms ~~[and conditions]~~ of the agency director's  
26 employment ~~[in the memorandum of understanding].~~

27 (d) The terms of the memorandum of understanding shall

1 outline specific performance objectives, as defined [~~jointly~~] by  
2 the commissioner [~~and the policymaking body~~], to be fulfilled by  
3 the agency director, including the performance objectives outlined  
4 in Section 531.0055(h).

5 (e) Based upon the performance objectives outlined in the  
6 memorandum of understanding, the commissioner shall perform an  
7 employment evaluation of the agency director.

8 [~~(f) The commissioner shall submit the evaluation, along  
9 with any recommendation regarding the employment of the agency  
10 director, to the agency's policymaking body and the governor not  
11 later than January 1 of each even-numbered year.~~]

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

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

19 SECTION 1.05. Subchapter A, Chapter 531, Government Code,  
20 is amended by adding Sections 531.0161, 531.0162, 531.0163,  
21 531.0164, and 531.0165 to read as follows:

22 Sec. 531.0161. NEGOTIATED RULEMAKING AND ALTERNATIVE  
23 DISPUTE PROCEDURES. (a) The commission shall develop and  
24 implement a policy, for the commission and each health and human  
25 services agency, to encourage the use of:

26 (1) negotiated rulemaking procedures under Chapter  
27 2008 for the adoption of commission rules; and



1           (2) appropriate alternative dispute resolution  
2 procedures under Chapter 2009 to assist in the resolution of  
3 internal and external disputes under the commission's or agency's  
4 jurisdiction.

5           (b) The procedures relating to alternative dispute  
6 resolution must conform, to the extent possible, to any model  
7 guidelines issued by the State Office of Administrative Hearings  
8 for the use of alternative dispute resolution by state agencies.

9           Sec. 531.0162. USE OF TECHNOLOGY. (a) The commission shall  
10 develop and implement a policy requiring the executive director and  
11 employees of each health and human services agency to research and  
12 propose appropriate technological solutions to improve the  
13 agency's ability to perform its functions. The technological  
14 solutions must:

15           (1) ensure that the public is able to easily find  
16 information about a health and human services agency on the  
17 Internet;

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

20                   (A) interact with the agency through the  
21 Internet; and

22                   (B) access any service that can be provided  
23 effectively through the Internet; and

24           (3) be cost-effective and developed through the  
25 commission's planning process.

26           (b) The commission shall develop and implement a policy  
27 described by Subsection (a) in relation to the commission's

1 functions.

2 Sec. 531.0163. PURCHASING. Notwithstanding any other law,  
3 the commission shall make all purchases for health and human  
4 services agencies. The commission may delegate purchasing  
5 authority to a health and human services agency under circumstances  
6 in which the commission determines that it is not cost-effective  
7 for the commission to make the purchases. If the commission  
8 delegates purchasing authority to a health and human services  
9 agency, the agency shall comply with Section 2155.144.

10 Sec. 531.0164. MEMORANDUM OF UNDERSTANDING. (a) The  
11 memorandum of understanding under Section 531.0055(k) must be  
12 adopted by the commissioner by rule in accordance with the  
13 procedures prescribed by Subchapter B, Chapter 2001, for adopting  
14 rules, except that the requirements of Section 2001.033(a)(1)(A) or  
15 (C) do not apply with respect to any part of the memorandum of  
16 understanding that:

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

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

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

24 Sec. 531.0165. TRANSFER OF PROGRAMS AND FUNCTIONS;  
25 COORDINATION. (a) The commission may:

26 (1) assign responsibility for all or part of a health  
27 and human services program or function to the commission or any

1 health and human services agency;

2 (2) transfer all or part of a health and human services  
3 program or function to the commission or one or more health and  
4 human services agencies and may require that health and human  
5 services agencies cooperate as necessary to administer the program  
6 or function; and

7 (3) transfer amounts appropriated to the commission or  
8 a health and human services agency as necessary for an assignment or  
9 transfer.

10 (b) A decision of the commissioner shall resolve any  
11 conflict between the health and human services agencies.

12 (c) If the commissioner transfers all or part of a program  
13 or function to the commission or one or more health and human  
14 services agencies, the commissioner and the executive director of  
15 each affected agency shall amend the memorandum of understanding  
16 required by Section 531.0055(k) to reflect any change in  
17 responsibilities that results from the transfer.

18 SECTION 1.06. Subchapter B, Chapter 531, Government Code,  
19 is amended by adding Section 531.0224 to read as follows:

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

22 (1) plan and direct the financial assistance program  
23 under Chapter 31, Human Resources Code, including the procurement,  
24 management, and monitoring of contracts necessary to implement the  
25 program;

26 (2) adopt rules and standards governing the financial  
27 assistance program under Chapter 31, Human Resources Code, in

1 consultation with the advisory boards of the agencies that operate  
2 the program, including rules for determining eligibility for and  
3 the amount and duration of an earned income disregard; and

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

7 SECTION 1.07. Sections 531.0057, 531.034, and 531.0345,  
8 Government Code, are repealed.

9 ARTICLE 2. HEALTH AND HUMAN SERVICES AGENCIES

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

12 TITLE 12. HEALTH AND MENTAL HEALTH

13 SUBTITLE A. HEALTH AND MENTAL HEALTH SERVICES

14 CHAPTER 1001. DEPARTMENT FOR HEALTH AND MENTAL HEALTH

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 1001.001. DEFINITIONS. In this chapter:

17 (1) "Advisory board" means the advisory board for  
18 health and mental health.

19 (2) "Agency" means the Department for Health and  
20 Mental Health.

21 (3) "Commission" means the Health and Human Services  
22 Commission.

23 (4) "Commissioner" means the commissioner of health  
24 and human services.

25 (5) "Executive director" means the executive director  
26 of the agency.

27 Sec. 1001.002. AGENCY. The agency is an agency of the

1 state.

2 Sec. 1001.003. SUNSET PROVISION. The agency is subject to  
3 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
4 in existence as provided by that chapter, the agency is abolished  
5 and this chapter expires September 1, 2009.

6 [Sections 1001.004-1001.020 reserved for expansion]

7 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

8 Sec. 1001.021. ADVISORY BOARD FOR HEALTH AND MENTAL HEALTH.

9 (a) The advisory board for health and mental health is created to  
10 assist the commissioner in developing rules and policies for the  
11 agency.

12 (b) The advisory board is composed of seven members  
13 appointed by the governor. To be eligible for appointment to the  
14 advisory board, a person must have demonstrated an interest in and  
15 knowledge of problems and available services related to public  
16 health and mental health, including those concerning substance  
17 abuse. The members must include the following:

18 (1) two members of the general public;

19 (2) a person with experience in public health matters;

20 (3) a person with experience in regulating health or  
21 hospital facilities and services;

22 (4) a person with experience in mental health  
23 services;

24 (5) a person with experience in substance abuse  
25 services; and

26 (6) a person with experience in professional  
27 licensing.

1       (c) A person may not be a public member of the advisory board  
2 if the person or the person's spouse:

3           (1) is registered, certified, or licensed by a  
4 regulatory agency in the field of health, mental health, or  
5 substance abuse services;

6           (2) is employed by or participates in the management  
7 of a business entity or other organization regulated by or  
8 receiving money from the agency;

9           (3) owns or controls, directly or indirectly, more  
10 than a 10 percent interest in a business entity or other  
11 organization regulated by or receiving money from the agency; or

12           (4) uses or receives a substantial amount of tangible  
13 goods, services, or money from the agency other than reimbursement  
14 authorized by law for advisory board membership, attendance, or  
15 expenses.

16       (d) The advisory board shall study and make recommendations  
17 to the executive director regarding the management and operation of  
18 the agency, including policies and rules governing the delivery of  
19 services to persons who are served by the agency and the rights and  
20 duties of persons who are served or regulated by the agency.

21       (e) Chapter 551, Government Code, applies to the advisory  
22 board.

23       (f) Chapter 2110, Government Code, does not apply to the  
24 advisory board.

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

1 appointees.

2 (b) To the extent possible, appointments to the advisory  
3 board shall be made so that the ethnic and geographic diversity of  
4 the state is reflected on the board.

5 Sec. 1001.023. CONFLICTS OF INTEREST. (a) In this section,  
6 "Texas trade association" means a cooperative and voluntarily  
7 joined statewide association of business or professional  
8 competitors in this state designed to assist its members and its  
9 industry or profession in dealing with mutual business or  
10 professional problems and in promoting their common interest.

11 (b) A person may not be a member of the advisory board and  
12 may not be an agency employee employed in a "bona fide executive,  
13 administrative, or professional capacity," as that phrase is used  
14 for purposes of establishing an exemption to the overtime  
15 provisions of the federal Fair Labor Standards Act of 1938 (29  
16 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

17 (1) the person is an officer, employee, or paid  
18 consultant of a Texas trade association in the field of health,  
19 mental health, or substance abuse services; or

20 (2) the person's spouse is an officer, manager, or paid  
21 consultant of a Texas trade association in the field of health,  
22 mental health, or substance abuse services.

23 (c) A person may not be a member of the advisory board if the  
24 person is required to register as a lobbyist under Chapter 305,  
25 Government Code, because of the person's activities for  
26 compensation on behalf of a profession related to the operation of  
27 the agency.

1           Sec. 1001.024. TRAINING PROGRAM FOR ADVISORY BOARD MEMBERS.

2           (a) A person who is appointed as a member of the advisory board may  
3           not vote, deliberate, or be counted as a member in attendance at a  
4           meeting of the advisory board until the person completes a training  
5           program that complies with this section.

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

8                   (1) the legislation that created the agency and the  
9                   advisory board;

10                   (2) the programs operated by the agency;

11                   (3) the role and functions of the agency and the  
12           advisory board, including detailed information regarding:

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

16                           (B) the advisory responsibilities of the  
17           advisory board;

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

21                   (5) the current budget for the agency;

22                   (6) the results of the most recent formal audit of the  
23           agency;

24                   (7) the requirements of:

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

27                           (B) the public information law, Chapter 552,



1 Government Code;

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

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

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

8 Sec. 1001.025. TERMS. (a) Advisory board members serve for  
9 staggered six-year terms with the terms of two or three members  
10 expiring February 1 of each odd-numbered year.

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

13 Sec. 1001.026. VACANCY. The governor by appointment shall  
14 fill the unexpired term of a vacancy on the advisory board.

15 Sec. 1001.027. PRESIDING OFFICER; OTHER OFFICERS;  
16 MEETINGS. (a) The governor shall designate a member of the  
17 advisory board as the presiding officer to serve in that capacity at  
18 the pleasure of the governor.

19 (b) The members of the advisory board shall elect any other  
20 necessary officers.

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

24 Sec. 1001.028. REIMBURSEMENT FOR EXPENSES. An advisory  
25 board member may not receive compensation for service as a member of  
26 the advisory board but is entitled to reimbursement for travel  
27 expenses incurred by the member while conducting the business of

1 the advisory board as provided by the General Appropriations Act.

2 Sec. 1001.029. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

3 (a) The executive director, with the advice of the advisory board,  
4 shall prepare information of public interest describing the  
5 functions of the agency and the procedures by which complaints are  
6 filed with and resolved by the agency. The agency shall make the  
7 information available to the public and appropriate state  
8 governmental entities.

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

13 Sec. 1001.030. PUBLIC ACCESS AND TESTIMONY. The  
14 commissioner shall develop and implement policies that provide the  
15 public with a reasonable opportunity to appear before the advisory  
16 board or commissioner and to speak on any issue under the  
17 jurisdiction of the agency.

18 Sec. 1001.031. POLICYMAKING AND MANAGEMENT  
19 RESPONSIBILITIES. The commissioner, with the advice of the  
20 advisory board, shall develop and the agency shall implement  
21 policies that clearly delineate the policymaking responsibilities  
22 of the commissioner from the management responsibilities of the  
23 commission, the executive director, and the staff of the agency.

24 Sec. 1001.032. ANNUAL REPORT. (a) The executive director  
25 shall file annually with the commissioner a complete and detailed  
26 written report accounting for all funds received and disbursed by  
27 the agency during the preceding fiscal year.

1       (b) The annual report must be in the form and be reported in  
2 the time provided by the commissioner.

3       Sec. 1001.033. OFFICES. The agency shall maintain its  
4 central office in Austin. The agency may maintain offices in other  
5 areas of the state as necessary.

6       [Sections 1001.034-1001.050 reserved for expansion]

7                   SUBCHAPTER C. PERSONNEL

8       Sec. 1001.051. EXECUTIVE DIRECTOR. (a) The commissioner  
9 shall appoint an executive director, who is to be selected  
10 according to education, training, experience, and demonstrated  
11 ability.

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

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

17       (d) The executive director shall administer this chapter  
18 under operational policies established by the commissioner and in  
19 accordance with the memorandum of understanding under Section  
20 531.0055(k), Government Code, between the executive director and  
21 the commissioner, as adopted by rule.

22       Sec. 1001.052. PERSONNEL. (a) The agency may employ,  
23 compensate, and prescribe the duties of personnel necessary and  
24 suitable to administer this chapter.

25       (b) The commissioner shall prepare and by rule adopt  
26 personnel standards.

27       (c) A personnel position may be filled only by an individual

1 selected and appointed on a nonpartisan merit basis.

2 (d) The commissioner, with the advice of the advisory board,  
3 shall develop and the agency shall implement policies that clearly  
4 define the responsibilities of the staff of the agency.

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

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

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

23 Sec. 1001.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)  
24 Subject to rules adopted by the commissioner, the executive  
25 director or the executive director's designee shall prepare and  
26 maintain a written policy statement that implements a program of  
27 equal employment opportunity to ensure that all personnel decisions

1 are made without regard to race, color, disability, sex, religion,  
2 age, or national origin.

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

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

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

14 (c) The policy statement must be:

15 (1) updated annually;

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

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

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

24 [Sections 1001.058-1001.070 reserved for expansion]

25 SUBCHAPTER D. POWERS AND DUTIES OF AGENCY

26 Sec. 1001.071. GENERAL POWERS AND DUTIES OF AGENCY RELATED  
27 TO HEALTH CARE. The agency is responsible for administering human

1 services programs regarding the public health, including:

2 (1) implementing the state's health care delivery  
3 programs;

4 (2) administering state health facilities, hospitals,  
5 and health care systems;

6 (3) developing and providing health care services, as  
7 directed by law;

8 (4) providing for the prevention and control of  
9 communicable diseases;

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

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

14 (7) acting as the lead agency for implementation of  
15 state policies regarding the human immunodeficiency virus and  
16 acquired immunodeficiency syndrome;

17 (8) administering state programs related to cancer,  
18 including the Texas Cancer Plan;

19 (9) investigating the causes of injuries and methods  
20 of prevention;

21 (10) administering a grant program to provide  
22 appropriated money to counties, municipalities, public health  
23 districts, and other political subdivisions for their use to  
24 provide or pay for essential public health services;

25 (11) licensing, permitting, or certifying, and  
26 enforcing regulations regarding:

27 (A) youth camps;

- 1                   (B) home and community support services;  
2                   (C) industrial homework;  
3                   (D) renderers;  
4                   (E) tanning facilities;  
5                   (F) tattoo and body piercing studios;  
6                   (G) migrant labor housing facilities; and  
7                   (H) other facilities or businesses as directed by  
8 law;
- 9                   (12) administering the registration of vital  
10 statistics;
- 11                   (13) licensing, inspecting, and enforcing regulations  
12 regarding health facilities;
- 13                   (14) implementing established standards and  
14 procedures for the management and control of sanitation and for  
15 health protection measures;
- 16                   (15) enforcing regulations regarding radioactive  
17 materials;
- 18                   (16) enforcing regulations regarding food, bottled  
19 and vended drinking water, drugs, cosmetics, and health devices;
- 20                   (17) enforcing regulations regarding food service  
21 establishments, retail food stores, mobile food units, and roadside  
22 food vendors;
- 23                   (18) enforcing regulations regarding controlling  
24 hazardous substances in households and workplaces; and
- 25                   (19) licensing professionals and other persons who  
26 provide health-related services.

27                   Sec. 1001.072. GENERAL POWERS AND DUTIES OF AGENCY RELATED

1 TO MENTAL HEALTH. The agency is responsible for administering  
2 human services programs regarding mental health, including:

3 (1) coordinating mental health services at the local  
4 and state level;

5 (2) operating the state's mental health facilities;

6 (3) inspecting, licensing, and enforcing regulations  
7 regarding mental health facilities; and

8 (4) licensing professionals and other persons who  
9 provide mental health treatment services.

10 Sec. 1001.073. GENERAL POWERS AND DUTIES OF AGENCY RELATED  
11 TO SUBSTANCE ABUSE. The agency is responsible for administering  
12 human services programs regarding substance abuse, including:

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

15 (2) inspecting, licensing, and enforcing regulations  
16 regarding substance abuse treatment facilities;

17 (3) providing public education on substance abuse  
18 issues, as directed by law; and

19 (4) licensing professionals and other persons who  
20 provide substance abuse treatment services.

21 Sec. 1001.074. ADMINISTRATION OF OTHER HEALTH, MENTAL  
22 HEALTH, OR SUBSTANCE ABUSE PROGRAMS AND SERVICES. The agency shall  
23 administer other programs and services related to health, mental  
24 health, or substance abuse that the commissioner delegates to the  
25 agency as the commissioner determines necessary to efficiently  
26 provide those services in this state.

27 Sec. 1001.075. INFORMATION REGARDING COMPLAINTS. (a) The



1 agency shall maintain a file on each written complaint filed with  
2 the agency. The file must include:

3 (1) the name of the person who filed the complaint;  
4 (2) the date the complaint is received by the agency;  
5 (3) the subject matter of the complaint;  
6 (4) the name of each person contacted in relation to  
7 the complaint;

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

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

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

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

22 Sec. 1001.076. RULES. The commissioner may adopt rules  
23 reasonably necessary for the agency to administer this chapter,  
24 consistent with the memorandum of understanding under Section  
25 531.0055(k), Government Code, between the executive director and  
26 the commissioner, as adopted by rule.

27 SECTION 2.02. The Human Resources Code is amended by adding

1 Title 11 to read as follows:

2 TITLE 11. SERVICES FOR CHILDREN, FAMILIES, AND THE AGING AND  
3 DISABLED

4 SUBTITLE A. SERVICES FOR CHILDREN AND FAMILIES

5 CHAPTER 161. DEPARTMENT FOR CHILDREN AND FAMILIES

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 161.001. DEFINITIONS. In this chapter:

8 (1) "Advisory board" means the advisory board for  
9 child and family services.

10 (2) "Agency" means the Department for Children and  
11 Families.

12 (3) "Commission" means the Health and Human Services  
13 Commission.

14 (4) "Commissioner" means the commissioner of health  
15 and human services.

16 (5) "Executive director" means the executive director  
17 of the agency.

18 Sec. 161.002. AGENCY. The agency is an agency of the state.

19 Sec. 161.003. SUNSET PROVISION. The agency is subject to  
20 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
21 in existence as provided by that chapter, the agency is abolished  
22 and this chapter expires September 1, 2009.

23 [Sections 161.004-161.020 reserved for expansion]

24 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

25 Sec. 161.021. ADVISORY BOARD FOR CHILD AND FAMILY SERVICES.

26 (a) The advisory board for child and family services is created to  
27 assist the commissioner in developing rules and policies for the

1 agency.

2 (b) The advisory board is composed of seven members  
3 appointed by the governor. To be eligible for appointment to the  
4 advisory board, a person must have demonstrated an interest in and  
5 knowledge of problems faced by and services available to children  
6 and families. The members must include the following:

7 (1) two members of the general public;

8 (2) a person with experience in child protective  
9 services;

10 (3) a person with experience in family violence  
11 services;

12 (4) a person with experience in services available to  
13 children at risk of engaging in delinquent conduct or conduct  
14 indicating a need for supervision and children adjudged to be  
15 delinquent;

16 (5) a person with experience in managing correctional  
17 facilities for children; and

18 (6) a person with other specialized knowledge in  
19 providing services to children and families.

20 (c) A person may not be a public member of the advisory board  
21 if the person or the person's spouse:

22 (1) is registered, certified, or licensed by a  
23 regulatory agency in the field of human services for children and  
24 families;

25 (2) is employed by or participates in the management  
26 of a business entity or other organization regulated by or  
27 receiving money from the agency;

1           (3) owns or controls, directly or indirectly, more  
2 than a 10 percent interest in a business entity or other  
3 organization regulated by or receiving money from the agency; or

4           (4) uses or receives a substantial amount of tangible  
5 goods, services, or money from the agency other than reimbursement  
6 authorized by law for advisory board membership, attendance, or  
7 expenses.

8           (d) The advisory board shall study and make recommendations  
9 to the executive director regarding the management and operation of  
10 the agency, including policies and rules governing the delivery of  
11 services to persons who are served by the agency and the rights and  
12 duties of persons who are served or regulated by the agency.

13           (e) Chapter 551, Government Code, applies to the advisory  
14 board.

15           (f) Chapter 2110, Government Code, does not apply to the  
16 advisory board.

17           Sec. 161.022. APPOINTMENTS. (a) Appointments to the  
18 advisory board shall be made without regard to the race, color,  
19 disability, sex, religion, age, or national origin of the  
20 appointees.

21           (b) To the extent possible, appointments to the advisory  
22 board shall be made so that the ethnic and geographic diversity of  
23 the state is reflected on the board.

24           Sec. 161.023. CONFLICTS OF INTEREST. (a) In this section,  
25 "Texas trade association" means a cooperative and voluntarily  
26 joined statewide association of business or professional  
27 competitors in this state designed to assist its members and its

1 industry or profession in dealing with mutual business or  
2 professional problems and in promoting their common interest.

3 (b) A person may not be a member of the advisory board and  
4 may not be an agency employee employed in a "bona fide executive,  
5 administrative, or professional capacity," as that phrase is used  
6 for purposes of establishing an exemption to the overtime  
7 provisions of the federal Fair Labor Standards Act of 1938 (29  
8 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

9 (1) the person is an officer, employee, or paid  
10 consultant of a Texas trade association in the field of human  
11 services for children and families; or

12 (2) the person's spouse is an officer, manager, or paid  
13 consultant of a Texas trade association in the field of human  
14 services for children and families.

15 (c) A person may not be a member of the advisory board if the  
16 person is required to register as a lobbyist under Chapter 305,  
17 Government Code, because of the person's activities for  
18 compensation on behalf of a profession related to the operation of  
19 the agency.

20 Sec. 161.024. TRAINING PROGRAM FOR ADVISORY BOARD MEMBERS.

21 (a) A person who is appointed as a member of the advisory board may  
22 not vote, deliberate, or be counted as a member in attendance at a  
23 meeting of the advisory board until the person completes a training  
24 program that complies with this section.

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

27 (1) the legislation that created the agency and the

1 advisory board;

2 (2) the programs operated by the agency;

3 (3) the role and functions of the agency and the  
4 advisory board, including detailed information regarding:

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

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

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

13 (5) the current budget for the agency;

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

16 (7) the requirements of:

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

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

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

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

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

27 Sec. 161.025. TERMS. (a) Advisory board members serve for

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

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

5 Sec. 161.026. VACANCY. The governor by appointment shall  
6 fill the unexpired term of a vacancy on the advisory board.

7 Sec. 161.027. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.

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

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

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

16 Sec. 161.028. REIMBURSEMENT FOR EXPENSES. An advisory  
17 board member may not receive compensation for service as a member of  
18 the advisory board but is entitled to reimbursement for travel  
19 expenses incurred by the member while conducting the business of  
20 the advisory board as provided by the General Appropriations Act.

21 Sec. 161.029. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

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

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

5       Sec. 161.030. PUBLIC ACCESS AND TESTIMONY. The  
6 commissioner shall develop and implement policies that provide the  
7 public with a reasonable opportunity to appear before the advisory  
8 board or commissioner and to speak on any issue under the  
9 jurisdiction of the agency.

10       Sec. 161.031. POLICYMAKING AND MANAGEMENT  
11 RESPONSIBILITIES. The commissioner, with the advice of the  
12 advisory board, shall develop and the agency shall implement  
13 policies that clearly delineate the policymaking responsibilities  
14 of the commissioner from the management responsibilities of the  
15 commission, the executive director, and the staff of the agency.

16       Sec. 161.032. ANNUAL REPORT. (a) The executive director  
17 shall file annually with the commissioner a complete and detailed  
18 written report accounting for all funds received and disbursed by  
19 the agency during the preceding fiscal year.

20       (b) The annual report must be in the form and be reported in  
21 the time provided by the commissioner.

22       Sec. 161.033. OFFICES. The agency shall maintain its  
23 central office in Austin. The agency may maintain offices in other  
24 areas of the state as necessary.

25       [Sections 161.034-161.050 reserved for expansion]

26                               SUBCHAPTER C. PERSONNEL

27       Sec. 161.051. EXECUTIVE DIRECTOR. (a) The commissioner



1 shall appoint an executive director, who is to be selected  
2 according to education, training, experience, and demonstrated  
3 ability.

4 (b) The executive director serves at the pleasure of the  
5 commissioner.

6 (c) The executive director shall act as the agency's chief  
7 administrative officer and as a liaison between the agency and  
8 commission.

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

14 Sec. 161.052. PERSONNEL. (a) The agency may employ,  
15 compensate, and prescribe the duties of personnel necessary and  
16 suitable to administer this chapter.

17 (b) The commissioner shall prepare and by rule adopt  
18 personnel standards.

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

21 (d) The commissioner, with the advice of the advisory board,  
22 shall develop and the agency shall implement policies that clearly  
23 define the responsibilities of the staff of the agency.

24 Sec. 161.053. INFORMATION ABOUT QUALIFICATIONS AND  
25 STANDARDS OF CONDUCT. The executive director or the executive  
26 director's designee shall provide to agency employees, as often as  
27 necessary, information regarding the requirements for employment

1 under this chapter or rules adopted by the commissioner, including  
2 information regarding a person's responsibilities under applicable  
3 laws relating to standards of conduct for state employees.

4 Sec. 161.054. MERIT PAY. Subject to rules adopted by the  
5 commissioner, the executive director or the executive director's  
6 designee shall develop a system of annual performance evaluations.  
7 All merit pay for agency employees must be given under the system  
8 established under this section or under rules adopted by the  
9 commissioner.

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

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

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

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

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

5           (c) The policy statement must be:

6                 (1) updated annually;

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

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

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

15           [Sections 161.058-161.070 reserved for expansion]

16           SUBCHAPTER D. POWERS AND DUTIES OF AGENCY

17           Sec. 161.071. GENERAL POWERS AND DUTIES OF AGENCY. (a) The  
18 agency is responsible for administering human services programs for  
19 children and families, including:

20                 (1) operating the financial assistance program under  
21 Chapter 31 and the nutritional assistance programs under Chapter  
22 33, except as provided by Section 531.0055(b)(4), Government Code;

23                 (2) providing family violence and child protective  
24 services, including conducting child abuse and neglect  
25 investigations;

26                 (3) enforcing regulations regarding child-care  
27 facilities and services;

1           (4) administering the foster care program, including  
2 determining eligibility for foster care services and funds;

3           (5) managing the state's correctional facilities for  
4 children; and

5           (6) providing:

6                 (A) prevention and early intervention services  
7 for children at risk of engaging in delinquent conduct or conduct  
8 indicating a need for supervision and their families; and

9                 (B) rehabilitation and parole supervision  
10 services for children adjudged delinquent by the courts of this  
11 state and committed to the agency.

12           (b) The agency shall administer other programs and services  
13 for children and families that the commissioner delegates to the  
14 agency as the commissioner determines necessary to efficiently  
15 provide those services in this state.

16           Sec. 161.072. INFORMATION REGARDING COMPLAINTS. (a) The  
17 agency shall maintain a file on each written complaint filed with  
18 the agency. The file must include:

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

20                 (2) the date the complaint is received by the agency;

21                 (3) the subject matter of the complaint;

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

24                 (5) a summary of the results of the review or  
25 investigation of the complaint; and

26                 (6) an explanation of the reason the file was closed,  
27 if the agency closed the file without taking action other than to

1 investigate the complaint.

2 (b) The agency shall provide to the person filing the  
3 complaint and to each person who is a subject of the complaint a  
4 copy of the commissioner's and the agency's policies and procedures  
5 relating to complaint investigation and resolution.

6 (c) The agency, at least quarterly until final disposition  
7 of the complaint, shall notify the person filing the complaint and  
8 each person who is a subject of the complaint of the status of the  
9 investigation unless the notice would jeopardize an undercover  
10 investigation.

11 Sec. 161.073. RULES. The commissioner may adopt rules  
12 reasonably necessary for the agency to administer this chapter,  
13 consistent with the memorandum of understanding under Section  
14 531.0055(k), Government Code, between the executive director and  
15 the commissioner, as adopted by rule.

16 [Chapters 162-180 reserved for expansion]

17 SUBTITLE B. SERVICES FOR THE AGING

18 CHAPTER 181. DEPARTMENT ON AGING

19 SUBCHAPTER A. GENERAL PROVISIONS

20 Sec. 181.001. DEFINITIONS. In this chapter:

21 (1) "Advisory board" means the advisory board for  
22 aging services.

23 (2) "Agency" means the Department on Aging.

24 (3) "Commission" means the Health and Human Services  
25 Commission.

26 (4) "Commissioner" means the commissioner of health  
27 and human services.

1           (5) "Executive director" means the executive director  
2 of the agency.

3           Sec. 181.002. AGENCY. The agency is an agency of the state.

4           Sec. 181.003. SUNSET PROVISION. The agency is subject to  
5 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
6 in existence as provided by that chapter, the agency is abolished  
7 and this chapter expires September 1, 2009.

8           [Sections 181.004-181.020 reserved for expansion]

9           SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

10          Sec. 181.021. ADVISORY BOARD FOR AGING SERVICES. (a) The  
11 advisory board for aging services is created to assist the  
12 commissioner in developing rules and policies for the agency.

13          (b) The advisory board is composed of seven members  
14 appointed by the governor. To be eligible for appointment to the  
15 advisory board, a person must have demonstrated an interest in and  
16 knowledge of the problems of aging. The members must include the  
17 following:

18           (1) two members of the general public;

19           (2) a medical professional, preferably a  
20 gerontologist;

21           (3) an advocate for consumers of services for the  
22 aging and their families;

23           (4) a person experienced in adult protective services;

24           (5) a person with knowledge of federal funding  
25 available to provide programs and services for the aging; and

26           (6) a person with other specialized knowledge of  
27 programs and services for the aging.

1       (c) A person may not be a public member of the advisory board  
2 if the person or the person's spouse:

3           (1) is registered, certified, or licensed by a  
4 regulatory agency in the field of services for the aging;

5           (2) is employed by or participates in the management  
6 of a business entity or other organization regulated by or  
7 receiving money from the agency;

8           (3) owns or controls, directly or indirectly, more  
9 than a 10 percent interest in a business entity or other  
10 organization regulated by or receiving money from the agency; or

11           (4) uses or receives a substantial amount of tangible  
12 goods, services, or money from the agency other than reimbursement  
13 authorized by law for advisory board membership, attendance, or  
14 expenses.

15       (d) The advisory board shall study and make recommendations  
16 to the executive director regarding the management and operation of  
17 the agency, including policies and rules governing the delivery of  
18 services to persons who are served by the agency and the rights and  
19 duties of persons who are served or regulated by the agency.

20       (e) Chapter 551, Government Code, applies to the advisory  
21 board.

22       (f) Chapter 2110, Government Code, does not apply to the  
23 advisory board.

24       Sec. 181.022. APPOINTMENTS. (a) Appointments to the  
25 advisory board shall be made without regard to the race, color,  
26 disability, sex, religion, age, or national origin of the  
27 appointees.

1       (b) To the extent possible, appointments to the advisory  
2 board shall be made so that the ethnic and geographic diversity of  
3 the state is reflected on the board.

4       Sec. 181.023. CONFLICTS OF INTEREST. (a) In this section,  
5 "Texas trade association" means a cooperative and voluntarily  
6 joined statewide association of business or professional  
7 competitors in this state designed to assist its members and its  
8 industry or profession in dealing with mutual business or  
9 professional problems and in promoting their common interest.

10       (b) A person may not be a member of the advisory board and  
11 may not be an agency employee employed in a "bona fide executive,  
12 administrative, or professional capacity," as that phrase is used  
13 for purposes of establishing an exemption to the overtime  
14 provisions of the federal Fair Labor Standards Act of 1938 (29  
15 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

16           (1) the person is an officer, employee, or paid  
17 consultant of a Texas trade association in the field of services for  
18 the aging; or

19           (2) the person's spouse is an officer, manager, or paid  
20 consultant of a Texas trade association in the field of services for  
21 the aging.

22       (c) A person may not be a member of the advisory board if the  
23 person is required to register as a lobbyist under Chapter 305,  
24 Government Code, because of the person's activities for  
25 compensation on behalf of a profession related to the operation of  
26 the agency.

27       Sec. 181.024. TRAINING PROGRAM FOR ADVISORY BOARD MEMBERS.



1 (a) A person who is appointed as a member of the advisory board may  
2 not vote, deliberate, or be counted as a member in attendance at a  
3 meeting of the advisory board until the person completes a training  
4 program that complies with this section.

5 (b) The training program must provide the person with  
6 information regarding:

7 (1) the legislation that created the agency and the  
8 advisory board;

9 (2) the programs operated by the agency;

10 (3) the role and functions of the agency and the  
11 advisory board, including detailed information regarding:

12 (A) the division of authority and of  
13 responsibility between the executive director and the  
14 commissioner; and

15 (B) the advisory responsibilities of the  
16 advisory board;

17 (4) the rules of the commissioner applicable to the  
18 agency, with an emphasis on the rules that relate to disciplinary  
19 and investigatory authority;

20 (5) the current budget for the agency;

21 (6) the results of the most recent formal audit of the  
22 agency;

23 (7) the requirements of:

24 (A) the open meetings law, Chapter 551,  
25 Government Code;

26 (B) the public information law, Chapter 552,  
27 Government Code;

1           (C) the administrative procedure law, Chapter  
2 2001, Government Code; and

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

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

7           Sec. 181.025. TERMS. (a) Advisory board members serve for  
8 staggered six-year terms with the terms of two or three members  
9 expiring February 1 of each odd-numbered year.

10          (b) A member of the advisory board may not serve more than  
11 two consecutive full terms as a board member.

12          Sec. 181.026. VACANCY. The governor by appointment shall  
13 fill the unexpired term of a vacancy on the advisory board.

14          Sec. 181.027. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.  
15 (a) The governor shall designate a member of the advisory board as  
16 the presiding officer to serve in that capacity at the pleasure of  
17 the governor.

18          (b) The members of the advisory board shall elect any other  
19 necessary officers.

20          (c) The advisory board shall meet quarterly and at other  
21 times at the call of the presiding officer. The board may hold  
22 meetings in different areas of the state.

23          Sec. 181.028. REIMBURSEMENT FOR EXPENSES. An advisory  
24 board member may not receive compensation for service as a member of  
25 the advisory board but is entitled to reimbursement for travel  
26 expenses incurred by the member while conducting the business of  
27 the advisory board as provided by the General Appropriations Act.

1       Sec. 181.029. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

2       (a) The executive director, with the advice of the advisory board,  
3       shall prepare information of public interest describing the  
4       functions of the agency and the procedures by which complaints are  
5       filed with and resolved by the agency. The agency shall make the  
6       information available to the public and appropriate state  
7       governmental entities.

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

12       Sec. 181.030. PUBLIC ACCESS AND TESTIMONY. The  
13       commissioner shall develop and implement policies that provide the  
14       public with a reasonable opportunity to appear before the advisory  
15       board or commissioner and to speak on any issue under the  
16       jurisdiction of the agency.

17       Sec. 181.031. POLICYMAKING AND MANAGEMENT  
18       RESPONSIBILITIES. The commissioner, with the advice of the  
19       advisory board, shall develop and the agency shall implement  
20       policies that clearly delineate the policymaking responsibilities  
21       of the commissioner from the management responsibilities of the  
22       commission, the executive director, and the staff of the agency.

23       Sec. 181.032. ANNUAL REPORT. (a) The executive director  
24       shall file annually with the commissioner a complete and detailed  
25       written report accounting for all funds received and disbursed by  
26       the agency during the preceding fiscal year.

27       (b) The annual report must be in the form and be reported in

1 the time provided by the commissioner.

2 Sec. 181.033. OFFICES. The agency shall maintain its  
3 central office in Austin. The agency may maintain offices in other  
4 areas of the state as necessary.

5 [Sections 181.034-181.050 reserved for expansion]

6 SUBCHAPTER C. PERSONNEL

7 Sec. 181.051. EXECUTIVE DIRECTOR. (a) The commissioner  
8 shall appoint an executive director, who is to be selected  
9 according to education, training, experience, and demonstrated  
10 ability.

11 (b) The executive director serves at the pleasure of the  
12 commissioner.

13 (c) The executive director shall act as the agency's chief  
14 administrative officer and as a liaison between the agency and  
15 commission.

16 (d) The executive director shall administer this chapter  
17 under operational policies established by the commissioner and in  
18 accordance 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 Sec. 181.052. PERSONNEL. (a) The agency may employ,  
22 compensate, and prescribe the duties of personnel necessary and  
23 suitable to administer this chapter.

24 (b) The commissioner shall prepare and by rule adopt  
25 personnel standards.

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

1       (d) The commissioner, with the advice of the advisory board,  
2 shall develop and the agency shall implement policies that clearly  
3 define the responsibilities of the staff of the agency.

4       Sec. 181.053. INFORMATION ABOUT QUALIFICATIONS AND  
5 STANDARDS OF CONDUCT. The executive director or the executive  
6 director's designee shall provide to agency employees, as often as  
7 necessary, information regarding the requirements for employment  
8 under this chapter or rules adopted by the commissioner, including  
9 information regarding a person's responsibilities under applicable  
10 laws relating to standards of conduct for state employees.

11       Sec. 181.054. MERIT PAY. Subject to rules adopted by the  
12 commissioner, the executive director or the executive director's  
13 designee shall develop a system of annual performance evaluations.  
14 All merit pay for agency employees must be given under the system  
15 established under this section or under rules adopted by the  
16 commissioner.

17       Sec. 181.055. CAREER LADDER. The executive director or the  
18 executive director's designee shall develop an intra-agency career  
19 ladder program. The program must require intra-agency postings of  
20 all nonentry-level positions concurrently with any public posting.

21       Sec. 181.056. 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 agency, the  
3 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 agency to avoid the unlawful  
7 employment practices described by Chapter 21, Labor Code; and

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

12        (c) The policy statement must be:

13            (1) updated annually;

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

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

17        Sec. 181.057. STATE EMPLOYEE INCENTIVE PROGRAM. The  
18 executive director or the executive director's designee shall  
19 provide to agency employees information and training on the  
20 benefits and methods of participation in the state employee  
21 incentive program.

22        [Sections 181.058-181.070 reserved for expansion]

23        SUBCHAPTER D. POWERS AND DUTIES OF AGENCY

24        Sec. 181.071. GENERAL POWERS AND DUTIES OF AGENCY. (a) The  
25 agency shall:

26            (1) provide expertise and advice to state agencies and  
27 the legislature and other elected officials on issues related to

1 aging, including recommendations to meet the needs of this state's  
2 aging population;

3 (2) strengthen the services available for the aging in  
4 this state by coordinating services provided by governmental and  
5 private agencies and facilities;

6 (3) extend and expand services for the aging by  
7 coordinating the interest and efforts of local communities in  
8 studying the problems of aging residents of this state;

9 (4) encourage, promote, and aid in establishing area  
10 agencies on aging to develop local programs and services that  
11 improve the living conditions of the aging by enabling them to more  
12 fully enjoy and participate in family and community life;

13 (5) enforce regulations regarding long-term care  
14 services and facilities and community services and facilities, to  
15 the extent provided by other law; and

16 (6) provide adult protective services to the extent  
17 provided by Chapter 48 and other law.

18 (b) The agency shall administer other programs and services  
19 for the aging that the commissioner delegates to the agency as the  
20 commissioner determines necessary to efficiently provide those  
21 services in this state.

22 Sec. 181.072. INFORMATION REGARDING COMPLAINTS. (a) The  
23 agency shall maintain a file on each written complaint filed with  
24 the agency. The file must include:

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

26 (2) the date the complaint is received by the agency;

27 (3) the subject matter of the complaint;

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

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

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

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

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

17           Sec. 181.073. RULES. The commissioner may adopt rules  
18 reasonably necessary for the agency to administer this chapter,  
19 consistent with the memorandum of understanding under Section  
20 531.0055(k), Government Code, between the executive director and  
21 the commissioner, as adopted by rule.

22           [Chapters 182-200 reserved for expansion]

23           SUBTITLE C. SERVICES FOR PERSONS WITH DISABILITIES

24           CHAPTER 201. DEPARTMENT FOR PERSONS WITH DISABILITIES

25           SUBCHAPTER A. GENERAL PROVISIONS

26           Sec. 201.001. DEFINITIONS. In this chapter:

27           (1) "Advisory board" means the board for persons with



1 disabilities.

2 (2) "Agency" means the Department for Persons with  
3 Disabilities.

4 (3) "Commission" means the Health and Human Services  
5 Commission.

6 (4) "Commissioner" means the commissioner of health  
7 and human services.

8 (5) "Executive director" means the executive director  
9 of the agency.

10 Sec. 201.002. AGENCY. The agency is an agency of the state.

11 Sec. 201.003. SUNSET PROVISION. The agency is subject to  
12 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
13 in existence as provided by that chapter, the agency is abolished  
14 and this chapter expires September 1, 2009.

15 [Sections 201.004-201.020 reserved for expansion]

16 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

17 Sec. 201.021. ADVISORY BOARD FOR PERSONS WITH DISABILITIES.

18 (a) The advisory board for persons with disabilities is created to  
19 assist the commissioner in developing rules and policies for the  
20 agency.

21 (b) The advisory board is composed of seven members  
22 appointed by the governor. To be eligible for appointment to the  
23 advisory board, a person must have demonstrated an interest in and  
24 knowledge of the problems faced by and services available to  
25 persons with disabilities. The members must include the following:

26 (1) two members of the general public;

27 (2) a person with experience in the provision of

1 services to blind or visually impaired persons;

2 (3) a person with experience in the provision of  
3 services to persons with mental retardation;

4 (4) a person with experience in the provision of  
5 services to deaf persons and persons who are hard of hearing;

6 (5) a person experienced in matters related to early  
7 childhood intervention for developmental disabilities or  
8 developmental delays; and

9 (6) a medical professional with experience in the  
10 treatment of persons with disabilities.

11 (c) A person may not be a public member of the advisory board  
12 if the person or the person's spouse:

13 (1) is registered, certified, or licensed by a  
14 regulatory agency in the field of services for persons with  
15 disabilities;

16 (2) is employed by or participates in the management  
17 of a business entity or other organization regulated by or  
18 receiving money from the agency;

19 (3) owns or controls, directly or indirectly, more  
20 than a 10 percent interest in a business entity or other  
21 organization regulated by or receiving money from the agency; or

22 (4) uses or receives a substantial amount of tangible  
23 goods, services, or money from the agency other than reimbursement  
24 authorized by law for advisory board membership, attendance, or  
25 expenses.

26 (d) The advisory board shall study and make recommendations  
27 to the executive director regarding the management and operation of

1 the agency, including policies and rules governing the delivery of  
2 services to persons who are served by the agency and the rights and  
3 duties of persons who are served or regulated by the agency.

4 (e) Chapter 551, Government Code, applies to the advisory  
5 board.

6 (f) Chapter 2110, Government Code, does not apply to the  
7 advisory board.

8 Sec. 201.022. APPOINTMENTS. (a) Appointments to the  
9 advisory board shall be made without regard to the race, color,  
10 disability, sex, religion, age, or national origin of the  
11 appointees.

12 (b) To the extent possible, appointments to the advisory  
13 board shall be made so that the ethnic and geographic diversity of  
14 the state is reflected on the board.

15 Sec. 201.023. CONFLICTS OF INTEREST. (a) In this section,  
16 "Texas trade association" means a cooperative and voluntarily  
17 joined statewide association of business or professional  
18 competitors in this state designed to assist its members and its  
19 industry or profession in dealing with mutual business or  
20 professional problems and in promoting their common interest.

21 (b) A person may not be a member of the advisory board and  
22 may not be an agency employee employed in a "bona fide executive,  
23 administrative, or professional capacity," as that phrase is used  
24 for purposes of establishing an exemption to the overtime  
25 provisions of the federal Fair Labor Standards Act of 1938 (29  
26 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

27 (1) the person is an officer, employee, or paid

1 consultant of a Texas trade association in the field of services for  
2 persons with disabilities; or

3 (2) the person's spouse is an officer, manager, or paid  
4 consultant of a Texas trade association in the field of services for  
5 persons with disabilities.

6 (c) A person may not be a member of the advisory board if the  
7 person is required to register as a lobbyist under Chapter 305,  
8 Government Code, because of the person's activities for  
9 compensation on behalf of a profession related to the operation of  
10 the agency.

11 Sec. 201.024. TRAINING PROGRAM FOR ADVISORY BOARD MEMBERS.

12 (a) A person who is appointed as a member of the advisory board may  
13 not vote, deliberate, or be counted as a member in attendance at a  
14 meeting of the advisory board until the person completes a training  
15 program that complies with this section.

16 (b) The training program must provide the person with  
17 information regarding:

18 (1) the legislation that created the agency and the  
19 advisory board;

20 (2) the programs operated by the agency;

21 (3) the role and functions of the agency and the  
22 advisory board, including detailed information regarding:

23 (A) the division of authority and of  
24 responsibilities between the executive director and the  
25 commissioner; and

26 (B) the advisory responsibilities of the  
27 advisory board;

1           (4) the rules of the commissioner applicable to the  
2 agency, with an emphasis on the rules that relate to disciplinary  
3 and investigatory authority;

4           (5) the current budget for the agency;

5           (6) the results of the most recent formal audit of the  
6 agency;

7           (7) the requirements of:

8                   (A) the open meetings law, Chapter 551,  
9 Government Code;

10                   (B) the public information law, Chapter 552,  
11 Government Code;

12                   (C) the administrative procedure law, Chapter  
13 2001, Government Code; and

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

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

18           Sec. 201.025. TERMS. (a) Advisory board members serve for  
19 staggered six-year terms with the terms of two or three members  
20 expiring February 1 of each odd-numbered year.

21           (b) A member of the advisory board may not serve more than  
22 two consecutive full terms as a board member.

23           Sec. 201.026. VACANCY. The governor by appointment shall  
24 fill the unexpired term of a vacancy on the advisory board.

25           Sec. 201.027. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.

26           (a) The governor shall designate a member of the advisory board as  
27 the presiding officer to serve in that capacity at the pleasure of

1 the governor.

2 (b) The members of the advisory board shall elect any other  
3 necessary officers.

4 (c) The advisory board shall meet quarterly and at other  
5 times at the call of the presiding officer. The board may hold  
6 meetings in different areas of the state.

7 Sec. 201.028. REIMBURSEMENT FOR EXPENSES. An advisory  
8 board member may not receive compensation for service as a member of  
9 the advisory board but is entitled to reimbursement for travel  
10 expenses incurred by the member while conducting the business of  
11 the advisory board as provided by the General Appropriations Act.

12 Sec. 201.029. PUBLIC INTEREST INFORMATION AND COMPLAINTS.  
13 (a) The executive director, with the advice of the advisory board,  
14 shall prepare information of public interest describing the  
15 functions of the agency and the procedures by which complaints are  
16 filed with and resolved by the agency. The agency shall make the  
17 information available to the public and appropriate state  
18 governmental entities.

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

23 Sec. 201.030. PUBLIC ACCESS AND TESTIMONY. The  
24 commissioner shall develop and implement policies that provide the  
25 public with a reasonable opportunity to appear before the advisory  
26 board or commissioner and to speak on any issue under the  
27 jurisdiction of the agency.

1           Sec. 201.031. POLICYMAKING AND MANAGEMENT  
2 RESPONSIBILITIES. The commissioner, with the advice of the  
3 advisory board, shall develop and the agency shall implement  
4 policies that clearly delineate the policymaking responsibilities  
5 of the commissioner from the management responsibilities of the  
6 commission, the executive director, and the staff of the agency.

7           Sec. 201.032. ANNUAL REPORT. (a) The executive director  
8 shall file annually with the commissioner a complete and detailed  
9 written report accounting for all funds received and disbursed by  
10 the agency during the preceding fiscal year.

11           (b) The annual report must be in the form and be reported in  
12 the time provided by the commissioner.

13           Sec. 201.033. OFFICES. The agency shall maintain its  
14 central office in Austin. The agency may maintain offices in other  
15 areas of the state as necessary.

16           [Sections 201.034-201.050 reserved for expansion]

17                           SUBCHAPTER C. PERSONNEL

18           Sec. 201.051. EXECUTIVE DIRECTOR. (a) The commissioner  
19 shall appoint an executive director, who is to be selected  
20 according to education, training, experience, and demonstrated  
21 ability.

22           (b) The executive director serves at the pleasure of the  
23 commissioner.

24           (c) The executive director shall act as the agency's chief  
25 administrative officer and as a liaison between the agency and the  
26 commission.

27           (d) The executive director shall administer this chapter

1 under operational policies established by the commissioner and in  
2 accordance 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 Sec. 201.052. PERSONNEL. (a) The agency may employ,  
6 compensate, and prescribe the duties of personnel necessary and  
7 suitable to administer this chapter.

8 (b) The commissioner shall prepare and by rule adopt  
9 personnel standards.

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

12 (d) The commissioner, with the advice of the advisory board,  
13 shall develop and the agency shall implement policies that clearly  
14 define the responsibilities of the staff of the agency.

15 Sec. 201.053. INFORMATION ABOUT QUALIFICATIONS AND  
16 STANDARDS OF CONDUCT. The executive director or the executive  
17 director's designee shall provide to agency employees, as often as  
18 necessary, information regarding the requirements for employment  
19 under this chapter or rules adopted by the commissioner, including  
20 information regarding a person's responsibilities under applicable  
21 laws relating to standards of conduct for state employees.

22 Sec. 201.054. MERIT PAY. Subject to rules adopted by the  
23 commissioner, the executive director or the executive director's  
24 designee shall develop a system of annual performance evaluations.  
25 All merit pay for agency employees must be given under the system  
26 established under this section or under rules adopted by the  
27 commissioner.



1       Sec. 201.055. CAREER LADDER. The executive director or the  
2 executive director's designee shall develop an intra-agency career  
3 ladder program. The program must require intra-agency postings of  
4 all nonentry-level positions concurrently with any public posting.

5       Sec. 201.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)  
6 Subject to rules adopted by the commissioner, the executive  
7 director or the executive director's designee shall prepare and  
8 maintain a written policy statement that implements a program of  
9 equal employment opportunity to ensure that all personnel decisions  
10 are made without regard to race, color, disability, sex, religion,  
11 age, or national origin.

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

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

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

23       (c) The policy statement must be:

24           (1) updated annually;

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

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

1       Sec. 201.057. STATE EMPLOYEE INCENTIVE PROGRAM. The  
2 executive director or the executive director's designee shall  
3 provide to agency employees information and training on the  
4 benefits and methods of participation in the state employee  
5 incentive program.

6           [Sections 201.058-201.070 reserved for expansion]

7           SUBCHAPTER D. POWERS AND DUTIES OF AGENCY

8       Sec. 201.071. GENERAL POWERS AND DUTIES OF AGENCY. (a) The  
9 agency is responsible for:

10           (1) providing and coordinating state and local  
11 programs and services for persons with disabilities, including  
12 programs for the treatment, rehabilitation, or benefit of:

13                   (A) persons with mental retardation;

14                   (B) persons who are blind, visually impaired,  
15 deaf, or hard of hearing;

16                   (C) persons with developmental disabilities; and

17                   (D) persons with other disabilities;

18           (2) inspecting, licensing, and enforcing regulations  
19 regarding facilities for the treatment, rehabilitation, or benefit  
20 of persons with disabilities;

21           (3) operating state facilities for the housing,  
22 treatment, rehabilitation, or benefit of persons with  
23 disabilities, including state schools for persons with mental  
24 retardation; and

25           (4) providing public education programs on matters  
26 related to persons with disabilities, as directed by law.

27       (b) The agency shall administer other programs and services

1 for persons with disabilities that the commissioner delegates to  
2 the agency as the commissioner determines necessary to efficiently  
3 provide those services in this state.

4 Sec. 201.072. INFORMATION REGARDING COMPLAINTS. (a) The  
5 agency shall maintain a file on each written complaint filed with  
6 the agency. 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 agency;

9 (3) the subject matter of the complaint;

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

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

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

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

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

26 Sec. 201.073. RULES. The commissioner may adopt rules  
27 reasonably necessary for the agency to administer this chapter,

1 consistent with the memorandum of understanding under Section  
2 531.0055(k), Government Code, between the executive director and  
3 the commissioner, as adopted by rule.

4 SECTION 2.03. APPOINTMENTS OF EXECUTIVE DIRECTORS. As soon  
5 as possible after the effective date of this article, the  
6 commissioner of health and human services shall appoint the  
7 executive directors of:

8 (1) the Department for Health and Mental Health in  
9 accordance with Chapter 1001, Health and Safety Code, as added by  
10 this article;

11 (2) the Department for Children and Families in  
12 accordance with Chapter 161, Human Resources Code, as added by this  
13 article;

14 (3) the Department on Aging in accordance with Chapter  
15 181, Human Resources Code, as added by this article; and

16 (4) the Department for Persons with Disabilities in  
17 accordance with Chapter 201, Human Resources Code, as added by this  
18 article.

19 SECTION 2.04. APPOINTMENTS OF BOARD MEMBERS. (a) As soon  
20 as possible after the effective date of this article, the governor  
21 shall appoint the members of the advisory board for health and  
22 mental health in accordance with Chapter 1001, Health and Safety  
23 Code, as added by this article. In making the initial appointments,  
24 the governor shall designate three members for terms expiring  
25 February 1, 2005, two members for terms expiring February 1, 2007,  
26 and two members for terms expiring February 1, 2009.

27 (b) As soon as possible after the effective date of this

1 article, the governor shall appoint the members of the advisory  
2 board for child and family services in accordance with Chapter 161,  
3 Human Resources Code, as added by this article. In making the  
4 initial appointments, the governor shall designate three members  
5 for terms expiring February 1, 2005, two members for terms expiring  
6 February 1, 2007, and two members for terms expiring February 1,  
7 2009.

8 (c) As soon as possible after the effective date of this  
9 article, the governor shall appoint the members of the advisory  
10 board for aging services in accordance with Chapter 181, Human  
11 Resources Code, as added by this article. In making the initial  
12 appointments, the governor shall designate three members for terms  
13 expiring February 1, 2005, two members for terms expiring February  
14 1, 2007, and two members for terms expiring February 1, 2009.

15 (d) As soon as possible after the effective date of this  
16 article, the governor shall appoint the members of the advisory  
17 board for persons with disabilities in accordance with Chapter 201,  
18 Human Resources Code, as added by this article. In making the  
19 initial appointments, the governor shall designate three members  
20 for terms expiring February 1, 2005, two members for terms expiring  
21 February 1, 2007, and two members for terms expiring February 1,  
22 2009.

23 SECTION 2.05. LIMITATION ON ACTIVITIES. A state agency  
24 created under this article may, before September 1, 2004, perform  
25 only those powers, duties, functions, and activities that relate to  
26 preparing for the transfer of powers, duties, functions, programs,  
27 and activities to that agency in accordance with Article 3 of this

1 Act. A state agency created under this article may not operate all  
2 or any part of a health and human services program before September  
3 1, 2004.

4 SECTION 2.06. INITIAL ADVISORY BOARD MEETINGS. The  
5 presiding officer of the advisory board for each state agency  
6 created under this article shall call the initial meeting of the  
7 advisory board as soon as possible after the advisory board members  
8 are appointed.

9 SECTION 2.07. EFFECTIVE DATE. This article takes effect  
10 June 1, 2004, and the Department for Health and Mental Health, the  
11 Department for Children and Families, the Department on Aging, and  
12 the Department for Persons with Disabilities are created on that  
13 date.

14 ARTICLE 3. INTERAGENCY TRANSFERS OF PROPERTY,  
15 RECORDS, OBLIGATIONS, FUNDS, FUNCTIONS, PROGRAMS,  
16 AND ACTIVITIES

17 SECTION 3.01. TRANSFERS TO THE HEALTH AND HUMAN SERVICES  
18 COMMISSION. (a) On September 1, 2004, the following powers,  
19 duties, functions, programs, and activities are transferred to the  
20 Health and Human Services Commission:

21 (1) all powers, duties, functions, programs, and  
22 activities related to administrative support services, such as  
23 strategic planning and evaluation, audit, legal, human resources,  
24 accounting, purchasing, financial management, and contract  
25 management services, of a state agency or entity abolished by  
26 Section 5.01 of this Act;

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

1 activities related to determining eligibility for benefits under  
2 the following programs administered by a state agency or entity  
3 abolished by Section 5.01 of this Act:

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

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

8 (C) the medical assistance program under Chapter  
9 32, Human Resources Code; and

10 (D) the nutritional assistance programs under  
11 Chapter 33, Human Resources Code; and

12 (3) all rulemaking and policymaking authority for the  
13 provision of health and human services in this state.

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

15 (1) all obligations and contracts of a state agency or  
16 entity abolished by Section 5.01 of this Act that are related to a  
17 power, duty, function, program, or activity transferred under  
18 Subsection (a) of this section are transferred to the Health and  
19 Human Services Commission;

20 (2) all property and records in the custody of a state  
21 agency or entity abolished by Section 5.01 of this Act that are  
22 related to a power, duty, function, program, or activity  
23 transferred under Subsection (a) of this section and all funds  
24 appropriated by the legislature for the power, duty, function,  
25 program, or activity shall be transferred to the Health and Human  
26 Services Commission; and

27 (3) all complaints, investigations, or contested

1 cases that are pending before a state agency or entity abolished by  
2 Section 5.01 of this Act or the governing body of the agency or  
3 entity and that are related to a power, duty, function, program, or  
4 activity transferred under Subsection (a) of this section are  
5 transferred without change in status to the Health and Human  
6 Services Commission.

7 (c) A rule or form adopted by a state agency or entity  
8 abolished by Section 5.01 of this Act that relates to a power, duty,  
9 function, program, or activity transferred under Subsection (a) of  
10 this section is a rule or form of the Health and Human Services  
11 Commission and remains in effect until altered by the commission.

12 (d) A reference in law to a state agency or entity abolished  
13 by Section 5.01 of this Act, or to the governing body of the agency  
14 or entity, that relates to a power, duty, function, program, or  
15 activity transferred under Subsection (a) of this section means the  
16 Health and Human Services Commission.

17 (e) A license, permit, or certification in effect that was  
18 issued by a state agency or entity abolished by Section 5.01 of this  
19 Act and that relates to a power, duty, function, program, or  
20 activity transferred under Subsection (a) of this section is  
21 continued in effect as a license, permit, or certification of the  
22 Health and Human Services Commission.

23 SECTION 3.02. TRANSFERS TO THE DEPARTMENT FOR HEALTH AND  
24 MENTAL HEALTH. (a) On September 1, 2004, the following powers,  
25 duties, functions, programs, and activities, other than those  
26 related to rulemaking or policymaking, or administrative support  
27 services such as strategic planning and evaluation, audit, legal,



1 human resources, accounting, purchasing, financial management, and  
2 contract management services, are transferred to the Department for  
3 Health and Mental Health:

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

7 (2) all powers, duties, functions, programs, and  
8 activities of the Texas Department of Mental Health and Mental  
9 Retardation relating to mental health services;

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

12 (4) all powers, duties, functions, programs, and  
13 activities of the Texas Health Care Information Council;

14 (5) all powers, duties, functions, programs, and  
15 activities of the Texas Cancer Council; and

16 (6) all powers, duties, functions, programs, and  
17 activities of:

18 (A) the Board of Nurse Examiners;

19 (B) the Board of Vocational Nurse Examiners;

20 (C) the Executive Council of Physical Therapy and  
21 Occupational Therapy Examiners;

22 (D) the State Board of Dental Examiners;

23 (E) the Texas Board of Chiropractic Examiners;

24 (F) the Texas Optometry Board;

25 (G) the Texas State Board of Examiners of  
26 Psychologists;

27 (H) the Texas State Board of Medical Examiners;

1 (I) the Texas State Board of Pharmacy; and  
2 (J) the Texas State Board of Podiatric Medical  
3 Examiners.

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

5 (1) all obligations and contracts of an entity listed  
6 in Subsection (a) of this section that are related to a power, duty,  
7 function, program, or activity transferred under that subsection  
8 are transferred to the Department for Health and Mental Health;

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

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 for Health and Mental Health and remains in  
25 effect until altered by the commissioner of health and human  
26 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, as appropriate,  
3 the Department for Health and Mental Health or any other health and  
4 human services agency to which the commissioner of health and human  
5 services transfers the power, duty, function, program, or activity  
6 under Section 531.0165, Government Code, as added by this Act. A  
7 reference in law to the governing body of an entity listed in  
8 Subsection (a) of this section means the Health and Human Services  
9 Commission or the commissioner of health and human services.

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

16 SECTION 3.03. TRANSFERS TO THE DEPARTMENT FOR CHILDREN AND  
17 FAMILIES. (a) On September 1, 2004, the following powers, duties,  
18 functions, programs, and activities, other than those related to  
19 rulemaking or policymaking, or administrative support services  
20 such as strategic planning and evaluation, audit, legal, human  
21 resources, accounting, purchasing, financial management, and  
22 contract management services, are transferred to the Department for  
23 Children and Families:

24 (1) except as provided by Section 3.04 of this  
25 article, all powers, duties, functions, programs, and activities of  
26 the Department of Protective and Regulatory Services;

27 (2) except as provided by Sections 3.01, 3.04, and

1 3.05 of this article, all powers, duties, functions, programs, and  
2 activities of the Texas Department of Human Services, including  
3 those related to preventing family violence, providing services to  
4 victims of family violence, and operating the financial and  
5 nutritional assistance programs;

6 (3) all powers, duties, functions, programs, and  
7 activities of the Texas Juvenile Probation Commission; and

8 (4) all powers, duties, functions, programs, and  
9 activities of the Texas Youth Commission.

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

11 (1) all obligations and contracts of an entity listed  
12 in Subsection (a) of this section that are related to a power, duty,  
13 function, program, or activity transferred under that subsection  
14 are transferred to the Department for Children and Families;

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

21 (3) all complaints, investigations, or contested  
22 cases that are pending before an entity or the governing body of an  
23 entity listed in Subsection (a) of this section and that are related  
24 to a power, duty, function, program, or activity transferred under  
25 that subsection are transferred without change in status to the  
26 Department for Children and Families.

27 (c) A rule or form adopted by an entity listed in Subsection

1 (a) of this section that relates to a power, duty, function,  
2 program, or activity transferred under that subsection is a rule or  
3 form of the Department for Children and Families and remains in  
4 effect until altered by the commissioner of health and human  
5 services.

6 (d) A reference in law to an entity listed in Subsection (a)  
7 of this section that relates to a power, duty, function, program, or  
8 activity transferred under that subsection means, as appropriate,  
9 the Department for Children and Families or any other health and  
10 human services agency to which the commissioner of health and human  
11 services transfers the power, duty, function, program, or activity  
12 under Section 531.0165, Government Code, as added by this Act. A  
13 reference in law to the governing body of an entity listed in  
14 Subsection (a) of this section means the Health and Human Services  
15 Commission or the commissioner of health and human services.

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

22 SECTION 3.04. TRANSFERS TO THE DEPARTMENT ON AGING. (a) On  
23 September 1, 2004, the following powers, duties, functions,  
24 programs, and activities, other than those related to rulemaking or  
25 policymaking, or administrative support services such as strategic  
26 planning and evaluation, audit, legal, human resources,  
27 accounting, purchasing, financial management, and contract

1 management services, are transferred to the Department on Aging:

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

4 (2) from the Department of Protective and Regulatory  
5 Services, all powers, duties, functions, programs, and activities  
6 related to the adult protective services program under Chapter 48,  
7 Human Resources Code, including investigations and client  
8 services; and

9 (3) from the Texas Department of Human Services, all  
10 powers, duties, functions, programs, and activities related to  
11 providing long-term care services and community-based support and  
12 services.

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

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

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

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

1 that subsection are transferred without change in status to the  
2 Department on Aging.

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

8 (d) A reference in law to an entity listed in Subsection (a)  
9 of this section that relates to a power, duty, function, program, or  
10 activity transferred under that subsection means, as appropriate,  
11 the Department on Aging or any other health and human services  
12 agency to which the commissioner of health and human services  
13 transfers the power, duty, function, program, or activity under  
14 Section 531.0165, Government Code, as added by this Act. A  
15 reference in law to the governing body of an entity listed in  
16 Subsection (a) of this section means the Health and Human Services  
17 Commission or the commissioner of health and human services.

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

23 SECTION 3.05. TRANSFERS TO THE DEPARTMENT FOR PERSONS WITH  
24 DISABILITIES. (a) On September 1, 2004, the following powers,  
25 duties, functions, programs, and activities, other than those  
26 related to rulemaking or policymaking, or administrative support  
27 services such as strategic planning and evaluation, audit, legal,

1 human resources, accounting, purchasing, financial management, and  
2 contract management services, are transferred to the Department for  
3 Persons with Disabilities:

4 (1) except as provided by Section 3.02 of this  
5 article, all powers, duties, functions, programs, and activities of  
6 the Texas Department of Mental Health and Mental Retardation;

7 (2) all powers, duties, functions, programs, and  
8 activities of the Texas Rehabilitation Commission;

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

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

13 (5) all powers, duties, functions, programs, and  
14 activities of the Interagency Council on Early Childhood  
15 Intervention; and

16 (6) all powers, duties, functions, programs, and  
17 activities of the office of services to persons with disabilities  
18 in the Texas Department of Human Services.

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

20 (1) all obligations and contracts of an entity listed  
21 in Subsection (a) of this section that are related to a power, duty,  
22 function, program, or activity transferred under that subsection  
23 are transferred to the Department for Persons with Disabilities;

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



1 the power, duty, function, program, or activity shall be  
2 transferred to the Department for Persons with Disabilities; and

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

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

15 (d) A reference in law to an entity listed in Subsection (a)  
16 of this section that relates to a power, duty, function, program, or  
17 activity transferred under that subsection means, as appropriate,  
18 the Department for Persons with Disabilities or any other health  
19 and human services agency to which the commissioner of health and  
20 human services transfers the power, duty, function, program, or  
21 activity under Section 531.0165, Government Code, as added by this  
22 Act. A reference in law to the governing body of an entity listed in  
23 Subsection (a) of this section means the Health and Human Services  
24 Commission or the commissioner of health and human services.

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

1 transferred under that subsection is continued in effect as a  
2 license, permit, or certification of the Department for Persons  
3 with Disabilities.

4 SECTION 3.06. FACILITATION OF TRANSFERS BY COMMISSIONER OF  
5 HEALTH AND HUMAN SERVICES. (a) To facilitate the transfer of  
6 powers, duties, functions, programs, and activities among the  
7 state's health and human services agencies, the Health and Human  
8 Services Commission, and other agencies as provided by this article  
9 with a minimal negative effect on the delivery of health and human  
10 services in this state, the commissioner of health and human  
11 services shall:

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

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

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

18 (C) each state agency employee whose primary  
19 duties involve the power, duty, function, program, or activity and  
20 whether:

21 (i) the employee becomes an employee of an  
22 agency created under Article 2 of this Act, to be assigned duties by  
23 the executive director of that agency, or an employee of the Health  
24 and Human Services Commission, to be assigned duties by the  
25 commissioner of health and human services;

26 (ii) the employee must reapply with an  
27 agency created under Article 2 of this Act or with the Health and

1 Human Services Commission, as applicable, for a comparable  
2 employment position; or

3 (iii) the employment position will be  
4 eliminated; and

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

7 (2) oversee and assist the entities listed in Sections  
8 3.01, 3.02, 3.03, 3.04, and 3.05 of this article in transferring the  
9 powers, duties, functions, programs, activities, records,  
10 property, funds, obligations, and employees in accordance with this  
11 article.

12 (b) A state agency or entity abolished by Section 5.01 of  
13 this Act shall assist the commissioner of health and human services  
14 in planning for an orderly transfer of powers, duties, functions,  
15 programs, and activities as provided by this article.

16 SECTION 3.07. APPLICABILITY OF FORMER LAW. An action  
17 brought or proceeding commenced before the effective date of a  
18 transfer prescribed by this article, including a contested case or  
19 a remand of an action or proceeding by a reviewing court, is  
20 governed by the laws and rules applicable to the action or  
21 proceeding before the transfer.

22 ARTICLE 4. OPERATION OF THE MEDICAL  
23 ASSISTANCE PROGRAM

24 SECTION 4.01. Section 32.024, Human Resources Code, is  
25 amended by adding Subsection (t-1) to read as follows:

26 (t-1) The department, in its rules governing the medical  
27 transportation program, may not prohibit a recipient of medical

1 assistance from receiving transportation services through the  
2 program on the basis that the recipient resides in a nursing  
3 facility.

4 SECTION 4.02. Section 32.026, Human Resources Code, is  
5 amended by adding Subsection (d-1) to read as follows:

6 (d-1) The department shall establish not more than four call  
7 centers for purposes of determining and certifying the eligibility  
8 and need for public assistance benefits administered by the  
9 department, including determining and certifying the eligibility  
10 and need for medical assistance for children under 19 years of age.

11 SECTION 4.03. Subchapter B, Chapter 32, Human Resources  
12 Code, is amended by adding Section 32.0291 to read as follows:

13 Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS.

14 (a) Notwithstanding any other law, the department may:

15 (1) perform a prepayment review of a claim for  
16 reimbursement under the medical assistance program to determine  
17 whether the claim involves fraud or abuse; and

18 (2) as necessary to perform that review, withhold  
19 payment of the claim for not more than five working days without  
20 notice to the person submitting the claim.

21 (b) Notwithstanding any other law, the department may  
22 impose a postpayment hold on payment of future claims submitted by a  
23 provider if the department has reliable evidence that the provider  
24 has committed fraud or wilful misrepresentation regarding a claim  
25 for reimbursement under the medical assistance program. The  
26 department must notify the provider of the postpayment hold not  
27 later than the fifth working day after the date the hold is imposed.

1 SECTION 4.04. Section 32.032, Human Resources Code, is  
2 amended to read as follows:

3 Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE.  
4 The department shall adopt reasonable rules for minimizing the  
5 opportunity for fraud and abuse, for establishing and maintaining  
6 methods for detecting and identifying situations in which a  
7 question of fraud or abuse in the program may exist, and for  
8 referring cases where fraud or abuse appears to exist to the  
9 appropriate law enforcement agencies for prosecution.

10 SECTION 4.05. Section 32.0321(a), Human Resources Code, is  
11 amended to read as follows:

12 (a) The department by rule may require each provider of  
13 medical assistance in a provider type that has demonstrated  
14 significant potential for fraud or abuse to file with the  
15 department a surety bond in a reasonable amount. The department by  
16 rule shall require a provider of medical assistance to file with the  
17 department a surety bond in a reasonable amount if the department  
18 identifies an irregularity relating to the provider's services  
19 under the medical assistance program that indicates the need for  
20 protection against potential future acts of fraud or abuse.

21 SECTION 4.06. Section 32.039(a), Human Resources Code, is  
22 amended by adding Subdivision (1-a) to read as follows:

23 (1-a) "Inducement" includes a service, cash in any  
24 amount, entertainment, or any item of value.

25 SECTION 4.07. Section 32.039, Human Resources Code, is  
26 amended by amending Subsections (b), (u), and (v) and adding  
27 Subsections (w) and (x) to read as follows:

1 (b) A person commits a violation if the person:

2 (1) presents or causes to be presented to the  
3 department a claim that contains a statement or representation the  
4 person knows or should know to be false;

5 (1-a) engages in conduct that violates Section  
6 102.001, Occupations Code;

7 (1-b) solicits or receives, directly or indirectly,  
8 overtly or covertly any remuneration, including any kickback,  
9 bribe, or rebate, in cash or in kind for referring an individual to  
10 a person for the furnishing of, or for arranging the furnishing of,  
11 any item or service for which payment may be made, in whole or in  
12 part, under the medical assistance program;

13 (1-c) solicits or receives, directly or indirectly,  
14 overtly or covertly any remuneration, including any kickback,  
15 bribe, or rebate, in cash or in kind for purchasing, leasing, or  
16 ordering, or arranging for or recommending the purchasing, leasing,  
17 or ordering of any good, facility, service, or item for which  
18 payment may be made, in whole or in part, under the medical  
19 assistance program;

20 (1-d) offers or pays, directly or indirectly, overtly  
21 or covertly any remuneration, including any kickback, bribe, or  
22 rebate, in cash or in kind to induce a person to refer an individual  
23 to another person for the furnishing of, or for arranging the  
24 furnishing of, any item or service for which payment made be made,  
25 in whole or in part, under the medical assistance program;

26 (1-e) offers or pays, directly or indirectly, overtly  
27 or covertly any remuneration, including any kickback, bribe, or

1 rebate, in cash or in kind to induce a person to purchase, lease, or  
2 order or arrange for or recommend the purchase, lease, or order of  
3 any good, facility, service, or item for which payment may be made,  
4 in whole or in part, under the medical assistance program;

5 (1-f) provides or offers an inducement in a manner or  
6 for a purpose not otherwise prohibited by this section or Section  
7 102.001, Occupations Code, to an individual, including a recipient,  
8 provider, or employee of a provider, for the purpose of influencing  
9 a decision regarding selection of a provider or receipt of a good  
10 or service under the medical assistance program or for the purpose  
11 of otherwise influencing a decision regarding the use of goods or  
12 services provided under the medical assistance program; or

13 (2) is a managed care organization that contracts with  
14 the department to provide or arrange to provide health care  
15 benefits or services to individuals eligible for medical assistance  
16 and:

17 (A) fails to provide to an individual a health  
18 care benefit or service that the organization is required to  
19 provide under the contract with the department;

20 (B) fails to provide to the department  
21 information required to be provided by law, department rule, or  
22 contractual provision;

23 (C) engages in a fraudulent activity in  
24 connection with the enrollment in the organization's managed care  
25 plan of an individual eligible for medical assistance or in  
26 connection with marketing the organization's services to an  
27 individual eligible for medical assistance; or

1 (D) engages in actions that indicate a pattern  
2 of:

3 (i) wrongful denial of payment for a health  
4 care benefit or service that the organization is required to  
5 provide under the contract with the department; or

6 (ii) wrongful delay of at least 45 days or a  
7 longer period specified in the contract with the department, not to  
8 exceed 60 days, in making payment for a health care benefit or  
9 service that the organization is required to provide under the  
10 contract with the department.

11 (u) Except as provided by Subsection (w), a [A] person found  
12 liable for a violation under Subsection (c) that resulted in injury  
13 to an elderly person, as defined by Section 48.002(a)(1)  
14 [~~48.002(1)~~], a disabled person, as defined by Section  
15 48.002(a)(8)(A) [~~48.002(8)(A)~~], or a person younger than 18 years  
16 of age may not provide or arrange to provide health care services  
17 under the medical assistance program for a period of 10 years. The  
18 department by rule may provide for a period of ineligibility longer  
19 than 10 years. The period of ineligibility begins on the date on  
20 which the determination that the person is liable becomes final.  
21 [~~This subsection does not apply to a person who operates a nursing~~  
22 ~~facility or an ICF-MR facility.~~]

23 (v) Except as provided by Subsection (w), a [A] person found  
24 liable for a violation under Subsection (c) that did not result in  
25 injury to an elderly person, as defined by Section 48.002(a)(1)  
26 [~~48.002(1)~~], a disabled person, as defined by Section  
27 48.002(a)(8)(A) [~~48.002(8)(A)~~], or a person younger than 18 years



1 of age may not provide or arrange to provide health care services  
2 under the medical assistance program for a period of three years.  
3 The department by rule may provide for a period of ineligibility  
4 longer than three years. The period of ineligibility begins on the  
5 date on which the determination that the person is liable becomes  
6 final[~~. This subsection does not apply to a person who operates a~~  
7 ~~nursing facility or an ICF-MR facility].~~

8 (w) The department by rule may prescribe criteria under  
9 which a person described by Subsection (u) or (v) is not prohibited  
10 from providing or arranging to provide health care services under  
11 the medical assistance program. The criteria may include  
12 consideration of:

13 (1) the person's knowledge of the violation;

14 (2) the likelihood that education provided to the  
15 person would be sufficient to prevent future violations;

16 (3) the potential impact on availability of services  
17 in the community served by the person; and

18 (4) any other reasonable factor identified by the  
19 department.

20 (x) Subsections (b)(1-b) through (1-f) do not prohibit a  
21 person from engaging in:

22 (1) generally accepted business practices, as  
23 determined by department rule, including:

24 (A) conducting a marketing campaign;

25 (B) providing token items of minimal value that  
26 advertise the person's trade name; and

27 (C) providing complimentary refreshments at an

1 informational meeting promoting the person's goods or services; or

2 (2) conduct specifically authorized by law.

3 SECTION 4.08. Subchapter B, Chapter 32, Human Resources  
4 Code, is amended by adding Section 32.0391 to read as follows:

5 Sec. 32.0391. CRIMINAL OFFENSE. (a) A person commits an  
6 offense if the person commits a violation under Section  
7 32.039(b)(1-b), (1-c), (1-d), or (1-e).

8 (b) An offense under this section is a state jail felony.

9 (c) If conduct constituting an offense under this section  
10 also constitutes an offense under another provision of law,  
11 including a provision in the Penal Code, the person may be  
12 prosecuted under either this section or the other provision.

13 SECTION 4.09. Subchapter B, Chapter 32, Human Resources  
14 Code, is amended by adding Section 32.0423 to read as follows:

15 Sec. 32.0423. RECOVERY OF REIMBURSEMENTS FROM HEALTH  
16 COVERAGE PROVIDERS. The medical assistance identification card of  
17 a recipient of medical assistance shall state whether the recipient  
18 is covered by any third-party health coverage or insurance. To the  
19 extent allowed by federal law, a health care service provider must  
20 seek reimbursement from available third-party health coverage or  
21 insurance before billing the medical assistance program.

22 SECTION 4.10. Section 32.050, Human Resources Code, is  
23 amended by adding Subsections (d) and (e) to read as follows:

24 (d) A nursing facility, home health services provider, or  
25 any other similar long-term care services provider must:

26 (1) seek reimbursement from Medicare before billing  
27 the medical assistance program for services provided to an

1 individual identified under Subsection (a); and

2 (2) as directed by the department, appeal Medicare  
3 claim denials for payment of services provided to an individual  
4 identified under Subsection (a).

5 (e) If the Medicare reimbursement rate for a service  
6 provided to an individual identified under Subsection (a) exceeds  
7 the medical assistance reimbursement rate for a comparable service,  
8 the medical assistance program may not pay a Medicare coinsurance  
9 or deductible amount for that service.

10 SECTION 4.11. Subchapter B, Chapter 32, Human Resources  
11 Code, is amended by adding Section 32.060 to read as follows:

12 Sec. 32.060. THIRD-PARTY BILLING VENDORS. (a) A  
13 third-party billing vendor may not submit a claim with the  
14 department for reimbursement on behalf of a provider of medical  
15 services under the medical assistance program unless the vendor has  
16 entered into a contract with the department authorizing that  
17 activity.

18 (b) To the extent practical, the contract shall contain  
19 provisions comparable to the provisions contained in contracts  
20 between the department and providers of medical services, with an  
21 emphasis on provisions designed to prevent fraud or abuse under the  
22 medical assistance program. At a minimum, the contract must  
23 require the third-party billing vendor to:

24 (1) provide documentation of the vendor's authority to  
25 bill on behalf of each provider for whom the vendor submits claims;

26 (2) submit a claim in a manner that permits the  
27 department to identify and verify the vendor, any computer or

1 telephone line used in submitting the claim, any relevant user  
2 password used in submitting the claim, and any provider number  
3 referenced in the claim; and

4 (3) subject to any confidentiality requirements  
5 imposed by federal law, provide the department, the office of the  
6 attorney general, or authorized representatives with:

7 (A) access to any records maintained by the  
8 vendor, including original records and records maintained by the  
9 vendor on behalf of a provider, relevant to an audit or  
10 investigation of the vendor's services or another function of the  
11 department or office of the attorney general relating to the  
12 vendor; and

13 (B) if requested, copies of any records described  
14 by Paragraph (A) at no charge to the department, the office of the  
15 attorney general, or authorized representatives.

16 (c) On receipt of a claim submitted by a third-party billing  
17 vendor, the department shall send a remittance notice directly to  
18 the provider referenced in the claim. The notice must:

19 (1) include detailed information regarding the claim  
20 submitted on behalf of the provider; and

21 (2) require the provider to review the claim for  
22 accuracy and notify the department promptly regarding any errors.

23 (d) The department shall take all action necessary,  
24 including any modifications of the department's claims processing  
25 system, to enable the department to identify and verify a  
26 third-party billing vendor submitting a claim for reimbursement  
27 under the medical assistance program, including identification and

1 verification of any computer or telephone line used in submitting  
2 the claim, any relevant user password used in submitting the claim,  
3 and any provider number referenced in the claim.

4 SECTION 4.12. Subchapter B, Chapter 531, Government Code,  
5 is amended by adding Sections 531.0392 and 531.063 to read as  
6 follows:

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

11 (b) The commission shall contract directly on a no-risk  
12 contingency fee basis with a consulting firm experienced in  
13 third-party reimbursements to assist the state in increasing  
14 third-party reimbursements under the Medicaid program.

15 (c) The commission shall require a consulting firm with whom  
16 the commission contracts under this section to:

17 (1) establish to the extent authorized by law  
18 information-sharing procedures regarding dually eligible  
19 individuals with fiscal intermediaries and other contractors who  
20 process Medicare claims;

21 (2) examine and appeal Medicare claim denials for  
22 payment of home health services and other similar services provided  
23 to dually eligible individuals; and

24 (3) update the firm's automated systems as reasonably  
25 necessary to include any new technology that will increase  
26 third-party reimbursements under the Medicaid program.

27 (d) The commission shall obtain Medicaid reimbursement from

1 each fiscal intermediary who makes a payment to a service provider  
2 on behalf of the Medicare program, including a reimbursement for a  
3 payment made to a home health services provider or nursing facility  
4 for services rendered to a dually eligible individual.

5 Sec. 531.063. MEMORANDUM OF UNDERSTANDING RELATING TO  
6 CERTAIN CLASS-ACTION LAWSUITS. The commission shall enter into a  
7 memorandum of understanding with the office of the attorney general  
8 to establish procedures for the commission to identify and submit  
9 requests for the review of any health-related class-action lawsuits  
10 filed in this state or another state to determine:

11 (1) whether a Medicaid recipient is a party to the  
12 lawsuit; and

13 (2) whether the state should intervene in the  
14 proceeding to pursue any third-party reimbursement and subrogation  
15 right held by the commission or a health and human services agency  
16 arising from payment of medical expenses.

17 SECTION 4.13. Section 531.102, Government Code, is amended  
18 by amending Subsections (a) and (d) and adding Subsections (f) and  
19 (g) to read as follows:

20 (a) The commission, through the commission's office of  
21 investigations and enforcement, is responsible for the  
22 investigation of fraud and abuse in the provision of health and  
23 human services and the enforcement of state law relating to the  
24 provision of those services.

25 (d) The commission may require employees of health and human  
26 services agencies to provide assistance to the commission in  
27 connection with the commission's duties relating to the

1 investigation of fraud and abuse in the provision of health and  
2 human services.

3 (f) Notwithstanding any other law, for purposes of  
4 obtaining information relevant to the office's duties from a law  
5 enforcement agency, prosecutor, or governmental entity, the office  
6 is considered to be a law enforcement agency and may obtain the  
7 information in the same manner as another law enforcement agency.  
8 Information obtained by the office under this subsection that deals  
9 with the detection, investigation, or prosecution of crime is  
10 excepted from the requirements of Section 552.021 in the manner  
11 provided by Section 552.108.

12 (g) In connection with the investigation of fraud and abuse  
13 in the provision of health and human services, the office may issue  
14 a subpoena throughout this state to compel the attendance and  
15 testimony of a witness or production of records. The subpoena may  
16 compel attendance or production at the office or at another place  
17 designated in the subpoena.

18 SECTION 4.14. Subchapter C, Chapter 531, Government Code,  
19 is amended by adding Section 531.1021 to read as follows:

20 Sec. 531.1021. SEIZURE OF ASSETS. (a) The commission,  
21 through the commission's office of investigations and enforcement,  
22 may seize assets owned by a person if:

23 (1) the commission determines through an  
24 investigation that there is a substantial likelihood that the  
25 person has engaged in conduct that constitutes fraud or abuse under  
26 the medical assistance program; and

27 (2) the seizure of assets is necessary to protect the

1 commission's ability to recover amounts wrongfully obtained by the  
2 person and associated damages and penalties to which the commission  
3 may otherwise be entitled by law.

4 (b) The commission shall provide a person whose assets are  
5 seized with an opportunity for a hearing at which the person may  
6 contest the seizure.

7 (c) The commission may not dispose of seized assets until:

8 (1) the person is determined to have engaged in  
9 conduct that constitutes fraud or abuse under the medical  
10 assistance program; and

11 (2) the commission's entitlement to the assets is  
12 confirmed in accordance with due process.

13 SECTION 4.15. Section 531.103, Government Code, is amended  
14 by adding Subsections (c-1) and (e-1) and amending Subsection (e)  
15 to read as follows:

16 (c-1) In addition to the report required by Subsection (c),  
17 the office of the attorney general, not later than November 1 of  
18 each year, shall prepare and submit to the governor, the  
19 legislature, and the comptroller a report that specifically  
20 addresses the activities of the attorney general's Medicaid fraud  
21 control unit and civil Medicaid fraud section. The attorney  
22 general shall consult with the comptroller regarding the format of  
23 the report and make reasonable efforts to provide the report in the  
24 format requested by the comptroller. The report must specify, for  
25 the Medicaid fraud control unit and the civil Medicaid fraud  
26 section, respectively, the following information:

27 (1) total agency expenditures;



- 1           (2) caseloads;  
2           (3) the length of time required to complete each case  
3 through each phase of activity;  
4           (4) recoveries and penalties arising from each case;  
5           (5) difficulties in operations; and  
6           (6) any other information considered relevant by the  
7 attorney general to an analysis of the effectiveness of the unit and  
8 section.

9           (e) The commission shall refer a case of suspected fraud,  
10 waste, or abuse under the state Medicaid program to the appropriate  
11 United States attorney, district attorney, county attorney, city  
12 attorney, or private collection agency if the attorney general  
13 fails to act within 30 days of referral of the case to the office of  
14 the attorney general. A failure by the attorney general to act  
15 within 30 days constitutes approval by the attorney general under  
16 Section 2107.003.

17           (e-1) In addition to the provisions required by Subsection  
18 (a), the memorandum of understanding required by this section must  
19 identify circumstances under which the commission may refer a case  
20 of suspected fraud, waste, or abuse under the state Medicaid  
21 program directly to the appropriate United States attorney,  
22 district attorney, county attorney, city attorney, or private  
23 collection agency. A case referred in accordance with this  
24 subsection is considered approved by the attorney general under  
25 Section 2107.003.

26           SECTION 4.16. Section 531.107(b), Government Code, is  
27 amended to read as follows:

1 (b) The task force is composed of a representative of the:

2 (1) attorney general's office, appointed by the  
3 attorney general;

4 (2) comptroller's office, appointed by the  
5 comptroller;

6 (3) Department of Public Safety, appointed by the  
7 public safety director;

8 (4) state auditor's office, appointed by the state  
9 auditor;

10 (5) commission, appointed by the commissioner of  
11 health and human services;

12 (6) Texas Department of Human Services or its  
13 successor in function, appointed by the commissioner of human  
14 services; ~~and~~

15 (7) Texas Department of Insurance, appointed by the  
16 commissioner of insurance; and

17 (8) Texas Department of Health or its successor in  
18 function, appointed by the commissioner of public health.

19 SECTION 4.17. STUDY. (a) The Medicaid and Public  
20 Assistance Fraud Oversight Task Force, with the participation of  
21 the Texas Department of Health's Bureau of Vital Statistics and  
22 other agencies designated by the comptroller, shall study  
23 procedures and documentation requirements used by the state in  
24 confirming a person's identity for purposes of establishing  
25 entitlement to Medicaid and other benefits provided through health  
26 and human services programs.

27 (b) Not later than December 1, 2004, the Medicaid and Public

1 Assistance Fraud Oversight Task Force, with assistance from the  
2 agencies participating in the study required by Subsection (a) of  
3 this section, shall submit a report to the legislature containing  
4 recommendations for improvements in the procedures and  
5 documentation requirements described by Subsection (a) of this  
6 section that would strengthen the state's ability to prevent fraud  
7 and abuse in the Medicaid program and other health and human  
8 services programs.

9 SECTION 4.18. CONSOLIDATION OF CERTAIN DIVISIONS AND  
10 ACTIVITIES. (a) Not later than March 1, 2004, the Health and Human  
11 Services Commission shall consolidate the Medicaid post-payment  
12 third-party recovery divisions or activities of the Texas  
13 Department of Human Services, the Medicaid vendor drug program, and  
14 the state's Medicaid claims administrator with the Medicaid  
15 post-payment third-party recovery function.

16 (b) The Health and Human Services Commission shall use the  
17 commission's Medicaid post-payment third-party recovery contractor  
18 for the consolidated division.

19 (c) The Health and Human Services Commission shall update  
20 its computer system to facilitate the consolidation.

21 SECTION 4.19. MEMORANDUMS OF UNDERSTANDING. (a) Not later  
22 than January 1, 2004, the Health and Human Services Commission and  
23 the office of the attorney general shall enter into the memorandum  
24 of understanding required by Section 531.063, Government Code, as  
25 added by this Act.

26 (b) Not later than December 1, 2003, the office of the  
27 attorney general and the Health and Human Services Commission shall

1 amend the memorandum of understanding required by Section 531.103,  
2 Government Code, as necessary to comply with Section 531.103(e-1),  
3 Government Code, as added by this Act.

4 SECTION 4.20. APPLICABILITY. The changes in law made by  
5 this Act through amending Section 32.039(b), Human Resources Code,  
6 and adding Section 32.0391, Human Resources Code, apply only to a  
7 violation committed on or after the effective date of this Act. For  
8 purposes of this section, a violation is committed on or after the  
9 effective date of this Act only if each element of the violation  
10 occurs on or after that date. A violation committed before the  
11 effective date of this Act is covered by the law in effect when the  
12 violation was committed, and the former law is continued in effect  
13 for that purpose.

14 SECTION 4.21. EFFECTIVE DATE. (a) Except as otherwise  
15 provided by Subsection (b) of this section, this article takes  
16 effect September 1, 2003.

17 (b) Section 32.060, Human Resources Code, as added by this  
18 article, takes effect January 1, 2004.

19 ARTICLE 5. MISCELLANEOUS PROVISIONS

20 SECTION 5.01. ABOLITION OF STATE AGENCIES AND ENTITIES.

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

22 (1) the Board of Nurse Examiners;

23 (2) the Board of Vocational Nurse Examiners;

24 (3) the Department of Protective and Regulatory  
25 Services;

26 (4) the Executive Council of Physical Therapy and  
27 Occupational Therapy Examiners;

- 1           (5) the Interagency Council on Early Childhood  
2 Intervention;
- 3           (6) the State Board of Dental Examiners;
- 4           (7) the Texas Board of Chiropractic Examiners;
- 5           (8) the Texas Cancer Council;
- 6           (9) the Texas Commission for the Blind;
- 7           (10) the Texas Commission for the Deaf and Hard of  
8 Hearing;
- 9           (11) the Texas Commission on Alcohol and Drug Abuse;
- 10          (12) the Texas Department of Health;
- 11          (13) the Texas Department of Human Services;
- 12          (14) the Texas Department of Mental Health and Mental  
13 Retardation;
- 14          (15) the Texas Department on Aging;
- 15          (16) the Texas Health Care Information Council;
- 16          (17) the Texas Juvenile Probation Commission;
- 17          (18) the Texas Optometry Board;
- 18          (19) the Texas Rehabilitation Commission;
- 19          (20) the Texas State Board of Examiners of  
20 Psychologists;
- 21          (21) the Texas State Board of Medical Examiners;
- 22          (22) the Texas State Board of Pharmacy;
- 23          (23) the Texas State Board of Podiatric Medical  
24 Examiners; and
- 25          (24) the Texas Youth Commission.

26           (b) The abolition of a state agency or entity listed in  
27 Subsection (a) of this section and the transfer of its powers,

1 duties, functions, programs, activities, obligations, rights,  
2 contracts, records, property, funds, and employees as provided by  
3 this Act do not affect or impair an act done, any obligation, right,  
4 order, permit, certificate, rule, criterion, standard, or  
5 requirement existing, or any penalty accrued under former law, and  
6 that law remains in effect for any action concerning those matters.

7 SECTION 5.02. REPEAL. Article 2, Chapter 1505, Acts of the  
8 76th Legislature, Regular Session, 1999, is repealed.

9 SECTION 5.03. REQUIRED WAIVER OR AUTHORIZATION. If before  
10 implementing any provision of this Act a state agency determines  
11 that a waiver or authorization from a federal agency is necessary  
12 for implementation of that provision, the agency affected by the  
13 provision shall request the waiver or authorization and may delay  
14 implementing that provision until the waiver or authorization is  
15 granted.

16 SECTION 5.04. EFFECTIVE DATE. Except as otherwise provided  
17 by this Act, this Act takes effect September 1, 2004.