

By: Hupp

H.B. No. 6

A BILL TO BE ENTITLED

AN ACT

relating to protective services; providing penalties.

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

ARTICLE 1. CHILD PROTECTIVE SERVICES AND FOSTER CARE SYSTEMS

SECTION 1.01. The heading to Chapter 42, Human Resources Code, is amended to read as follows:

CHAPTER 42. REGULATION OF NONRESIDENTIAL CHILD-CARE

~~[CERTAIN] FACILITIES AND~~ [] HOMES ~~[, AND AGENCIES THAT PROVIDE
CHILD-CARE SERVICES]~~

SECTION 1.02. Section 42.001, Human Resources Code, is amended to read as follows:

Sec. 42.001. PURPOSE. The purpose of this chapter is to protect the health, safety, and well-being of the children of the state who receive services ~~[reside]~~ in child-care facilities by establishing statewide minimum standards for their safety and protection and by regulating the facilities through a licensing program ~~[or by requiring child-care facilities to be regulated by alternative accreditation bodies]~~. It is the policy of the state to ensure the protection of all children under care in child-care facilities and to encourage and assist in the improvement of child-care programs. It is also the intent of the legislature that freedom of religion of all citizens is inviolate. With respect to a school or child-care facility sponsored by a religious organization, nothing in this chapter gives a governmental agency

1 authority to regulate, control, supervise, or in any way be
2 involved in the:

3 (1) form, manner, or content of religious instruction,
4 ministry, teaching, or the curriculum offered by the school or
5 facility;

6 (2) ability of the school or facility to select and
7 supervise qualified personnel, and otherwise control the terms of
8 employment, including the right to employ individuals who share the
9 religious views of the school or facility;

10 (3) internal self-governance and autonomy of the
11 school or facility; or

12 (4) religious environment of the school or facility,
13 such as symbols, art, icons, and scripture.

14 SECTION 1.03. (a) Sections 42.002(3), (7), (8), and (13),
15 Human Resources Code, are amended to read as follows:

16 (3) "Child-care facility" means a facility licensed,
17 certified, or registered by the department to provide assessment,
18 care, training, education, custody, treatment, or supervision for a
19 child who is not related by blood, marriage, or adoption to the
20 owner or operator of the facility, for less than 24 hours a [~~all or~~
21 ~~part of the 24-hour~~] day, whether or not the facility is operated
22 for profit or charges for the services it offers.

23 (7) "Day-care center" means a child-care facility that
24 provides care for more than 12 children under 14 years of age [~~for~~
25 ~~less than 24 hours a day~~].

26 (8) "Group day-care home" means a child-care facility
27 that provides care for 7 to 12 children under 14 years of age [~~for~~

1 ~~less than 24 hours a day~~].

2 (13) "Facility" means a [~~"Facilities" includes~~]
3 child-care facility [~~facilities and child-placing agencies~~].

4 (b) Sections 42.002(4), (5), (6), (10), (11), and (12),
5 Human Resources Code, are repealed.

6 SECTION 1.04. Subchapter A, Chapter 42, Human Resources
7 Code, is amended by adding Section 42.003 to read as follows:

8 Sec. 42.003. REFERENCES IN OTHER LAW TO DEFINITIONS. (a)
9 Except as provided by Subsection (b), a reference in law providing
10 that a term has the meaning assigned by Section 42.002 means that
11 the term has the meaning assigned by Section 42.002 or 49.002, as
12 applicable.

13 (b) A reference in law providing that "child-care facility"
14 has the meaning assigned by Section 42.002 means that the term has
15 the meaning assigned by Section 42.002 or the meaning assigned the
16 term "residential child-care facility" by Section 49.002, as
17 applicable.

18 SECTION 1.05. (a) Sections 42.022(a), (c), (e), and (h),
19 Human Resources Code, are amended to read as follows:

20 (a) The State Advisory Committee on Nonresidential
21 Child-Care [~~Administrators and~~] Facilities is appointed by the
22 executive commissioner [~~board~~] on the recommendation of the
23 director.

24 (c) The advisory committee is composed of 12 members
25 [~~appointed by the board~~]. The members must have the following
26 qualifications:

27 (1) two must be parents, guardians, or custodians of

1 children who use child-care ~~[the]~~ facilities;

2 (2) two must be representatives of child advocacy
3 groups;

4 (3) two must be operators of nonprofit child-care
5 facilities that are licensed under this chapter;

6 (4) two must be experts in various professional fields
7 that are relevant to child care and development;

8 (5) two must be members of the general public; and

9 (6) two must be operators of proprietary child-care
10 facilities that are licensed under this chapter.

11 (e) The committee shall review rules and minimum standards
12 for ~~[child-care administrators,]~~ child-care facilities~~[, and~~
13 ~~child-placing agencies]~~ promulgated by state agencies~~[,]~~ and shall
14 advise the department, the council, and state agencies on problems
15 of ~~[child-care administrators,]~~ child-care facilities~~[, and~~
16 ~~child-placing agencies]~~.

17 (h) In making appointments to the committee, the executive
18 commissioner ~~[board]~~ shall consider whether the committee reflects
19 the race, ethnicity, and age of the residents of this state and
20 whether the committee provides representation of the geographic
21 regions of the state.

22 (b) Section 42.022(g), Human Resources Code, is repealed.

23 (c) The advisory subcommittee on child-care administration
24 appointed under Section 42.022(g), Human Resources Code, is
25 abolished on the effective date of this section.

26 SECTION 1.06. The heading to Subchapter C, Chapter 42,
27 Human Resources Code, is amended to read as follows:

1 SUBCHAPTER C. REGULATION [~~OF CERTAIN FACILITIES, HOMES, AND~~
2 ~~AGENCIES~~]

3 SECTION 1.07. (a) Sections 42.041(a), (b), and (d), Human
4 Resources Code, are amended to read as follows:

5 (a) No person may operate a child-care facility [~~or~~
6 ~~child-placing agency~~] without a license issued by the department.

7 (b) This section does not apply to:

8 (1) a state-operated child-care facility;

9 (2) [~~an agency foster home or agency foster group~~
10 ~~home,~~

11 [~~(3)~~] a child-care facility that is operated in
12 connection with a shopping center, business, religious
13 organization, or establishment where children are cared for during
14 short periods while parents or persons responsible for the children
15 are attending religious services, shopping, or engaging in other
16 activities on or near the premises, including [~~but not limited to~~]
17 retreats or classes for religious instruction;

18 (3) [~~(4)~~] a school or class for religious instruction
19 that does not last longer than two weeks and is conducted by a
20 religious organization during the summer months;

21 (4) [~~(5)~~] a youth camp licensed by the Texas Department
22 of Health,

23 [~~(6)~~] a child-care facility licensed, operated,
24 certified, or registered by another state agency;

25 (5) [~~(7)~~] an educational facility accredited by the
26 Texas Education Agency or the Southern Association of Colleges and
27 Schools that operates primarily for educational purposes in grades

1 kindergarten and above, an after-school program operated directly
2 by an accredited educational facility, or an after-school program
3 operated by another entity under contract with the educational
4 facility, if the Texas Education Agency or Southern Association of
5 Colleges and Schools has approved the curriculum content of the
6 after-school program operated under the contract;

7 (6) [~~(8)~~] an educational facility that operates solely
8 for educational purposes in grades kindergarten through at least
9 grade two, that does not provide custodial care for more than one
10 hour during the hours before or after the customary school day, and
11 that is a member of an organization that promulgates, publishes,
12 and requires compliance with health, safety, fire, and sanitation
13 standards equal to standards required by state, municipal, and
14 county codes;

15 (7) [~~(9)~~] a kindergarten or preschool educational
16 program that is operated as part of a public school or a private
17 school accredited by the Texas Education Agency, that offers
18 educational programs through grade six, and that does not provide
19 custodial care during the hours before or after the customary
20 school day;

21 (8) [~~(10)~~] a family home, whether registered or
22 listed;

23 (9) [~~(11)~~] an educational facility that is integral to
24 and inseparable from its sponsoring religious organization or an
25 educational facility both of which do not provide custodial care
26 for more than two hours maximum per day, and that offers educational
27 programs for children age five and above in one or more of the

1 following: kindergarten through at least grade three, elementary,
2 or secondary grades;

3 (10) [~~(12)~~] ~~an emergency shelter facility providing~~
4 ~~shelter to minor mothers who are the sole support of their natural~~
5 ~~children under Section 32.201, Family Code, unless the facility~~
6 ~~would otherwise require a license as a child-care facility under~~
7 ~~this section;~~

8 [~~(13)~~] ~~a juvenile detention facility certified under~~
9 ~~Section 51.12, Family Code, or Section 141.042(d), a juvenile~~
10 ~~facility providing services solely for the Texas Youth Commission,~~
11 ~~or any other correctional facility for children operated or~~
12 ~~regulated by another state agency or by a political subdivision of~~
13 ~~the state;~~

14 [~~(14)~~] an elementary-age (ages 5-13) recreation
15 program operated by a municipality provided the governing body of
16 the municipality annually adopts standards of care by ordinance
17 after a public hearing for such programs, that such standards are
18 provided to the parents of each program participant, and that the
19 ordinances shall include, at a minimum, staffing ratios, minimum
20 staff qualifications, minimum facility, health, and safety
21 standards, and mechanisms for monitoring and enforcing the adopted
22 local standards; and further provided that parents be informed that
23 the program is not licensed by the state and the program may not be
24 advertised as a child-care facility; or

25 (11) [~~(15)~~] an annual youth camp held in a
26 municipality with a population of more than 1.5 million that
27 operates for not more than three months and that has been operated

1 for at least 10 years by a nonprofit organization that provides care
2 for the homeless.

3 (d) A child-care facility exempt from the provisions of
4 Subsection (a) [~~of this section~~] that desires to receive or
5 participate in federal or state funding shall be required to comply
6 with all other provisions of this chapter and with all regulations
7 promulgated under this chapter.

8 (b) Section 42.041(c), Human Resources Code, is repealed.

9 SECTION 1.08. (a) Sections 42.042(a), (b), (e), (f), (g),
10 (i)-(n), and (p), Human Resources Code, are amended to read as
11 follows:

12 (a) The executive commissioner [~~department~~] shall adopt
13 [~~make~~] rules to carry out the provisions of this chapter.

14 (b) The executive commissioner [~~department~~] shall conduct a
15 comprehensive review of all rules and standards at least every six
16 years. For purposes of this subsection, the six-year period begins
17 on the latest of the date of:

18 (1) the conclusion of the review of the rules and
19 standards;

20 (2) a decision by the executive commissioner
21 [~~department~~] not to revise the rules and standards; or

22 (3) [~~a decision by the board not to revise the rules~~
23 ~~and standards; or~~

24 [~~(4) board~~] action by the executive commissioner
25 adopting new standards.

26 (e) The executive commissioner [~~department~~] shall adopt
27 [~~promulgate~~] minimum standards that apply to licensed child-care

1 facilities and to registered family homes covered by this chapter
2 and that will:

3 (1) promote the health, safety, and welfare of
4 children receiving services in [~~attending~~] a facility or registered
5 family home;

6 (2) promote safe, comfortable, and healthy physical
7 facilities and registered family homes for children;

8 (3) ensure adequate supervision of children by
9 capable, qualified, and healthy personnel;

10 (4) ensure adequate and healthy food service where
11 food service is offered;

12 (5) prohibit racial discrimination by child-care
13 facilities and registered family homes; and

14 (6) require procedures for parental and guardian
15 consultation in the formulation of children's educational [~~and~~
16 ~~therapeutic~~] programs[~~, and~~

17 [~~(7) prevent the breakdown of foster care and adoptive~~
18 ~~placement~~].

19 (f) In adopting [~~promulgating~~] minimum standards for the
20 provision of child-care services, the executive commissioner
21 [~~department~~] shall recognize the various categories of services,
22 including services for specialized care and[~~7~~] the various
23 categories of children and their particular needs[~~, and the~~
24 ~~differences in the organization and operation of child-care~~
25 ~~facilities and institutions. Standards for child-care~~
26 ~~institutions must require an intake study before a child is placed~~
27 ~~in an institution. The intake study may be conducted at a community~~

1 ~~mental health and mental retardation center~~].

2 (g) In adopting [~~promulgating~~] minimum standards, the
3 executive commissioner [~~department~~] may recognize and treat
4 differently the types of services provided by the following:

5 (1) registered family homes; and

6 (2) child-care facilities, including [~~child-care~~
7 ~~institutions, foster group homes, foster homes,~~] group day-care
8 homes[~~,~~] and day-care centers[~~,~~

9 [~~(3) child-placing agencies;~~

10 [~~(4) agency foster homes; and~~

11 [~~(5) agency foster group homes~~].

12 (i) Before adopting minimum standards, the executive
13 commissioner [~~department~~] shall present the proposed standards to
14 the State Advisory Committee on Nonresidential Child-Care
15 Facilities for review and comment, and shall send a copy of the
16 proposed standards to each license holder [~~licensee~~] covered by the
17 proposed standards at least 60 days before the standards take
18 effect to provide the license holder [~~licensee~~] an opportunity to
19 review and to send written suggestions to the committee and the
20 executive commissioner [~~department~~].

21 (j) The executive commissioner or the department may waive
22 compliance with a minimum standard in a specific instance after a
23 determination [~~if it determines~~] that the economic impact of
24 compliance is sufficiently great to make compliance impractical.

25 (k) The executive commissioner or the department may not
26 regulate or attempt to regulate or control the content or method of
27 any instruction or curriculum of a school sponsored by a religious

1 organization.

2 (l) In adopting [~~promulgating~~] minimum standards for the
3 regulation of family homes that register with the department, the
4 executive commissioner [~~department~~] must address the minimum
5 qualifications, education, and training required of a person who
6 operates a family home registered with the department.

7 (m) In determining minimum standards relating to
8 staff-to-child ratios, group sizes, or square footage requirements
9 applicable to [~~nonresidential~~] child-care facilities [~~that provide~~
10 ~~care for less than 24 hours a day~~], the executive commissioner
11 [~~department~~] shall, within available appropriations, conduct a
12 comprehensive cost-benefit analysis and economic impact study that
13 includes families and licensed child-care providers.

14 (n) Not later than the 60th day before the date the
15 executive commissioner [~~board~~] adopts a revision to the minimum
16 standards for child-care facilities, the executive commissioner
17 [~~department~~] shall present the revision to the appropriate
18 legislative oversight committees that have jurisdiction over
19 child-care facilities for review and comment.

20 (p) The executive commissioner [~~department~~] by rule shall
21 prescribe minimum training standards for an employee of a regulated
22 child-care facility, including the time required for completing the
23 training. The executive commissioner [~~department~~] may not require
24 an employee to repeat required training if the employee has
25 completed the training within the time prescribed by [~~department~~]
26 rule. The department's local offices shall make available at the
27 local office locations a copy of the rules regarding minimum

1 training standards, information enabling the owner or operator of a
2 regulated facility to apply for training funds from other agencies
3 to lower facility costs, and any other materials the department may
4 develop to assist the owner or operator or other entity in providing
5 the training.

6 (b) Section 42.042(h), Human Resources Code, is repealed.

7 SECTION 1.09. Section 42.045, Human Resources Code, is
8 amended to read as follows:

9 Sec. 42.045. RECORDS. [~~(a)~~] A person who operates a
10 licensed or certified facility shall maintain individual child
11 development records, individual health records, statistical
12 records, and complete financial records.

13 [~~(b) A person who provides adoption services under a license
14 to operate a child-placing agency shall furnish information
15 required by the department to determine whether adoption related
16 income and disbursements are reasonable, appropriate, and in
17 compliance with the department's minimum standards.~~

18 [~~(c) If a child-placing agency terminates operation as a
19 child-placing agency, it shall, after giving notice to the
20 department, transfer its files and records concerning adopted
21 children, their biological families, and their adoptive families to
22 the Bureau of Vital Statistics or, after giving notice to the Bureau
23 of Vital Statistics, to a facility licensed by the department to
24 place children for adoption.]~~

25 SECTION 1.10. Section 42.046(a), Human Resources Code, is
26 amended to read as follows:

27 (a) An applicant for a license to operate a child-care

1 facility [~~or child-placing agency~~] or for a listing or registration
2 to operate a family home shall submit to the department the
3 appropriate fee prescribed by Section 42.054 and a completed
4 application on a form provided by the department.

5 SECTION 1.11. (a) Section 42.052(a), Human Resources Code,
6 is amended to read as follows:

7 (a) A state-operated child-care facility [~~or child-placing~~
8 ~~agency~~] must receive certification of approval from the department.
9 The certification of approval remains valid until revoked or
10 surrendered.

11 (b) Sections 42.052(g) and (h), Human Resources Code, are
12 repealed.

13 SECTION 1.12. (a) Sections 42.054(a), (b), and (f), Human
14 Resources Code, are amended to read as follows:

15 (a) The department shall charge an applicant a
16 nonrefundable application fee of \$35 for an initial license to
17 operate a child-care facility [~~or a child-placing agency~~].

18 (b) The department shall charge each child-care facility a
19 fee of \$35 for a provisional license. [~~The department shall charge~~
20 ~~each child-placing agency a fee of \$50 for a provisional license.~~]

21 (f) If a facility[~~, agency,~~] or home fails to pay the annual
22 fee when due, the license, listing, or registration, as
23 appropriate, is suspended until the fee is paid.

24 (b) Sections 42.054(d) and (g), Human Resources Code, are
25 repealed.

26 SECTION 1.13. Section 42.073(a), Human Resources Code, is
27 amended to read as follows:

1 (a) The department shall suspend a facility's license or a
2 family home's listing or registration and order the immediate
3 closing of the facility or family home if:

4 (1) the department finds the facility or family home
5 is operating in violation of the applicable standards prescribed by
6 this chapter; and

7 (2) the violation creates an immediate threat to the
8 health and safety of the children receiving services [~~attending or~~
9 ~~residing~~] in the facility or family home.

10 SECTION 1.14. (a) Section 42.076(a), Human Resources Code,
11 is amended to read as follows:

12 (a) A person who operates a child-care facility [~~or~~
13 ~~child-placing agency~~] without a license commits a Class B
14 misdemeanor.

15 (b) Section 42.076(d), Human Resources Code, is repealed.

16 SECTION 1.15. Sections 42.0425, 42.0461, 42.053, and
17 42.0535, Human Resources Code, are repealed.

18 SECTION 1.16. (a) Subtitle D, Title 2, Human Resources
19 Code, is amended by adding Chapter 49 to read as follows:

20 CHAPTER 49. REGULATION OF CERTAIN FACILITIES, HOMES,
21 AND AGENCIES THAT PROVIDE RESIDENTIAL CHILD-CARE SERVICES

22 SUBCHAPTER A. GENERAL PROVISIONS

23 Sec. 49.001. PURPOSE. The purpose of this chapter is to
24 protect the health, safety, and well-being of the children of the
25 state who reside in residential child-care facilities by
26 establishing statewide minimum standards for their safety and
27 protection and by regulating the facilities through a licensing

1 program. It is the policy of the state to ensure the protection of
2 all children under care in residential child-care facilities and to
3 encourage and assist in the improvement of child-care programs. It
4 is also the intent of the legislature that freedom of religion of
5 all citizens is inviolate. With respect to a school or residential
6 child-care facility sponsored by a religious organization, nothing
7 in this chapter gives a governmental agency authority to regulate,
8 control, supervise, or in any way be involved in the:

9 (1) form, manner, or content of religious instruction,
10 ministry, teaching, or the curriculum offered by the school or
11 facility;

12 (2) ability of the school or facility to select and
13 supervise qualified personnel, and otherwise control the terms of
14 employment, including the right to employ individuals who share the
15 religious views of the school or facility;

16 (3) internal self-governance and autonomy of the
17 school or facility; or

18 (4) religious environment of the school or facility,
19 such as symbols, art, icons, and scripture.

20 Sec. 49.002. DEFINITIONS. In this chapter:

21 (1) "Agency foster group home" means a residential
22 child-care facility that provides care for 7 to 12 children, is used
23 only by a licensed child-placing agency, and meets department
24 standards.

25 (2) "Agency foster home" means a residential
26 child-care facility that provides care for not more than six
27 children, is used only by a licensed child-placing agency, and

1 meets department standards.

2 (3) "Child" means a person under 18 years of age.

3 (4) "Child-care institution" means a residential
4 child-care facility that provides care for more than 12 children,
5 including facilities known as children's homes, halfway houses,
6 residential treatment centers, emergency shelters, and therapeutic
7 camps.

8 (5) "Child-placing agency" means a person, including
9 an organization, other than the natural parents or guardian of a
10 child who plans for the placement of or places a child in a
11 residential child-care facility, including an agency foster home or
12 agency foster group home, or in an adoptive home.

13 (6) "Controlling person" means a person who, either
14 alone or in connection with others, has the ability to directly or
15 indirectly influence or direct the management, expenditures, or
16 policies of a residential child-care facility.

17 (7) "Division" means the division designated by the
18 department to carry out the provisions of this chapter.

19 (8) "Facilities" includes residential child-care
20 facilities and child-placing agencies.

21 (9) "Foster group home" means a residential child-care
22 facility that provides care for 7 to 12 children.

23 (10) "Foster home" means a residential child-care
24 facility that provides care for not more than six children.

25 (11) "Religious organization" means a church,
26 synagogue, or other religious institution whose purpose is to
27 support and serve the propagation of truly held religious beliefs.

1 (12) "Residential child-care facility" means a
2 facility licensed or certified by the department to provide, for 24
3 hours a day, assessment, care, training, education, custody,
4 treatment, or supervision for a child who is not related by blood,
5 marriage, or adoption to the owner or operator of the facility,
6 regardless of whether the facility is operated for profit or
7 charges for the services it offers.

8 (13) "State of Texas" or "state" does not include
9 political subdivisions of the state.

10 [Sections 49.003-49.050 reserved for expansion]

11 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

12 Sec. 49.051. DIVISION DESIGNATED. (a) The department may
13 designate a division within the department to carry out
14 responsibilities the department may delegate or assign under this
15 chapter.

16 (b) The commissioner shall appoint as director of a division
17 designated under Subsection (a) a person who meets the
18 qualifications set by the executive commissioner.

19 (c) The department shall employ sufficient personnel and
20 provide training for the personnel to carry out the provisions of
21 this chapter.

22 (d) The director may divide the state into regions for the
23 purpose of administering this chapter.

24 Sec. 49.052. STATE ADVISORY COMMITTEE. (a) The State
25 Advisory Committee on Residential Child-Care Administrators and
26 Facilities is appointed by the executive commissioner on the
27 recommendation of the director.

1 (b) Members of the committee serve for terms of two years
2 expiring on February 1 of each odd-numbered year.

3 (c) The advisory committee is composed of 16 members. The
4 members must have the following qualifications:

5 (1) two must be parents, guardians, or custodians of
6 children who use residential child-care facilities;

7 (2) two must be representatives of child advocacy
8 groups;

9 (3) two must be operators of nonprofit child-placing
10 agencies that are licensed under this chapter;

11 (4) two must be experts in various professional fields
12 that are relevant to child care and development;

13 (5) two must be members of the general public;

14 (6) two must be operators of child-care institutions
15 that are licensed under this chapter;

16 (7) one must be a child and adolescent psychiatrist
17 certified by the American Board of Psychiatry and Neurology;

18 (8) one must be a licensed psychologist with
19 experience working with children and adolescents; and

20 (9) two must be representatives from facilities not
21 otherwise represented.

22 (d) The department shall provide staff necessary for the
23 committee.

24 (e) The committee shall review rules and minimum standards
25 for child-care administrators, residential child-care facilities,
26 and child-placing agencies adopted by state agencies and shall
27 advise the department, the council, and state agencies on problems

1 of child-care administrators, residential child-care facilities,
2 and child-placing agencies.

3 (f) The committee shall receive and review the department's
4 annual report prepared under Section 49.053.

5 (g) The executive commissioner, on the recommendation of
6 the director, shall appoint an advisory subcommittee on residential
7 child-care administration from the membership of the State Advisory
8 Committee on Residential Child-Care Administrators and Facilities.
9 The subcommittee shall advise the executive commissioner on
10 licensing child-care administrators, including the content of the
11 examination administered to license applicants under Section
12 43.004. The subcommittee on residential child-care administration
13 shall meet at the same time the committee meets.

14 (h) In making appointments to the committee, the executive
15 commissioner shall consider whether the committee reflects the
16 race, ethnicity, and age of the residents of this state and whether
17 the committee provides representation of the geographic regions of
18 the state.

19 Sec. 49.053. ANNUAL REPORT. (a) The commissioner shall
20 prepare an annual written report regarding the department's
21 activities under this chapter.

22 (b) The annual report must include:

23 (1) a report by regions of applications for licensure
24 or certification, of provisional licenses issued, denied, or
25 revoked, of licenses issued, denied, suspended, or revoked, of
26 emergency closures and injunctions, and of the compliance of
27 state-operated agencies with certification requirements;

1 (2) a summary of the amount and kind of in-service
2 training and other professional development opportunities provided
3 for department staff;

4 (3) a summary of training and other professional
5 development opportunities offered to facilities' staffs; and

6 (4) a report of new administrative procedures, of the
7 number of staff and staff changes, and of plans for the coming year.

8 (c) Copies of the annual report shall be available to any
9 state citizen on request.

10 Sec. 49.054. ADMINISTRATIVE PROCEDURE. Chapter 2001,
11 Government Code, applies to all procedures under this chapter
12 except where Chapter 2001 is contrary to or inconsistent with the
13 provisions of this chapter.

14 [Sections 49.055-49.100 reserved for expansion]

15 SUBCHAPTER C. REGULATION

16 Sec. 49.101. REQUIRED LICENSE OR ACCREDITATION. (a) A
17 person may not operate a residential child-care facility or
18 child-placing agency without a license issued by the department.

19 (b) This section does not apply to:

20 (1) a state-operated facility;

21 (2) an agency foster home or agency foster group home;

22 (3) a school or class for religious instruction that
23 does not last longer than two weeks and is conducted by a religious
24 organization during the summer months;

25 (4) a youth camp licensed by the Department of State
26 Health Services;

27 (5) a facility licensed, operated, certified, or

1 registered by another state agency;

2 (6) an emergency shelter facility providing shelter to
3 minor mothers who are the sole support of their natural children
4 under Section 32.201, Family Code, unless the facility would
5 otherwise require a license as a residential child-care facility
6 under this section;

7 (7) a juvenile detention facility certified under
8 Section 51.12, Family Code, or Section 141.042(d), a juvenile
9 facility providing services solely for the Texas Youth Commission,
10 or any other correctional facility for children operated or
11 regulated by another state agency or by a political subdivision of
12 the state; or

13 (8) an annual youth camp held in a municipality with a
14 population of more than 1.5 million that operates for not more than
15 three months and that has been operated for at least 10 years by a
16 nonprofit organization that provides care for the homeless.

17 (c) A single license that lists addresses and the
18 appropriate facilities may be issued to a child-care institution
19 that operates noncontiguous facilities that are nearby and that are
20 demonstrably a single operation as indicated by patterns of
21 staffing, finance, administrative supervision, and programs.

22 (d) A facility exempt from the provisions of Subsection (a)
23 that desires to receive or participate in federal or state funding
24 is required to comply with all other provisions of this chapter and
25 with all regulations adopted under this chapter.

26 (e) The exemptions provided by Subsection (b) do not affect
27 the authority of local, regional, or state health department

1 officials, the state fire marshal, or local fire prevention
2 officials to inspect residential child-care facilities.

3 Sec. 49.102. RULES AND STANDARDS. (a) The executive
4 commissioner shall adopt rules to carry out the provisions of this
5 chapter.

6 (b) The executive commissioner shall conduct a
7 comprehensive review of all rules and standards at least every
8 three years. For purposes of this subsection, the three-year
9 period begins on the latest of the date of:

10 (1) the conclusion of the review of the rules and
11 standards;

12 (2) a decision by the executive commissioner not to
13 revise the rules and standards; or

14 (3) action by the executive commissioner adopting new
15 standards.

16 (c) The department shall provide a standard procedure for
17 receiving and recording complaints.

18 (d) The department shall provide standard forms for
19 applications, inspection reports, and exit conferences.

20 (e) The executive commissioner shall adopt minimum
21 standards that apply to licensed residential child-care facilities
22 and child-placing agencies covered by this chapter and that will:

23 (1) promote the health, safety, and welfare of
24 children receiving services from a facility;

25 (2) promote safe, comfortable, and healthy physical
26 facilities for children;

27 (3) ensure adequate supervision of children by

1 capable, qualified, and healthy personnel;

2 (4) ensure adequate and healthy food service where
3 food service is offered;

4 (5) prohibit racial discrimination by facilities;

5 (6) require procedures for parental and guardian
6 consultation in the formulation of children's educational and
7 therapeutic programs; and

8 (7) prevent the breakdown of foster care and adoptive
9 placement.

10 (f) In adopting minimum standards for the provision of
11 residential child-care services, the executive commissioner shall
12 recognize the various categories of services, including services
13 for specialized care, the various categories of children and their
14 particular needs, and the differences in the organization and
15 operation of residential child-care facilities, child-care
16 institutions, and child-placing agencies. Standards for
17 child-care institutions must require an intake study before a child
18 is placed in an institution. The intake study may be conducted at a
19 community mental health and mental retardation center.

20 (g) In adopting minimum standards, the executive
21 commissioner may recognize and treat differently the types of
22 services provided by:

23 (1) residential child-care facilities, including
24 child-care institutions, foster homes, and foster group homes;

25 (2) child-placing agencies;

26 (3) agency foster homes; and

27 (4) agency foster group homes.

1 (h) The department shall develop and implement a
2 classification and risk-analysis system to:

3 (1) classify each minimum standard adopted by the
4 executive commissioner under Subsection (e) as:

5 (A) an immediate health and safety issue;

6 (B) a procedural issue; or

7 (C) an administrative function; and

8 (2) assign a priority designation to each standard
9 within a classification that identifies the degree of risk that the
10 issue that is the subject of the standard presents to a child's
11 health and safety.

12 (i) In developing the classification and risk-analysis
13 system under Subsection (h), the department shall consult with a
14 committee appointed by the executive commissioner and composed of
15 representatives of public and private entities.

16 (j) Before adopting minimum standards under Subsection (e),
17 the executive commissioner shall present the proposed standards to
18 the State Advisory Committee on Residential Child-Care
19 Administrators and Facilities for review and comment, and shall
20 send a copy of the proposed standards to each license holder covered
21 by the proposed standards at least 60 days before the standards take
22 effect to provide the license holder an opportunity to review and
23 send written suggestions to the committee and the executive
24 commissioner.

25 (k) The executive commissioner or the department may waive
26 compliance with a minimum standard in a specific instance after a
27 determination that:

1 (1) the economic impact of compliance is sufficiently
2 great to make compliance impractical; and

3 (2) the waiver is not likely to jeopardize the health,
4 safety, or welfare of children.

5 (1) Not later than the 60th day before the date the
6 executive commissioner adopts a revision to the minimum standards,
7 the executive commissioner shall present the revision to the
8 appropriate legislative oversight committees that have
9 jurisdiction over residential child-care facilities and
10 child-placing agencies for review and comment.

11 (m) The executive commissioner by rule shall prescribe
12 minimum training standards for an employee of a regulated
13 residential child-care facility, including the time required for
14 completing the training. The executive commissioner may not
15 require an employee to repeat required training if the employee has
16 completed the training within the time prescribed by rule. The
17 department's local offices shall make available at the local office
18 locations a copy of the rules regarding minimum training standards,
19 information enabling the owner or operator of a regulated facility
20 to apply for training funds from other agencies to lower facility
21 costs, and any other materials the department may develop to assist
22 the owner or operator or other entity in providing the training.

23 Sec. 49.103. BEHAVIOR INTERVENTION PROGRAMS. (a) Each
24 residential child-care facility that contracts with the department
25 to provide foster care services shall implement a certified
26 behavior intervention program for the benefit of children served by
27 the facility who need assistance in managing their conduct.

1 (b) The program must include:

2 (1) behavior intervention instruction by a certified
3 instructor for staff members who work directly with children served
4 by the facility; and

5 (2) training approved by the department for all staff
6 members regarding risks associated with the use of prone
7 restraints.

8 Sec. 49.104. ASSESSMENT SERVICES. (a) In this section,
9 "assessment services" means the determination of the placement
10 needs of a child who requires substitute care.

11 (b) The executive commissioner by rule shall regulate
12 assessment services provided by residential child-care facilities
13 or child-placing agencies. A residential child-care facility or a
14 child-placing agency may not provide assessment services unless
15 specifically authorized by the executive commissioner.

16 (c) The executive commissioner by rule shall establish
17 minimum standards for assessment services. The standards must
18 provide that consideration is given to the individual needs of a
19 child, the appropriate place for provision of services, and the
20 factors listed in Section 49.102(e).

21 Sec. 49.105. TRAINING OF PERSONNEL. A licensed facility
22 shall provide training for staff members in:

23 (1) the recognition of symptoms of child abuse,
24 neglect, and sexual molestation and the responsibility and
25 procedure of reporting suspected occurrences of child abuse,
26 neglect, and sexual molestation to the department or other
27 appropriate entity;

1 (2) the application of first aid; and
2 (3) the prevention and spread of communicable
3 diseases.

4 Sec. 49.106. PARENTAL VISITATION. All areas of a licensed
5 facility must be accessible to a parent of a child who is receiving
6 care at the facility if the parent visits the child during the
7 facility's hours of operation.

8 Sec. 49.107. RULES FOR IMMUNIZATIONS. (a) The executive
9 commissioner shall adopt rules for the immunization of children in
10 facilities regulated under this chapter.

11 (b) The executive commissioner shall require that each
12 child at an appropriate age have a test for tuberculosis and be
13 immunized against diphtheria, tetanus, poliomyelitis, mumps,
14 rubella, and rubeola and against any other communicable disease as
15 recommended by the Department of State Health Services. The
16 immunization must be effective on the date of first entry into the
17 facility. However, a child may be provisionally admitted if the
18 required immunizations have begun and are completed as rapidly as
19 medically feasible.

20 (c) The executive commissioner shall adopt rules for the
21 provisional admission of children to facilities regulated under
22 this chapter and may modify or delete any of the immunizations
23 listed in Subsection (b) or require additional immunizations as a
24 requirement for admission to a facility.

25 (d) No immunization may be required for admission to a
26 facility regulated under this chapter if a person applying for a
27 child's admission submits one of the following affidavits:

1 (1) an affidavit signed by a licensed physician
2 stating that the immunization poses a significant risk to the
3 health and well-being of the child or a member of the child's family
4 or household; or

5 (2) an affidavit signed by the child's parent or
6 guardian stating that the applicant declines immunization for
7 reasons of conscience, including a religious belief.

8 (e) An affidavit submitted under Subsection (d)(2) must be
9 on a form described by Section 161.0041, Health and Safety Code, and
10 must be submitted not later than the 90th day after the date the
11 affidavit is notarized.

12 (f) Each regulated facility shall keep an individual
13 immunization record for each child admitted, and the records shall
14 be open for inspection by the department at all reasonable times.

15 (g) The Department of State Health Services shall provide
16 the immunizations required by this section to children in areas
17 where there is no local provision of immunization services.

18 Sec. 49.108. INSPECTIONS. (a) An authorized
19 representative of the department may visit a facility regulated
20 under this chapter during operating hours to investigate, inspect,
21 and evaluate.

22 (b) The department or an authorized representative of the
23 department shall inspect all licensed or certified facilities at
24 least once a year and may inspect other facilities as necessary. At
25 least one of the annual visits must be unannounced and all may be
26 unannounced.

27 (c) The department or an authorized representative of the

1 department must investigate a facility regulated under this chapter
2 when a complaint is received. The department or representative
3 must:

4 (1) notify the director or authorized representative
5 of the regulated facility when a complaint is being investigated;
6 and

7 (2) report in writing the results of the investigation
8 to the director or authorized representative of the facility.

9 (d) The department may call on political subdivisions and
10 governmental agencies for assistance in their authorized fields.

11 (e) An entity that enters into a contract with the
12 department under Section 264.106, Family Code, shall conduct
13 inspections of agency foster homes, agency foster group homes,
14 foster homes, and foster group homes as an authorized
15 representative of the department, and the department may not
16 directly conduct those inspections.

17 (f) Notwithstanding Subsection (e), the department shall
18 periodically conduct inspections of a random sample of agency
19 foster homes, agency foster group homes, foster homes, and foster
20 group homes in which a child-placing agency with which the
21 department contracts under Section 264.106, Family Code, places
22 children. The department shall use the inspections to monitor and
23 enforce the compliance of the child-placing agency with the minimum
24 standards adopted under Section 49.102. The department shall use
25 an inspection checklist that includes all of the required items for
26 inspection in conducting inspections under this subsection. This
27 subsection expires September 1, 2008.

1 Sec. 49.109. INSPECTOR QUALIFICATIONS AND TRAINING;
2 EXAMINATION. (a) The department shall hire qualified individuals
3 to inspect facilities regulated under this chapter. An individual
4 is qualified if the individual:

5 (1) holds a bachelor's degree or has at least three
6 years of relevant work experience;

7 (2) has experience and knowledge related to the
8 regulation and licensing of residential child-care facilities and
9 the provision of human services; and

10 (3) passes an examination required under Subsection
11 (b).

12 (b) The department shall develop and administer
13 examinations for department employees who inspect facilities
14 regulated under this chapter. An examination must be
15 competency-based and specifically tailored to a type of facility.

16 (c) The department shall develop and implement a training
17 program to provide appropriate specialized training to department
18 employees who inspect facilities regulated under this chapter. The
19 program must:

20 (1) include technical support training to enhance
21 clinical skills and the equality of services provided;

22 (2) be competency-based; and

23 (3) provide specific information to each employee
24 about the types of facilities the employee is expected to inspect
25 including the care those facilities provide.

26 (d) Annually, the department shall evaluate the training
27 program required by this section and shall update the program as

1 necessary.

2 (e) In developing the examinations required by Subsection
3 (b) and in developing and updating the training program as required
4 by Subsections (c) and (d), the department shall consult with child
5 advocates and with operators of residential child-care facilities
6 or their representatives.

7 (f) A department employee may not inspect, survey, or take
8 administrative action against a facility unless the employee has
9 passed the appropriate examination required by Subsection (b).

10 (g) This section does not apply to a person who conducts
11 inspections of agency foster homes, agency foster group homes,
12 foster homes, or foster group homes under a contract under Section
13 264.106, Family Code.

14 Sec. 49.110. INSPECTION RESULTS AND EXIT CONFERENCE. (a) On
15 completion of an inspection under Section 49.108, the inspector
16 shall hold an exit conference with a representative of the
17 inspected facility. The inspector shall provide to the
18 representative:

19 (1) a copy of the inspection checklist used by the
20 inspector; and

21 (2) a list of violations discovered during the
22 inspection that includes specific references to the minimum
23 standards related to the violations.

24 (b) The inspector shall provide the representative an
25 opportunity to respond to the violations discovered during the
26 inspection.

27 (c) If after holding an exit conference the inspector finds

1 additional violations in a subsequent inspection, the inspector
2 shall conduct another exit conference to provide the information
3 required by Subsection (a) with respect to the additional
4 violations.

5 Sec. 49.111. INFORMAL DISPUTE RESOLUTION. (a) The
6 executive commissioner by rule shall establish an informal dispute
7 resolution process under which a disinterested individual may
8 resolve a dispute between the department and a facility regarding a
9 violation discovered during an inspection, a proposed enforcement
10 action relating to the violation, or another related proceeding
11 under this chapter. The process must require:

12 (1) the aggrieved facility to request informal dispute
13 resolution not later than the 15th day after the date the facility
14 is notified of the violation, proposed enforcement action, or other
15 proceeding that is the basis of the dispute; and

16 (2) an individual representing the aggrieved facility
17 in the process to register with the commission and disclose the
18 following:

19 (A) the individual's employment history during
20 the preceding five years, including employment with a regulatory
21 agency of this state or another state;

22 (B) the ownership, including the identity of the
23 controlling person or persons, of the aggrieved facility the
24 individual is representing; and

25 (C) the identity of other entities the individual
26 is representing, or has represented during the preceding 24 months,
27 before the commission.

1 (b) The executive commissioner shall adopt rules to resolve
2 disputes under the informal dispute resolution process. The rules
3 must require that the process be completed not later than the 30th
4 day after the date the aggrieved facility requests informal dispute
5 resolution.

6 (c) The commission may not delegate to another state agency
7 the responsibility to administer the informal dispute resolution
8 process established under this section.

9 Sec. 49.112. INSPECTION INFORMATION DATABASE. (a) The
10 department shall establish a computerized database containing
11 inspection information, including violations of minimum standards,
12 on facilities inspected under Section 49.108.

13 (b) The department shall make the information collected by
14 the department available to another state agency or political
15 subdivision of the state for the purpose of administering programs
16 or enforcing laws within the jurisdiction of that agency or
17 subdivision. If feasible using available information systems, the
18 department shall make the information directly available to the
19 Department of State Health Services and the commission through
20 electronic information systems. The department, the Department of
21 State Health Services, and the commission shall jointly plan the
22 development of inspection databases that, to the extent feasible,
23 are similar in their design and architecture to promote the sharing
24 of information.

25 (c) The department shall categorize information regarding
26 violations of minimum standards collected under this section by:

27 (1) the type and size of the facility in which the

1 violation occurred;

2 (2) the region of this state in which the violation
3 occurred; and

4 (3) the type of violation.

5 (d) The department shall use the information to:

6 (1) identify trends in violations in relation to
7 regions of this state and types of facilities;

8 (2) identify minimum standards that are subject to
9 inconsistent interpretation;

10 (3) identify training needs;

11 (4) direct training and other resources to facilities
12 that present the greatest risk to child safety; and

13 (5) improve the quality of residential child-care
14 services without increasing expenditures.

15 Sec. 49.113. REQUIRED BACKGROUND SEARCH OF CENTRAL REGISTRY
16 OF REPORTED CASES OF CHILD ABUSE OR NEGLECT. (a) Before the
17 department issues or renews a license or certification under this
18 subchapter, the department shall search the central registry of
19 reported cases of child abuse or neglect established under Section
20 261.002, Family Code, to determine whether the applicant or the
21 owner or an employee of the facility is listed in the registry as a
22 person who abused or neglected a child.

23 (b) The executive commissioner may adopt rules to implement
24 this section.

25 Sec. 49.114. RECORDS. (a) A person who operates a
26 licensed or certified facility shall maintain individual child
27 development records, individual health records, statistical

1 records, and complete financial records.

2 (b) A person who provides adoption services under a license
3 to operate a child-placing agency shall furnish information
4 required by the department to determine whether adoption-related
5 income and disbursements are reasonable, appropriate, and in
6 compliance with the department's minimum standards.

7 (c) If a child-placing agency terminates operation as a
8 child-placing agency, the agency shall, after giving notice to the
9 department, transfer the agency's files and records concerning
10 adopted children, their biological families, and their adoptive
11 families to the Bureau of Vital Statistics or, after giving notice
12 to the Bureau of Vital Statistics, to a facility licensed by the
13 department to place children for adoption.

14 Sec. 49.115. APPLICATION FOR LICENSE. (a) An applicant
15 for a license to operate a residential child-care facility or a
16 child-placing agency shall submit to the department the appropriate
17 fee prescribed by Section 49.128 and a completed application on a
18 form provided by the department.

19 (b) The department shall supply the applicant the
20 application form and a copy of the appropriate minimum standards,
21 if applicable.

22 (c) After receiving an application, the department shall
23 investigate the applicant and the plan of care for children, if
24 applicable. As part of the investigation, the department shall
25 require the applicant to provide information about the applicant's
26 and each controlling person's compliance history with the
27 regulatory requirements in any other state in which the applicant

1 or controlling person operates or previously operated a residential
2 child-care facility or a child-placing agency.

3 (d) The department shall develop and implement procedures
4 to deny the application of an applicant whose facility license in
5 another state was revoked or who is barred from holding a license or
6 operating a foster facility in another state. The department shall
7 also ensure that an applicant described by this subsection may not
8 operate a foster home or foster group home that is directly or
9 indirectly under a contract with the department.

10 (e) The department shall complete the investigation and
11 decide on an application not later than the 60th day after the date
12 the department receives a completed application.

13 Sec. 49.116. PUBLIC NOTICE AND HEARING IN CERTAIN
14 COUNTIES. (a) Before the department may issue a license, other
15 than a renewal license, for the operation or the expansion of the
16 capacity of a foster home or foster group home that is located in a
17 county with a population of less than 300,000 and that provides
18 child care for 24 hours a day at a location other than the actual
19 residence of a child's primary caretaker or of a child-care
20 institution, the applicant for the license or expansion shall, at
21 the applicant's expense:

22 (1) conduct a public hearing on the application in
23 accordance with rules of the executive commissioner after notifying
24 the department of the date, time, and location of the hearing; and

25 (2) publish notice of the application in a newspaper
26 of general circulation in the community in which the residential
27 child-care services are proposed to be provided.

1 (b) The notice required by Subsection (a)(2) must be
2 published at least 10 days before the date of the public hearing
3 required by Subsection (a)(1) and must include:

4 (1) the name and address of the applicant;

5 (2) the address at which the residential child-care
6 services are proposed to be provided;

7 (3) the date, time, and location of the public
8 hearing;

9 (4) the name, address, and telephone number of the
10 department as the licensing authority; and

11 (5) a statement informing the public that a person may
12 submit written comments to the department concerning the
13 application instead of or in addition to appearing at the public
14 hearing.

15 (c) The department shall require a representative of the
16 department to attend the public hearing in an official capacity for
17 the purpose of receiving public comments on the application.

18 (d) Before issuing a license described by Subsection (a),
19 the department shall consider:

20 (1) the amount of local resources available to support
21 children proposed to be served by the applicant;

22 (2) the impact of the proposed residential child-care
23 services on the ratio in the local school district of students
24 enrolled in a special education program to students enrolled in a
25 regular education program and the effect, if any, on the children
26 proposed to be served by the applicant; and

27 (3) the impact of the proposed residential child-care

1 services on the community and the effect on opportunities for
2 social interaction for the children proposed to be served by the
3 applicant.

4 (e) The department may deny the application if the
5 department determines that:

6 (1) the community has insufficient resources to
7 support children proposed to be served by the applicant;

8 (2) granting the application would significantly
9 increase the ratio in the local school district of students
10 enrolled in a special education program to students enrolled in a
11 regular education program and the increase would adversely affect
12 the children proposed to be served by the applicant; or

13 (3) granting the application would have a significant
14 adverse impact on the community and would limit opportunities for
15 social interaction for the children proposed to be served by the
16 applicant.

17 (f) A child-placing agency that proposes to verify an agency
18 home or agency group home that is located in a county with a
19 population of less than 300,000 that provides child care for 24
20 hours a day at a location other than the actual residence of a
21 child's primary caretaker shall:

22 (1) comply with the notice and hearing requirements
23 imposed by Subsections (a) and (b); and

24 (2) after conducting the required public hearing,
25 provide the department with information relating to the
26 considerations specified in Subsection (d).

27 (g) The department may prohibit the child-placing agency

1 from verifying the proposed agency home or agency group home on the
2 same grounds that the department may deny an application under
3 Subsection (e).

4 Sec. 49.117. LIMITATION ON NUMBER AND CAPACITY OF
5 FACILITIES. The executive commissioner by rule shall appropriately
6 limit:

7 (1) the total number of residential child-care
8 facilities operating in a county, based on the population of the
9 county; and

10 (2) the total number of children a residential
11 child-care facility may serve, based on the capacity of other
12 residential child-care facilities in the county and the population
13 of the county.

14 Sec. 49.118. CONSULTATIONS. (a) The department shall
15 offer consultation to potential applicants, applicants, and
16 license and certification holders about meeting and maintaining
17 standards for licensing and certification and achieving programs of
18 excellence in child care.

19 (b) The department shall offer consultation to prospective
20 and actual users of facilities.

21 Sec. 49.119. LICENSING. (a) The department shall issue a
22 license after determining that an applicant has satisfied all
23 requirements.

24 (b) When issuing a license, the department may impose
25 restrictions on a facility, including the number of children to be
26 served and the type of children to be served.

27 (c) The department may grant a variance of an individual

1 standard prescribed in the applicable standards for good and just
2 cause.

3 (d) A license holder must display a license issued under
4 this chapter in a prominent place at the facility.

5 (e) A license issued under this chapter is not transferable
6 and applies only to the operator and facility location stated in the
7 license application. A change in location or ownership
8 automatically revokes a license.

9 (f) A license must be issued if the department determines
10 that a facility meets all requirements. The evaluation shall be
11 based on one or more visits to the facility and a review of required
12 forms and records. A license is valid until revoked or surrendered.

13 Sec. 49.120. LIABILITY INSURANCE REQUIRED. (a) A license
14 holder shall maintain liability insurance coverage in the amount of
15 \$300,000 for each occurrence of negligence. An insurance policy or
16 contract required under this section must cover injury to a child
17 that occurs while the child is on the premises of the license holder
18 or in the care of the license holder.

19 (b) A license holder shall file with the department a
20 certificate or other evidence from an insurance company showing
21 that the license holder has an unexpired and uncanceled insurance
22 policy or contract that meets the requirements of this section.

23 (c) Should the license holder for financial reasons or for
24 lack of availability of an underwriter willing to issue a policy be
25 unable to secure the insurance required under Subsection (a) or
26 should the policy limits be exhausted, the license holder shall
27 notify the parent of or a person standing in parental relationship

1 to each child for whom the license holder provides care a written
2 notice that the liability coverage is not provided and there will
3 not be a ground for suspension or revocation of the license holder's
4 license under this chapter. The license holder shall also notify
5 the department that the coverage is not provided and provide the
6 reason for same. In no case shall the inability to secure coverage
7 serve to indemnify the license holder for damages due to
8 negligence.

9 (d) The insurance policy or contract shall be maintained at
10 all times in an amount as required by this section. Failure by a
11 license holder to renew the policy or contract or to maintain the
12 policy or contract in the required amount is a ground for suspension
13 or revocation of the license holder's license under this chapter.

14 Sec. 49.121. LICENSE RENEWAL. (a) A license holder may
15 apply for a new license in compliance with the requirements of this
16 chapter and the rules adopted by the executive commissioner.

17 (b) The application for a new license must be completed and
18 decided on by the department before the expiration of the license
19 under which a facility is operating.

20 (c) The department shall evaluate the application for a new
21 license to determine if all licensing requirements are met. The
22 evaluation may include a specified number of visits to the facility
23 and must include a review of all required forms and records.

24 Sec. 49.122. RENEWAL OF LICENSE. (a) A person who is
25 otherwise eligible to renew a license may renew an unexpired
26 license by paying the required annual fee to the department before
27 the expiration date of the license. A person whose license has

1 expired may not engage in activities that require a license until
2 the license has been renewed under this section.

3 (b) If the person's license has been expired for 90 days or
4 less, the person may renew the license by paying to the department
5 an amount equal to 1-1/2 times the required annual fee.

6 (c) If the person's license has been expired for longer than
7 90 days but less than one year, the person may renew the license by
8 paying to the department an amount equal to two times the required
9 annual fee.

10 (d) If the person's license has been expired for one year or
11 longer, the person may not renew the license. The person may obtain
12 a new license by complying with the requirements and procedures for
13 obtaining an original license.

14 (e) At least 30 days before the expiration of a person's
15 license, the department shall send written notice of the impending
16 license expiration to the person at the license holder's last known
17 address according to the records of the department.

18 Sec. 49.123. PROVISIONAL LICENSE. (a) The department
19 shall issue a provisional license when a facility's plans meet the
20 department's licensing requirements and one of the following
21 situations exists:

22 (1) the facility is not currently operating;

23 (2) the facility has relocated and has made changes in
24 the type of child-care services it provides; or

25 (3) there is a change in ownership of the facility
26 resulting in changes in policy and procedure or in the staff who
27 have direct contact with the children.

1 (b) A provisional license is valid for six months from the
2 date it is issued and may be renewed for an additional six months.

3 Sec. 49.124. CERTIFICATION. (a) A state-operated
4 residential child-care facility or child-placing agency must
5 receive certification of approval from the department. The
6 certification of approval remains valid until revoked or
7 surrendered.

8 (b) To be certified, a facility must comply with the
9 executive commissioner's rules and standards and any provisions of
10 this chapter that apply to a licensed facility of the same category.
11 The operator of a certified facility must display the certification
12 in a prominent place at the facility.

13 (c) The certification requirements of this section do not
14 apply to a Texas Youth Commission facility, a Texas Juvenile
15 Probation Commission facility, or a facility providing services
16 solely for the Texas Youth Commission.

17 (d) The certification requirements of this section do not
18 apply to a juvenile detention facility certified under Section
19 51.12, Family Code, or Section 141.042(d).

20 Sec. 49.125. DEPOSIT OF FEES. The fees authorized by this
21 chapter and received by the department shall be deposited in the
22 general revenue fund.

23 Sec. 49.126. AGENCY FOSTER HOMES AND AGENCY FOSTER GROUP
24 HOMES. (a) An agency foster home or agency foster group home is
25 considered part of the child-placing agency that operates the
26 agency foster home or agency foster group home for purposes of
27 licensing.

1 (b) The operator of a licensed agency shall display a copy
2 of the license in a prominent place in the agency foster home or
3 agency foster group home used by the agency.

4 (c) An agency foster home or agency foster group home shall
5 comply with all provisions of this chapter and all rules and
6 standards that apply to a residential child-care facility caring
7 for a similar number of children for a similar number of hours each
8 day.

9 (d) The department shall revoke or suspend the license of a
10 child-placing agency if an agency foster home or agency foster
11 group home operated by the licensed agency fails to comply with
12 Subsection (c).

13 Sec. 49.127. REQUIRED INFORMATION FOR VERIFICATION. (a) A
14 child-placing agency that seeks to verify an agency home or an
15 agency group home shall request background information about the
16 agency home or group home from a child-placing agency that has
17 previously verified that agency home or agency group home.

18 (b) Notwithstanding Section 261.201, Family Code, a
19 child-placing agency that has verified an agency home or an agency
20 group home is required to release to another child-placing agency
21 background information requested under Subsection (a).

22 (c) A child-placing agency that releases background
23 information under this section is immune from civil and criminal
24 liability for the release of the information.

25 (d) For purposes of this section, background information
26 means the home study under which the agency home or agency group
27 home was verified by the previous child-placing agency and any

1 record of noncompliance with state minimum standards received and
2 the resolution of any such noncompliance by the previous
3 child-placing agency.

4 Sec. 49.128. FEES. (a) The department shall charge an
5 applicant a nonrefundable application fee of \$35 for an initial
6 license to operate a residential child-care facility or a
7 child-placing agency.

8 (b) The department shall charge each residential child-care
9 facility a fee of \$35 for a provisional license. The department
10 shall charge each child-placing agency a fee of \$50 for a
11 provisional license.

12 (c) The department shall charge each licensed residential
13 child-care facility an annual license fee in the amount of \$35 plus
14 \$1 for each child the facility is permitted to serve. The fee is due
15 on the date the department issues the facility's initial license
16 and on the anniversary of that date.

17 (d) The department shall charge each licensed child-placing
18 agency an annual license fee of \$100. The fee is due on the date the
19 department issues the child-placing agency's initial license and on
20 the anniversary of that date.

21 (e) If a facility or agency fails to pay the annual fee when
22 due, the license is suspended until the fee is paid.

23 (f) Subsections (b) through (e) do not apply to:

24 (1) licensed foster homes and licensed foster group
25 homes;

26 (2) nonprofit facilities regulated under this chapter
27 that provided 24-hour care for children in the managing

1 conservatorship of the department during the 12-month period
2 immediately preceding the anniversary date of the facility's
3 license; or

4 (3) facilities operated by a nonprofit corporation or
5 foundation that provides 24-hour residential care and does not
6 charge for the care provided.

7 Sec. 49.129. SIGN POSTING. (a) Each residential
8 child-care facility shall post in a location that is conspicuous to
9 all employees and customers a sign that includes:

10 (1) a description of the provisions of the Family Code
11 relating to the duty to report child abuse or neglect;

12 (2) a description of the penalties for violating the
13 reporting provisions of the Family Code; and

14 (3) a brief description of sudden infant death
15 syndrome, shaken-baby syndrome, and childhood diabetes and methods
16 for preventing those phenomena.

17 (b) The department by rule shall determine the design, size,
18 and wording of the sign.

19 (c) The department shall provide the sign to each
20 residential child-care facility without charge.

21 (d) A person who operates a residential child-care facility
22 commits an offense if the department provides a sign to the facility
23 as provided by this section and the person intentionally fails to
24 display the sign in the facility as prescribed by this section. An
25 offense under this subsection is a Class C misdemeanor.

26 Sec. 49.130. REQUIRED BACKGROUND AND CRIMINAL HISTORY
27 CHECKS. (a) In accordance with rules adopted by the executive

1 commissioner, the director, owner, or operator of a residential
2 child-care facility shall, when applying to operate a residential
3 child-care facility and at least once during each 24 months after
4 receiving a license or certification of approval, submit to the
5 department for use in conducting background and criminal history
6 checks:

7 (1) the name of the director, owner, and operator of
8 the facility and the name of each person employed at the facility;
9 and

10 (2) the name of each person 14 years of age or older
11 who will regularly or frequently be staying or working at the
12 facility while children are being provided care.

13 (b) The department shall conduct background and criminal
14 history checks using:

15 (1) the information provided under Subsection (a);

16 (2) the information made available by the Department
17 of Public Safety under Section 411.114, Government Code, or by the
18 Federal Bureau of Investigation or other criminal justice agency
19 under Section 411.087, Government Code; and

20 (3) the department's records of reported abuse and
21 neglect.

22 (c) The executive commissioner by rule shall require a
23 residential child-care facility to pay to the department a fee in an
24 amount not to exceed the administrative costs the department incurs
25 in conducting a background and criminal history check under this
26 section.

27 Sec. 49.131. RULES REGARDING ADVERTISING OR COMPETITIVE

1 BIDDING. (a) The executive commissioner may not adopt rules
2 restricting advertising or competitive bidding by a license holder
3 except to prohibit false, misleading, or deceptive practices or to
4 prevent a violation of this chapter.

5 (b) In its rules to prohibit false, misleading, or deceptive
6 practices, the executive commissioner may not include a rule that:

7 (1) restricts the use of any medium for advertising;

8 (2) restricts the use of a license holder's personal
9 appearance or voice in an advertisement;

10 (3) relates to the size or duration of an
11 advertisement by the license holder; or

12 (4) restricts the license holder's advertisement under
13 a trade name.

14 Sec. 49.132. REQUIRED AFFIDAVIT FOR APPLICANTS FOR
15 EMPLOYMENT WITH FACILITY. (a) An applicant for temporary or
16 permanent employment with a licensed facility whose employment or
17 potential employment with the facility involves direct
18 interactions with or the opportunity to interact and associate with
19 children must execute and submit the following affidavit with the
20 application for employment:

21 STATE OF _____

22 COUNTY OF _____

23 I swear or affirm under penalty of perjury that I do not now
24 and I have not at any time, either as an adult or as a juvenile:

25 1. Been convicted of;

26 2. Pledged guilty to (whether or not resulting in a
27 conviction);

1 3. Pled nolo contendere or no contest to;

2 4. Admitted;

3 5. Had any judgment or order rendered against me (whether by
4 default or otherwise);

5 6. Entered into any settlement of an action or claim of;

6 7. Had any license, certification, employment, or volunteer
7 position suspended, revoked, terminated, or adversely affected
8 because of;

9 8. Resigned under threat of termination of employment or
10 volunteerism for;

11 9. Had a report of child abuse or neglect made and
12 substantiated against me for; or

13 10. Have any pending criminal charges against me in this or
14 any other jurisdiction for;

15 Any conduct, matter, or thing (irrespective of formal name
16 thereof) constituting or involving (whether under criminal or civil
17 law of any jurisdiction):

18 1. Any felony;

19 2. Rape or other sexual assault;

20 3. Physical, sexual, emotional abuse and/or neglect of a
21 minor;

22 4. Incest;

23 5. Exploitation, including sexual, of a minor;

24 6. Sexual misconduct with a minor;

25 7. Molestation of a child;

26 8. Lewdness or indecent exposure;

27 9. Lewd and lascivious behavior;

1 10. Obscene or pornographic literature, photographs, or
2 videos;

3 11. Assault, battery, or any violent offense involving a
4 minor;

5 12. Endangerment of a child;

6 13. Any misdemeanor or other offense classification
7 involving a minor or to which a minor was a witness;

8 14. Unfitness as a parent or custodian;

9 15. Removing children from a state or concealing children in
10 violation of a court order;

11 16. Restrictions or limitations on contact or visitation
12 with children or minors resulting from a court order protecting a
13 child or minor from abuse, neglect, or exploitation; or

14 17. Any type of child abduction.

15 Except the following (list all incidents, location,
16 description, and date) (if none, write NONE)

17 Signed _____

18 Date _____.

19 Subscribed and sworn to (or affirmed) before me this _____
20 day of _____, _____.

21 Signature _____ of _____ notarial _____ officer
22 _____.

23 (seal, if any, of notarial officer)

24 My commission expires: _____

25 (b) The failure or refusal of the applicant to sign or
26 provide the affidavit constitutes good cause for refusal to hire
27 the applicant.

1 [Sections 49.133-49.150 reserved for expansion]

2 SUBCHAPTER D. REMEDIES

3 Sec. 49.151. RANGE OF PENALTIES. The department shall
4 revoke, suspend, or refuse to renew a license, place on probation a
5 person whose license has been suspended, or reprimand a license
6 holder for a violation of this chapter or a rule of the executive
7 commissioner. If a license suspension is probated, the department
8 may require the license holder to:

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

11 (2) limit services to the areas prescribed by the
12 department;

13 (3) continue or review professional education until
14 the license holder attains a degree of skill satisfactory to the
15 department in those areas that are the basis of the probation; or

16 (4) take corrective action relating to the violation
17 on which the probation is based.

18 Sec. 49.152. SUSPENSION, EVALUATION, OR PROBATION OF
19 LICENSE. (a) The department may suspend the license of a facility
20 that has temporarily ceased operation but has definite plans for
21 starting operations again within the time limits of the issued
22 license.

23 (b) The department may suspend a facility's license for a
24 definite period rather than deny or revoke the license if the
25 department finds repeated noncompliance with standards that do not
26 endanger the health and safety of children. To qualify for license
27 suspension under this subsection, a facility must suspend its

1 operations and show that standards can be met within the suspension
2 period.

3 (c) If the department finds a facility is in repeated
4 noncompliance with standards that do not endanger the health and
5 safety of children, the department may schedule the facility for
6 evaluation or probation rather than suspend or revoke the
7 facility's license. The department shall provide notice to the
8 facility of the evaluation or probation and of the items of
9 noncompliance not later than the 10th day before the evaluation or
10 probation period begins. The department shall designate a period
11 of not less than 30 days during which the facility will remain under
12 evaluation. During the evaluation or probation period, the
13 facility must correct the items that were in noncompliance and
14 report the corrections to the department for approval.

15 (d) The department shall revoke the license of a facility
16 that does not comply with standards at the end of a license
17 suspension.

18 (e) The department may suspend or revoke the license of a
19 facility that does not correct items that were in noncompliance or
20 that does not comply with required standards within the applicable
21 evaluation or probation period.

22 Sec. 49.153. COSTS CHARGED TO FACILITY. The department may
23 charge a facility for reimbursement of the reasonable cost of
24 services provided by the department in formulating, monitoring, and
25 implementing a corrective action plan for the facility.

26 Sec. 49.154. LICENSE OR CERTIFICATION DENIAL, SUSPENSION,
27 OR REVOCATION. (a) The department may suspend, deny, revoke, or

1 refuse to renew the license or certification of approval of a
2 facility that does not comply with the requirements of this
3 chapter, the standards and rules of the executive commissioner, or
4 the specific terms of the license or certification. The department
5 may revoke the probation of a person whose license is suspended if
6 the person violates a term of the conditions of probation.

7 (b) If the department proposes to take an action under
8 Subsection (a), the person is entitled to a hearing conducted by the
9 State Office of Administrative Hearings. Proceedings for a
10 disciplinary action are governed by Chapter 2001, Government Code.
11 Rules of practice adopted under Section 2001.004, Government Code,
12 applicable to the proceedings for a disciplinary action may not
13 conflict with rules adopted by the State Office of Administrative
14 Hearings.

15 (c) A person whose license or certification is revoked or
16 whose application for a license or certification is denied may not
17 apply for any license or certification under this chapter before
18 the fifth anniversary of the date the revocation takes effect by
19 department or court order or the decision to deny the application or
20 certification is final, as applicable.

21 (d) Notwithstanding Subsection (c), the department shall
22 refuse to issue a license or certification for the operation of a
23 residential child-care facility to a person who previously held an
24 ownership interest in or served as an officer, director, board
25 member, or administrator of a residential child-care facility at
26 the time of the occurrence of conduct that resulted in:

27 (1) the license or certification of the facility being

1 revoked by the department or by court order; or

2 (2) the facility being voluntarily closed or its
3 license or certification relinquished after:

4 (A) the department took an action under
5 Subsection (a) in relation to the facility; or

6 (B) the facility received notice that the
7 department intended to take an action under Subsection (a) in
8 relation to the facility.

9 (e) The executive commissioner by rule may provide for
10 denial of an application or renewal for a licensed facility or may
11 revoke a facility's license based on findings of background or
12 criminal history as a result of a background or criminal history
13 check.

14 (f) A person may continue to operate a facility during an
15 appeal of a license denial or revocation unless the revocation or
16 denial is based on a violation that poses a risk to the health or
17 safety of children. The executive commissioner by rule shall
18 prescribe the violations that pose a risk to the health or safety of
19 children. The department shall notify the facility of the
20 violation that poses a risk to health or safety and that the
21 facility may not operate. A person who has been notified by the
22 department that the facility may not operate under this section may
23 seek injunctive relief from a district court in Travis County or in
24 the county in which the facility is located to allow operation
25 during the pendency of an appeal. The court may grant injunctive
26 relief against the department's action only if the court finds that
27 operation of the facility does not pose a health or safety risk to

1 children. Except as provided by Chapter 2001, Government Code, a
2 court granting injunctive relief under this subsection does not
3 have other jurisdiction over an appeal of a final department
4 decision.

5 Sec. 49.155. EMERGENCY SUSPENSION AND CLOSURE OF FACILITY.

6 (a) The department shall suspend a facility's license and order the
7 immediate closing of the facility if:

8 (1) the department finds the facility is operating in
9 violation of the applicable standards prescribed by this chapter;
10 and

11 (2) the violation creates an immediate threat to the
12 health and safety of the children residing in the facility.

13 (b) The department may suspend a facility's license and
14 order the immediate closing of the facility based on a serious
15 allegation that indicates the possibility of immediate risk to the
16 health and safety of the children residing in the facility.

17 (c) An order suspending a license and an order closing a
18 facility under this section is immediately effective on the date
19 the holder of the license receives written notice or on a later date
20 specified in the order.

21 (d) An order is valid for 30 days after the effective date of
22 the order.

23 (e) A department inspector may immediately suspend a
24 facility's license and order the immediate closing of the facility
25 at the time of an investigation if the inspector discovers a
26 violation or condition described by Subsection (a) or (b). The
27 department shall:

1 (1) train inspectors in the proper procedures for
2 license suspension; and

3 (2) provide inspectors with necessary administrative
4 support to order the emergency suspension.

5 (f) The department and the State Office of Administrative
6 Hearings shall expedite any hearing or decision involving an
7 emergency suspension or closure order issued under this section.

8 Sec. 49.156. INJUNCTIVE RELIEF. (a) When it appears that
9 a person has violated, is violating, or is threatening to violate a
10 licensing or certification requirement of this chapter or a
11 licensing or certification rule or standard, the department may
12 file a suit in a district court in Travis County or in the county
13 where the facility is located for assessment and recovery of civil
14 penalties under Section 49.157, for injunctive relief, including a
15 temporary restraining order, or for both injunctive relief and
16 civil penalties.

17 (b) The district court shall grant the injunctive relief the
18 facts warrant.

19 (c) At the department's request, the attorney general or the
20 county or district attorney of the county in which the facility is
21 located shall conduct a suit in the name of the State of Texas for
22 injunctive relief, to recover the civil penalty, or for both
23 injunctive relief and civil penalties as authorized by Subsection
24 (a).

25 (d) Injunctive relief provided by this section is in
26 addition to any other action, proceeding, or remedy authorized by
27 law. It is not necessary to allege or prove in an action filed under

1 this section that an adequate remedy at law does not exist or that
2 substantial or irreparable harm would result from the continued
3 violation.

4 (e) The department is not required to give an appeal bond in
5 an action arising under this section.

6 Sec. 49.157. CIVIL PENALTY. (a) A person is subject to a
7 civil penalty of not less than \$50 or more than \$100 for each day of
8 violation and for each act of violation if the person:

9 (1) threatens serious harm to a child in a facility by
10 violating a provision of this chapter or a rule or standard;

11 (2) violates a provision of this chapter or a rule or
12 standard three or more times within a 12-month period; or

13 (3) places a public advertisement for an unlicensed
14 facility.

15 (b) The civil penalty authorized by this section is
16 cumulative and in addition to the criminal penalties and injunctive
17 relief provided by this chapter.

18 Sec. 49.158. CRIMINAL PENALTIES. (a) A person who
19 operates a residential child-care facility or a child-placing
20 agency without a license commits a Class B misdemeanor.

21 (b) A person who places a public advertisement for an
22 unlicensed facility commits a Class C misdemeanor.

23 (c) It is not an offense under this section if a
24 professional provides legal or medical services to:

25 (1) a parent who identifies the prospective adoptive
26 parent and places the child for adoption without the assistance of
27 the professional; or

1 (2) a prospective adoptive parent who identifies a
2 parent and receives placement of a child for adoption without
3 assistance of the professional.

4 Sec. 49.159. NOTICE OF ACTION OR PROPOSED ACTION AGAINST
5 FACILITY. (a) If the department revokes or suspends a facility's
6 license, the department shall publish notice of this action in a
7 newspaper of general circulation in the county in which the
8 facility is located. The newspaper shall place the notice in the
9 section in which advertisements for day-care services are normally
10 published.

11 (b) If a person who operates a facility that has had its
12 license revoked or suspended later applies for a new license to
13 operate the same facility, the department shall charge the person
14 an application fee in an amount necessary to reimburse the
15 department for the cost of the notice relating to that facility.

16 (c) The department shall pay for publication of the notice
17 from funds appropriated to the department for licensing and
18 regulating residential child-care facilities and from appeal and
19 application fees collected under Subsection (b) and appropriated to
20 the department.

21 (d) If the department determines that the license of a
22 facility should be revoked or suspended, the facility shall mail
23 notification of the action or proposed action by certified mail to a
24 parent of each child served by the facility, if the person's
25 parental rights have not been terminated, and to the child's
26 managing conservator, as appropriate. The facility shall mail the
27 notification within five days of the date the facility is notified

1 of the department's determination that revocation or suspension of
2 the license is appropriate.

3 Sec. 49.160. ADMINISTRATIVE PENALTY. (a) The department
4 may impose an administrative penalty against a facility licensed
5 under this chapter or a controlling person of the facility if the
6 facility or person:

7 (1) violates this chapter or a rule, standard, or
8 order adopted under this chapter or a term of a license issued under
9 this chapter;

10 (2) makes a statement about a material fact that the
11 facility or person knows or should know is false:

12 (A) on an application for the issuance or renewal
13 of a license or an attachment to the application; or

14 (B) in response to a matter under investigation;

15 (3) refuses to allow a representative of the
16 department to inspect a book, record, or file required to be
17 maintained by the facility or any part of the premises of the
18 facility;

19 (4) purposefully interferes with the work of a
20 representative of the department or the enforcement of this
21 chapter; or

22 (5) fails to pay a penalty assessed under this chapter
23 not later than the date the penalty is due, as determined under
24 Sections 49.161-49.166.

25 (b) Nonmonetary, administrative penalties or remedies,
26 including corrective action plans, probation, and evaluation
27 periods, shall be imposed before monetary penalties are imposed,

1 when appropriate.

2 (c) Each day a violation continues or occurs is a separate
3 violation for purposes of imposing a penalty. The penalty for a
4 violation may be in an amount not to exceed the following limits,
5 based on the maximum number of children for which the facility was
6 authorized to provide care when the violation occurred:

7 <u>Number of children</u>	<u>Maximum amount of penalty</u>
8 <u>20 or less</u>	<u>\$100</u>
9 <u>21-40</u>	<u>\$150</u>
10 <u>41-60</u>	<u>\$200</u>
11 <u>61-80</u>	<u>\$250</u>
12 <u>81-100</u>	<u>\$375</u>
13 <u>More than 100</u>	<u>\$500</u>

14 (d) In addition to the number of children for which the
15 facility is authorized to provide care, the amount of the penalty
16 shall be based on:

17 (1) the seriousness of the violation, including the
18 nature, circumstances, extent, and gravity of any prohibited acts,
19 and the hazard or potential hazard created to the health, safety, or
20 economic welfare of the public;

21 (2) the economic harm to property or the environment
22 caused by the violation;

23 (3) the history of previous violations;

24 (4) the amount necessary to deter future violations;

25 (5) efforts to correct the violation; and

26 (6) any other matter that justice may require.

27 (e) Monetary penalties may not be imposed for violations of

1 clerical errors or standards that do not clearly apprise the
2 facility of the action required by the standard.

3 Sec. 49.161. REPORT RECOMMENDING ADMINISTRATIVE PENALTY.

4 (a) If the department, after examining a possible violation and
5 facts surrounding the possible violation, concludes that a facility
6 or controlling person has committed a violation for which an
7 administrative penalty may be imposed under Section 49.160, the
8 department shall issue a report stating the facts on which the
9 department bases that conclusion.

10 (b) The report shall recommend a penalty and the amount of
11 the penalty, as appropriate.

12 (c) The department shall provide written notice of the
13 report to the facility or controlling person of the facility not
14 later than the 10th day after the date the department issues the
15 report. The notice must include:

16 (1) a brief summary of the violations;

17 (2) the amount of any penalty recommended;

18 (3) whether the violations are subject to correction
19 as provided by Section 49.162 and, if so:

20 (A) the date on which the facility or controlling
21 person must file a plan of correction with the department to be
22 approved by the department; and

23 (B) the date on which the plan of correction must
24 be implemented to avoid assessment of the penalty;

25 (4) a statement that, on request, the facility or
26 controlling person is entitled to a hearing on the violation, the
27 penalty amount, or both; and

1 (5) the method by which the facility or controlling
2 person may obtain a copy of the report.

3 (d) Not later than the 20th day after the date the notice
4 under Subsection (c) is received by the facility or controlling
5 person, the facility or person shall provide in writing to the
6 department:

7 (1) consent to the department's report, including the
8 recommended penalty; or

9 (2) a request for a hearing.

10 (e) If the violation is subject to correction under Section
11 49.162, the facility or controlling person may submit a plan of
12 correction to the department for approval not later than the 10th
13 day after the date the notice under Subsection (c) is received by
14 the facility or person.

15 (f) If the facility or controlling person subject to a
16 violation consents to the penalty recommended by the department or
17 does not respond in a timely manner to the notice received under
18 Subsection (c), the commissioner or the commissioner's designee
19 shall assess the penalty recommended by the department.

20 (g) If the commissioner or the commissioner's designee
21 assesses the recommended penalty, the department shall provide
22 written notice of the decision to the facility or controlling
23 person. The notice must state the date by which the facility or
24 person must pay the penalty.

25 Sec. 49.162. CORRECTION OF VIOLATION. (a) The department
26 may not require payment of an administrative penalty imposed under
27 Section 49.160 if the facility or controlling person corrects the

1 violation in accordance with the plan of correction approved by the
2 department under Section 49.161 and the violation does not recur
3 before the first anniversary of the date the correction was
4 completed.

5 (b) If the facility or controlling person commits the
6 violation again before the first anniversary of the date the
7 correction was completed, the department shall impose and require
8 payment of a penalty for the subsequent violation that is equal to
9 three times the amount of the original penalty imposed.

10 (c) Subsection (a) does not apply to:

11 (1) a violation determined by the department to have
12 resulted in serious harm to or the death of a child;

13 (2) a violation described by any of the factors under
14 Sections 49.160(a)(2)-(5); or

15 (3) a penalty imposed under Subsection (b) for a
16 subsequent violation.

17 (d) The department shall inspect a correction made under
18 this section or take any other step necessary to assess the
19 correction and shall, after making a determination about the
20 satisfactory nature of the correction, notify the facility or
21 controlling person that the correction is:

22 (1) satisfactory, and that the penalty will not be
23 collected by the department; or

24 (2) not satisfactory, and that the department will
25 take action to collect the recommended penalty.

26 Sec. 49.163. HEARING ON ADMINISTRATIVE PENALTY. (a) A
27 facility or controlling person may request a hearing in writing on

1 or before the 20th day after the date the notice under Section
2 49.161 is received by the facility or person.

3 (b) On receipt of a timely request for a hearing, an
4 administrative law judge shall order a hearing and provide notice
5 of the hearing.

6 (c) The hearing shall be held before an administrative law
7 judge.

8 (d) The administrative law judge shall:

9 (1) make findings of fact and conclusions of law in a
10 written decision regarding whether a facility or controlling person
11 has committed a violation for which an administrative penalty may
12 be imposed under Section 49.160; and

13 (2) make a recommendation regarding the amount of the
14 proposed penalty, as appropriate.

15 (e) Based on the findings of fact and conclusions of law and
16 the recommendation of the administrative law judge, the
17 commissioner or the commissioner's designee by order shall:

18 (1) find that the violation has occurred and assess an
19 administrative penalty; or

20 (2) find that the violation has not occurred.

21 (f) If the commissioner or the commissioner's designee
22 finds that a violation has not occurred, the commissioner or the
23 commissioner's designee shall destroy all records relating to the
24 department's findings regarding the violation and a recommendation
25 for an administrative penalty except:

26 (1) records obtained by the department during its
27 investigation; and

1 (2) the administrative law judge's findings of fact
2 and conclusions of law.

3 (g) Proceedings under this section are subject to Chapter
4 2001, Government Code.

5 Sec. 49.164. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY;
6 INTEREST; REFUND. (a) The commissioner or the commissioner's
7 designee shall provide the facility or controlling person with
8 notice of the findings made under Section 49.163(d). If the
9 commissioner or the commissioner's designee finds that a violation
10 has occurred, the commissioner or the commissioner's designee shall
11 also provide to the facility or controlling person written notice
12 of:

13 (1) the findings;

14 (2) the amount of the administrative penalty;

15 (3) the rate of interest payable with respect to the
16 penalty and the date that interest begins to accrue;

17 (4) whether action under Section 49.166 is required in
18 lieu of payment of all or part of the penalty; and

19 (5) the person's right to judicial review of the order
20 of the commissioner or the commissioner's designee.

21 (b) Not later than the 30th day after the date the order of
22 the commissioner or the commissioner's designee is final, the
23 facility or controlling person subject to the penalty shall:

24 (1) pay the full amount of the penalty;

25 (2) pay the full amount of the penalty and file a
26 petition for judicial review contesting the occurrence of the
27 violation, the amount of the penalty, the department's

1 dissatisfaction with efforts to correct the violation, or any
2 combination of those issues; or

3 (3) without paying the full amount of the penalty,
4 file a petition for judicial review contesting the occurrence of
5 the violation, the amount of the penalty, the department's
6 dissatisfaction with efforts to correct the violation, or any
7 combination of those issues.

8 (c) Notwithstanding Subsection (b), the department may
9 allow the facility or controlling person to pay a penalty in
10 installments or require the facility or person to use all or part of
11 the amount of the penalty in accordance with Section 49.165.

12 (d) If the facility or controlling person fails to pay an
13 assessed penalty in the manner and by the date required by the
14 department:

15 (1) the penalty is subject to interest; and

16 (2) the department may refer the matter to the
17 attorney general for collection of the penalty and interest.

18 (e) Interest required under Subsection (d)(1) accrues:

19 (1) at a rate equal to the rate charged on loans to
20 depository institutions by the New York Federal Reserve Bank; and

21 (2) for the period beginning on the day after the date
22 the penalty becomes due and ending on the date the penalty is paid.

23 (f) If the amount of the penalty is reduced or the
24 assessment of a penalty is reversed on judicial review, the
25 commissioner shall:

26 (1) remit to the facility or controlling person the
27 appropriate amount of any penalty payment plus accrued interest; or

1 (2) execute a release of the supersedeas bond if one
2 has been posted.

3 (g) Accrued interest on amounts remitted by the
4 commissioner under Subsection (f)(1) shall be paid:

5 (1) at a rate equal to the rate charged on loans to
6 depository institutions by the New York Federal Reserve Bank; and

7 (2) for the period beginning on the date the penalty is
8 paid and ending on the date the penalty is remitted to the facility
9 or controlling person subject to the violation.

10 Sec. 49.165. STAY OF ENFORCEMENT OF PENALTY. (a) Within
11 the period described by Section 49.164(b), a facility or
12 controlling person who acts under Section 49.164(b)(3) may:

13 (1) stay enforcement of the penalty by:

14 (A) paying the amount of the penalty to the court
15 for placement in an escrow account; or

16 (B) giving to the court a supersedeas bond that
17 is approved by the court for the amount of the penalty and that is
18 effective until all judicial review of the order is final; or

19 (2) request the court to stay enforcement of the
20 penalty by:

21 (A) filing with the court a sworn affidavit of
22 the facility or person stating that the facility or person is
23 financially unable to pay the amount of the penalty and is
24 financially unable to give the supersedeas bond; and

25 (B) giving a copy of the affidavit to the
26 commissioner by certified mail.

27 (b) On receipt of a copy of an affidavit under Subsection

1 (a)(2), the commissioner may file with the court, within five days
2 after the date the copy is received, a contest to the affidavit.
3 The court shall hold a hearing on the facts alleged in the affidavit
4 as soon as practicable and shall stay the enforcement of the penalty
5 on finding that the alleged facts are true. The facility or person
6 who files an affidavit has the burden of proving that the facility
7 or person is financially unable to pay the amount of the penalty and
8 to give a supersedeas bond.

9 Sec. 49.166. AMELIORATION OF VIOLATION. (a) In lieu of
10 requiring payment of an administrative penalty imposed under
11 Section 49.160, the commissioner may allow the facility or
12 controlling person to use, under the supervision of the department,
13 an amount of money equal to the penalty imposed or any portion of
14 the penalty imposed to ameliorate the violation or improve
15 services, other than administrative services, at the facility.

16 (b) If the department determines that the violation does not
17 constitute an immediate threat to the health and safety of a child
18 residing in the facility, the department shall offer amelioration
19 to the facility or controlling person for the violation.

20 (c) The department shall offer amelioration to a facility or
21 controlling person not later than the 10th day after the date the
22 facility or person receives from the department a final
23 notification of the recommended assessment of an administrative
24 penalty that is sent to the person after an informal dispute
25 resolution process but before an administrative hearing under
26 Section 49.163.

27 (d) A facility or controlling person to whom amelioration

1 has been offered must file a plan for amelioration not later than
2 the 45th day after the date the facility or person receives the
3 offer of amelioration from the department. In the plan, the
4 facility or person must agree to waive the facility's or person's
5 right to an administrative hearing under Section 49.163 if the
6 department approves the plan.

7 (e) At a minimum, a plan for amelioration must:

8 (1) propose changes to the management or operation of
9 the facility that will improve services to or the quality of care of
10 children residing in the facility;

11 (2) identify, through measurable outcomes, the ways in
12 which and the extent to which the proposed changes will improve
13 services to or the quality of care of children residing in the
14 facility;

15 (3) establish clear goals to be achieved through the
16 proposed changes;

17 (4) establish a timeline for implementing the proposed
18 changes; and

19 (5) identify specific actions necessary to implement
20 the proposed changes.

21 (f) In addition to the factors required in Subsection (e),
22 an amelioration plan may propose changes to improve staff
23 recruitment and retention and the overall quality of life for
24 children residing in the facility.

25 (g) The department shall approve or deny an amelioration
26 plan not later than the 45th day after the date the department
27 receives the plan. On approval of a facility's or controlling

1 person's plan, the department shall deny any pending request for a
2 hearing submitted by the facility or person under Section 49.161.

3 (h) The department may not offer amelioration to a facility
4 or controlling person:

5 (1) except as provided by Subdivision (2), more than
6 three times in a two-year period; or

7 (2) more than one time in a two-year period for the
8 same or a similar violation.

9 (b) Section 264.1075, Family Code, is amended to read as
10 follows:

11 Sec. 264.1075. USE OF ASSESSMENT SERVICES. Before placing
12 a child in substitute care, the department shall use assessment
13 services provided by a residential child-care facility or a
14 child-placing agency in accordance with Section 49.104 [~~42.0425~~],
15 Human Resources Code, to determine the appropriate substitute care
16 for the child.

17 (c) Not later than September 1, 2006, the Department of
18 Family and Protective Services shall:

19 (1) develop the classification and risk-analysis
20 system required by Section 49.102(h), Human Resources Code, as
21 added by this section; and

22 (2) classify and assign priority designations to each
23 minimum standard adopted under Section 49.102, Human Resources
24 Code, as added by this section.

25 (d) Not later than January 1, 2006, the Department of Family
26 and Protective Services shall develop and begin administering the
27 examinations for inspectors required by Section 49.109, Human

1 Resources Code, as added by this section.

2 (e) Sections 49.109(a) and (f), Human Resources Code, as
3 added by this section, apply to an employee of the Department of
4 Family and Protective Services who conducts an inspection of a
5 facility, as defined by Section 49.002, Human Resources Code, as
6 added by this section, on or after March 1, 2006.

7 (f) Sections 49.160-49.166, Human Resources Code, as added
8 by this section, apply only to conduct occurring on or after the
9 effective date of this section. Conduct that occurs before the
10 effective date of this section is governed by the law in effect on
11 the date the conduct occurred, and the former law is continued in
12 effect for that purpose.

13 SECTION 1.17. (a) Section 39.182(a), Education Code, is
14 amended to read as follows:

15 (a) Not later than December 1 of each year, the agency shall
16 prepare and deliver to the governor, the lieutenant governor, the
17 speaker of the house of representatives, each member of the
18 legislature, the Legislative Budget Board, and the clerks of the
19 standing committees of the senate and house of representatives with
20 primary jurisdiction over the public school system a comprehensive
21 report covering the preceding school year and containing:

22 (1) an evaluation of the achievements of the state
23 educational program in relation to the statutory goals for the
24 public education system under Section 4.002;

25 (2) an evaluation of the status of education in the
26 state as reflected by the academic excellence indicators adopted
27 under Section 39.051;

1 (3) a summary compilation of overall student
2 performance on academic skills assessment instruments required by
3 Section 39.023 with the number and percentage of students exempted
4 from the administration of those instruments and the basis of the
5 exemptions, aggregated by grade level, subject area, campus, and
6 district, with appropriate interpretations and analysis, and
7 disaggregated by race, ethnicity, gender, and socioeconomic
8 status;

9 (4) a summary compilation of overall performance of
10 students placed in a disciplinary [~~an~~] alternative education
11 program established under Section 37.008 on academic skills
12 assessment instruments required by Section 39.023 with the number
13 of those students exempted from the administration of those
14 instruments and the basis of the exemptions, aggregated by
15 district, grade level, and subject area, with appropriate
16 interpretations and analysis, and disaggregated by race,
17 ethnicity, gender, and socioeconomic status;

18 (5) a summary compilation of overall performance of
19 students at risk of dropping out of school, as defined by Section
20 29.081(d), on academic skills assessment instruments required by
21 Section 39.023 with the number of those students exempted from the
22 administration of those instruments and the basis of the
23 exemptions, aggregated by district, grade level, and subject area,
24 with appropriate interpretations and analysis, and disaggregated
25 by race, ethnicity, gender, and socioeconomic status;

26 (6) a summary compilation of overall performance of
27 students in foster care or other residential care under the

1 conservatorship of the Department of Family and Protective Services
2 on academic skills assessment instruments required by Section
3 39.023 with the number of those students exempted from the
4 administration of those instruments and the basis of the
5 exemptions, aggregated by district, grade level, and subject area,
6 with appropriate interpretations and analysis, and disaggregated
7 by race, ethnicity, gender, and socioeconomic status;

8 (7) [~~(6)~~] an evaluation of the correlation between
9 student grades and student performance on academic skills
10 assessment instruments required by Section 39.023;

11 (8) [~~(7)~~] a statement of the dropout rate of students
12 in grade levels 7 through 12, expressed in the aggregate and by
13 grade level, and a statement of the completion rates of students for
14 grade levels 9 through 12;

15 (9) [~~(8)~~] a statement of:

16 (A) the completion rate of students who enter
17 grade level 9 and graduate not more than four years later;

18 (B) the completion rate of students who enter
19 grade level 9 and graduate, including students who require more
20 than four years to graduate;

21 (C) the completion rate of students who enter
22 grade level 9 and not more than four years later receive a high
23 school equivalency certificate;

24 (D) the completion rate of students who enter
25 grade level 9 and receive a high school equivalency certificate,
26 including students who require more than four years to receive a
27 certificate; and

1 (E) the number and percentage of all students who
2 have not been accounted for under Paragraph (A), (B), (C), or (D);

3 (10) [~~(9)~~] a statement of the projected
4 cross-sectional and longitudinal dropout rates for grade levels 9
5 through 12 for the next five years, assuming no state action is
6 taken to reduce the dropout rate;

7 (11) [~~(10)~~] a description of a systematic, measurable
8 plan for reducing the projected cross-sectional and longitudinal
9 dropout rates to five percent or less for the 1997-1998 school year;

10 (12) [~~(11)~~] a summary of the information required by
11 Section 29.083 regarding grade level retention of students and
12 information concerning:

13 (A) the number and percentage of students
14 retained; and

15 (B) the performance of retained students on
16 assessment instruments required under Section 39.023(a);

17 (13) [~~(12)~~] information, aggregated by district type
18 and disaggregated by race, ethnicity, gender, and socioeconomic
19 status, on:

20 (A) the number of students placed in a
21 disciplinary [~~an~~] alternative education program established under
22 Section 37.008;

23 (B) the average length of a student's placement
24 in a disciplinary [~~an~~] alternative education program established
25 under Section 37.008;

26 (C) the academic performance of students on
27 assessment instruments required under Section 39.023(a) during the

1 year preceding and during the year following placement in a
2 disciplinary [~~an~~] alternative education program; and

3 (D) the dropout rates of students who have been
4 placed in a disciplinary [~~an~~] alternative education program
5 established under Section 37.008;

6 (14) [~~(13)~~] a list of each school district or campus
7 that does not satisfy performance standards, with an explanation of
8 the actions taken by the commissioner to improve student
9 performance in the district or campus and an evaluation of the
10 results of those actions;

11 (15) [~~(14)~~] an evaluation of the status of the
12 curriculum taught in public schools, with recommendations for
13 legislative changes necessary to improve or modify the curriculum
14 required by Section 28.002;

15 (16) [~~(15)~~] a description of all funds received by and
16 each activity and expenditure of the agency;

17 (17) [~~(16)~~] a summary and analysis of the
18 instructional expenditures ratios and instructional employees
19 ratios of school districts computed under Section 44.0071;

20 (18) [~~(17)~~] a summary of the effect of deregulation,
21 including exemptions and waivers granted under Section 7.056 or
22 39.112;

23 (19) [~~(18)~~] a statement of the total number and length
24 of reports that school districts and school district employees must
25 submit to the agency, identifying which reports are required by
26 federal statute or rule, state statute, or agency rule, and a
27 summary of the agency's efforts to reduce overall reporting

1 requirements;

2 (20) [~~(19)~~] a list of each school district that is not
3 in compliance with state special education requirements,
4 including:

5 (A) the period for which the district has not
6 been in compliance;

7 (B) the manner in which the agency considered the
8 district's failure to comply in determining the district's
9 accreditation status; and

10 (C) an explanation of the actions taken by the
11 commissioner to ensure compliance and an evaluation of the results
12 of those actions;

13 (21) [~~(20)~~] a comparison of the performance of
14 open-enrollment charter schools and school districts on the
15 academic excellence indicators specified in Section 39.051(b) and
16 accountability measures adopted under Section 39.051(g), with a
17 separately aggregated comparison of the performance of
18 open-enrollment charter schools predominantly serving students at
19 risk of dropping out of school, as defined by Section 29.081(d),
20 with the performance of school districts; and

21 (22) [~~(21)~~] any additional information considered
22 important by the commissioner or the State Board of Education.

23 (b) The report required under Section 39.182(a), Education
24 Code, as amended by this section, must include the information
25 required by Section 39.182(a)(6), Education Code, as amended by
26 this section, beginning with the report due not later than December
27 1, 2006.

1 SECTION 1.18. Section 54.211, Education Code, is amended to
2 read as follows:

3 Sec. 54.211. EXEMPTIONS FOR STUDENTS IN FOSTER OR OTHER
4 RESIDENTIAL CARE. (a) A student is exempt from the payment of
5 tuition and fees authorized in this chapter if the student:

6 (1) was in foster care or other residential care under
7 the conservatorship of the Department of Family and Protective [~~and~~
8 ~~Regulatory~~] Services on or after:

9 (A) the day preceding the student's 18th
10 birthday;

11 (B) the day of the student's 14th birthday, if
12 the student was also eligible for adoption on or after that day; or

13 (C) the day the student graduated from high
14 school or received the equivalent of a high school diploma; and

15 (2) enrolls in an institution of higher education as
16 an undergraduate student not later than:

17 (A) the third anniversary of the date the student
18 was discharged from the foster or other residential care, the date
19 the student graduated from high school, or the date the student
20 received the equivalent of a high school diploma, whichever date is
21 earliest; or

22 (B) the student's 21st birthday.

23 (b) The Texas Education Agency and the Texas Higher
24 Education Coordinating Board shall develop outreach programs to
25 ensure that students in foster or other residential care in grades
26 9-12 are aware of the availability of the exemption from the payment
27 of tuition and fees provided by this section.

1 SECTION 1.19. Section 101.024, Family Code, is amended to
2 read as follows:

3 Sec. 101.024. PARENT. (a) "Parent" means the mother, a man
4 presumed to be the father, a man legally determined to be the
5 father, a man who has been adjudicated to be the father by a court of
6 competent jurisdiction, a man who has acknowledged his paternity
7 under applicable law, or an adoptive mother or father. Except as
8 provided by Subsection (b), the ~~[The]~~ term does not include a parent
9 as to whom the parent-child relationship has been terminated.

10 (b) For purposes of establishing, determining the terms of,
11 modifying, or enforcing an order, a reference in this title to a
12 parent includes a person ordered to pay child support under Section
13 154.001(a-1) or to provide medical support for a child.

14 SECTION 1.20. (a) Section 154.001, Family Code, is amended
15 by adding Subsection (a-1) to read as follows:

16 (a-1) The court shall order each person who is financially
17 able and whose parental rights have been terminated with respect to
18 a child in substitute care for whom the department has been
19 appointed managing conservator to support the child in the manner
20 specified by the order:

21 (1) until the earliest of:

22 (A) the child's adoption;

23 (B) the child's 18th birthday or graduation from
24 high school, whichever occurs later;

25 (C) removal of the child's disabilities of
26 minority by court order, marriage, or other operation of law; or

27 (D) the child's death; or

1 (2) if the child is disabled as defined in this
2 chapter, for an indefinite period.

3 (b) Section 154.001, Family Code, as amended by this
4 section, applies only to a person whose parent-child relationship
5 with respect to a child is terminated on or after the effective
6 date of this section. A person whose parent-child relationship is
7 terminated before the effective date of this section is governed by
8 the law in effect on the date the parent-child relationship was
9 terminated, and the former law is continued in effect for that
10 purpose.

11 SECTION 1.21. Section 107.013, Family Code, is amended by
12 adding Subsection (c) to read as follows:

13 (c) In a suit filed by a governmental entity requesting
14 temporary managing conservatorship of a child, the court shall
15 appoint an attorney ad litem to represent the interests of an
16 indigent parent of the child who responds in opposition to the suit.

17 SECTION 1.22. Subchapter D, Chapter 162, Family Code, is
18 amended by adding Section 162.3042 to read as follows:

19 Sec. 162.3042. ANNUAL HOME VISIT. The department annually
20 shall make an unannounced visit to the home of each child whose
21 parents are receiving adoption assistance under Section 162.304.

22 SECTION 1.23. Subchapter B, Chapter 231, Family Code, is
23 amended by adding Section 231.122 to read as follows:

24 Sec. 231.122. MONITORING CHILD SUPPORT CASES; ENFORCEMENT.
25 The Title IV-D agency shall monitor each Title IV-D case from the
26 date the agency begins providing services on the case. If a child
27 support obligor in a Title IV-D case becomes more than 60 days

1 delinquent in paying child support, the Title IV-D agency shall
2 expedite the commencement of an action to enforce the child support
3 order.

4 SECTION 1.24. The heading to Section 261.107, Family Code,
5 is amended to read as follows:

6 Sec. 261.107. FALSE REPORT; CRIMINAL PENALTY; CIVIL
7 PENALTY.

8 SECTION 1.25. (a) Section 261.107, Family Code, is amended
9 by amending Subsection (a) and adding Subsections (d) and (e) to
10 read as follows:

11 (a) A person commits an offense if the person knowingly or
12 intentionally makes a report as provided in this chapter that the
13 person knows is false or lacks factual foundation. An offense under
14 this section is a state jail felony [~~Class A misdemeanor~~] unless it
15 is shown on the trial of the offense that the person has previously
16 been convicted under this section, in which case the offense is a
17 [~~state jail~~] felony of the third degree.

18 (d) The court shall order a person who is convicted of an
19 offense under this section to pay any reasonable attorney's fees
20 incurred by the person who was falsely accused of abuse or neglect
21 in any proceeding relating to the false report.

22 (e) A person who engages in conduct described by Subsection
23 (a) is liable to the state for a civil penalty of \$1,000. The
24 attorney general shall bring an action to recover a civil penalty
25 authorized by this subsection.

26 (b) Section 261.107(a), Family Code, as amended by this
27 section, and Section 261.107(d), Family Code, as added by this

1 section, apply only to an offense committed on or after the
2 effective date of this section. An offense committed before the
3 effective date of this section is covered by Section 261.107,
4 Family Code, as it existed on the date the offense was committed,
5 and the former law is continued in effect for that purpose. For
6 purposes of this subsection, an offense is committed before the
7 effective date of this section if any element of the offense occurs
8 before that date.

9 (c) Section 261.107(e), Family Code, as added by this
10 section, applies only to conduct that occurs on or after the
11 effective date of this section. Conduct that occurs before the
12 effective date of this section is governed by the law in effect on
13 the date the conduct occurred, and the former law is continued in
14 effect for that purpose.

15 SECTION 1.26. Section 261.201, Family Code, is amended by
16 adding Subsection (g-1) to read as follows:

17 (g-1) The department, on request and subject to department
18 rule, shall provide to the parent, managing conservator, or other
19 legal representative of a child who is the subject of a false report
20 of abuse or neglect the identity of the person who made the false
21 report if that person has been convicted of an offense under Section
22 261.107.

23 SECTION 1.27. Subchapter D, Chapter 261, Family Code, is
24 amended by adding Section 261.3016 to read as follows:

25 Sec. 261.3016. REPORTS RECEIVED BY DEPARTMENT; IMMEDIATE
26 RESPONSE; TRAINING. (a) The department shall ensure that all
27 reports of abuse or neglect received by the department that are

1 assigned the highest priority under department rules and that
2 allege circumstances that could result in the death of or serious
3 harm to a child are immediately referred to the local law
4 enforcement agency for a response.

5 (b) The department shall investigate and determine the most
6 efficient and effective methods for referring reports of abuse and
7 neglect to local law enforcement agencies, including guidelines for
8 transferring reports made by telephone directly to local law
9 enforcement agencies or for having department personnel contact
10 local law enforcement agencies directly.

11 (c) The department and local law enforcement agencies
12 jointly shall establish clear guidelines describing the
13 circumstances in which department investigators should accompany
14 law enforcement officers in responding to a report of abuse or
15 neglect that is assigned the highest priority under department
16 rules and that alleges circumstances that could result in the death
17 of or serious harm to a child.

18 (d) The department shall develop, in cooperation with local
19 law enforcement officials and the Commission on State Emergency
20 Communications, a training program for department personnel who
21 receive reports of abuse and neglect. The training program must
22 include information on:

23 (1) the proper methods of screening reports of abuse
24 and neglect; and

25 (2) ways to determine whether a report of abuse or
26 neglect alleges circumstances that could result in the death of or
27 serious harm to a child and requires an immediate response by law

1 enforcement officers.

2 SECTION 1.28. Section 261.302(e), Family Code, is amended
3 to read as follows:

4 (e) An interview with a child alleged to be a victim of
5 ~~[physical]~~ abuse or neglect conducted by the department or another
6 person, other than a law enforcement agency, under the direction of
7 the department ~~[sexual abuse]~~ shall be audiotaped or videotaped
8 ~~[unless the investigating agency determines that good cause exists~~
9 ~~for not audiotaping or videotaping the interview in accordance with~~
10 ~~rules of the agency. Good cause may include, but is not limited to,~~
11 ~~such considerations as the age of the child and the nature and~~
12 ~~seriousness of the allegations under investigation. Nothing in~~
13 ~~this subsection shall be construed as prohibiting the investigating~~
14 ~~agency from audiotaping or videotaping an interview of a child on~~
15 ~~any case for which such audiotaping or videotaping is not required~~
16 ~~under this subsection].~~ The fact that the investigating agency
17 failed to audiotape or videotape an interview is admissible at the
18 trial of the offense that is the subject of the interview.

19 SECTION 1.29. (a) Section 261.307, Family Code, is amended
20 to read as follows:

21 Sec. 261.307. INFORMATION RELATING TO INVESTIGATION
22 PROCEDURE. As soon as possible after initiating an investigation
23 of a parent or other person having legal custody of a child, the
24 department shall provide to the person:

25 (1) a brief and easily understood summary of:

26 (A) ~~(1)~~ the department's procedures for
27 conducting an investigation of alleged child abuse or neglect,

1 including:

2 (i) [~~(A)~~] a description of the
3 circumstances under which the department would request to remove
4 the child from the home through the judicial system; and

5 (ii) [~~(B)~~] an explanation that the law
6 requires the department to refer all reports of alleged child abuse
7 or neglect to a law enforcement agency for a separate determination
8 of whether a criminal violation occurred;

9 (B) [~~(2)~~] the person's right to file a complaint
10 with the department or to request a review of the findings made by
11 the department in the investigation;

12 (C) [~~(3)~~] the person's right to review all
13 records of the investigation unless the review would jeopardize an
14 ongoing criminal investigation;

15 (D) [~~(4)~~] the person's right to seek legal
16 counsel;

17 (E) [~~(5)~~] references to the statutory and
18 regulatory provisions governing child abuse and neglect and how the
19 person may obtain copies of those provisions; and

20 (F) [~~(6)~~] the process the person may use to
21 acquire access to the child if the child is removed from the home;

22 (2) a proposed child placement resources form that
23 instructs the parent or other person having legal custody of the
24 child to complete and return the form to the department or agency
25 and identify in the form three relatives of the child who could be
26 relative caregivers, as that term is defined by Section 264.801;
27 and

1 (3) the informational manual required by Section
2 261.3071.

3 (b) The Department of Family and Protective Services shall
4 develop the proposed child placement resources form required to be
5 provided under Section 261.307, Family Code, as amended by this
6 section, not later than November 1, 2005.

7 (c) The Department of Family and Protective Services shall
8 provide the proposed child placement resources form required under
9 Section 261.307, Family Code, as amended by this section, to the
10 parent or other person having legal custody of a child who is the
11 subject of an investigation of abuse or neglect that is commenced on
12 or after November 1, 2005.

13 SECTION 1.30. Subchapter D, Chapter 261, Family Code, is
14 amended by adding Section 261.3071 to read as follows:

15 Sec. 261.3071. INFORMATIONAL MANUAL. (a) In this section,
16 "relative caregiver" has the meaning assigned by Section 264.801.

17 (b) The department shall develop and publish an
18 informational manual that provides information for:

19 (1) a parent or other person having custody of a child
20 who is the subject of an investigation under this chapter; and

21 (2) a person who is selected by the department to be
22 the child's relative caregiver.

23 (c) Information provided in the manual must be in both
24 English and Spanish and must include:

25 (1) useful indexes of information such as telephone
26 numbers;

27 (2) the information required to be provided under

1 Section 261.307(1); and

2 (3) information describing the rights and duties of a
3 relative caregiver.

4 SECTION 1.31. Subchapter B, Chapter 262, Family Code, is
5 amended by adding Section 262.114 to read as follows:

6 Sec. 262.114. EVALUATION OF IDENTIFIED RELATIVES;
7 PLACEMENT. (a) Before a full adversary hearing under Subchapter C,
8 the Department of Family and Protective Services must perform a
9 background and criminal history check and home study of each
10 relative identified as a potential relative caregiver, as defined
11 by Section 264.801, on the proposed child placement resources form
12 provided under Section 261.307.

13 (b) The department may place a child with a relative
14 identified on the proposed child placement resources form if the
15 department determines that the placement is in the best interest of
16 the child. The department may place the child with the relative
17 before conducting the background and criminal history check or home
18 study required under Subsection (a). The department shall provide
19 a copy of the informational manual required under Section 261.3071
20 to the relative caregiver at the time of the child's placement.

21 SECTION 1.32. (a) Section 262.201(c), Family Code, is
22 amended to read as follows:

23 (c) If the court finds sufficient evidence to satisfy a
24 person of ordinary prudence and caution that there is a continuing
25 danger to the physical health or safety of the child and for the
26 child to remain in the home is contrary to the welfare of the child,
27 the court shall issue an appropriate temporary order under Chapter

1 105. The court shall require each parent, alleged father, or
2 relative of the child before the court to submit the proposed child
3 placement resources form provided under Section 261.307, if the
4 form has not been previously provided, and provide the Department
5 of Family and Protective [~~and Regulatory~~] Services with information
6 necessary to locate any other absent parent, alleged father, or
7 relative of the child. The court shall inform each parent in open
8 court that parental and custodial rights and duties may be subject
9 to restriction or to termination unless the parent or parents are
10 willing and able to provide the child with a safe environment. If
11 the court finds that the child requires protection from family
12 violence by a member of the child's family or household, the court
13 shall render a protective order under Title 4 for the child. In
14 this subsection, "family violence" has the meaning assigned by
15 Section 71.004.

16 (b) The change in law made by this section to Section
17 262.201(c), Family Code, applies only to a full adversary hearing
18 that occurs on or after November 1, 2005. A full adversary hearing
19 that occurs before that date is governed by the law as it existed
20 before amendment by this section, and the former law is continued in
21 effect for that purpose.

22 SECTION 1.33. (a) Section 263.201, Family Code, is amended
23 by adding Subsection (c) to read as follows:

24 (c) The court shall require each parent, alleged father, or
25 relative of the child before the court to submit the proposed child
26 placement resources form provided under Section 261.307 at the
27 status hearing, if the form has not previously been submitted.

1 (b) The change in law made by this section to Section
2 263.201, Family Code, applies only to a status hearing that occurs
3 on or after November 1, 2005. A status hearing that occurs before
4 that date is governed by the law as it existed before amendment by
5 this section, and the former law is continued in effect for that
6 purpose.

7 SECTION 1.34. Section 264.001, Family Code, is amended to
8 read as follows:

9 Sec. 264.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

10 (1) "Department" [~~,"department"~~] means the Department
11 of Family and Protective [~~and Regulatory~~] Services.

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

14 (3) "Executive commissioner" means the executive
15 commissioner of the Health and Human Services Commission.

16 SECTION 1.35. (a) Section 264.106, Family Code, is amended
17 to read as follows:

18 Sec. 264.106. REQUIRED CONTRACTS FOR SUBSTITUTE CARE
19 SERVICES. (a) In this section:

20 (1) "Substitute care provider" means a residential
21 child-care facility or a child-placing agency, as those terms are
22 defined by Section 49.002, Human Resources Code.

23 (2) "Substitute care services" means services
24 provided to or for children in substitute care, including the
25 recruitment, training, and management of foster parents, the
26 inspection of foster homes, the recruitment of adoptive families,
27 parenting classes, services related to family preservation, and

1 case management services. The term does not include the processing
2 of adoptions.

3 (b) The department shall~~+~~

4 ~~[(1) assess the need for substitute care services~~
5 ~~throughout the state; and~~

6 ~~[(2)]~~ contract with substitute care providers ~~[only to~~
7 ~~the extent necessary to meet the need]~~ for the provision of all
8 necessary substitute care ~~[those]~~ services.

9 ~~[(b) Before contracting with a substitute care provider,~~
10 ~~the department shall determine whether:~~

11 ~~[(1) community resources are available to support~~
12 ~~children placed under the provider's care; and~~

13 ~~[(2) the appropriate public school district has~~
14 ~~sufficient resources to support children placed under the~~
15 ~~provider's care if the children will attend public school.]~~

16 (c) In addition to the requirements of Section 40.058(b),
17 Human Resources Code, a contract with a substitute care provider
18 must include provisions that:

19 (1) enable the department to monitor the effectiveness
20 of the provider's services; ~~and]~~

21 (2) specify performance outcomes; and

22 (3) authorize the department to terminate the contract
23 or impose sanctions for a violation of a provision of the contract
24 that specifies performance criteria.

25 (d) In determining whether to contract with a substitute
26 care provider, the department shall consider the provider's
27 performance under any previous contract for substitute care

1 services between the department and the provider.

2 (e) Notwithstanding any other law, on and after September 1,
3 2008, the department may not directly provide substitute care
4 services for children, including conducting inspections of foster
5 homes for compliance with the minimum standards adopted under
6 Chapter 49, Human Resources Code.

7 (f) The department shall include a provision in each
8 substitute care services contract under this section that requires
9 a contracting substitute care provider to disclose to the
10 department any information that may indicate an actual or potential
11 conflict of interest with the commission, the department, or
12 another health and human services agency, including information
13 regarding actual or potential related party transactions,
14 relationships, interests, or business history and any other factor
15 that may indicate an actual or potential conflict of interest. [~~In~~
16 this section, "substitute care provider" means a person who
17 provides residential care for children for 24 hours a day,
18 including:

19 [~~(1) a child-care institution, as defined by Section~~
20 ~~42.002, Human Resources Code,~~

21 [~~(2) a child-placing agency, as defined by Section~~
22 ~~42.002, Human Resources Code,~~

23 [~~(3) a foster group home or foster family home, as~~
24 ~~defined by Section 42.002, Human Resources Code, and~~

25 [~~(4) an agency group home or agency home, as defined by~~
26 ~~Section 42.002, Human Resources Code, other than an agency group~~
27 ~~home, agency home, or a foster home verified or certified by the~~

1 ~~department.]~~

2 (b) The Health and Human Services Commission and the
3 Department of Family and Protective Services shall, in consultation
4 with private entities, including members of the boards of directors
5 of private entities, jointly develop and adopt a substitute care
6 services transition plan and rules to implement Section 264.106,
7 Family Code, as amended by this section. The transition plan must
8 provide for a new structural model of service delivery that is based
9 on a goal of achieving positive performance outcomes for children
10 in substitute care and provide specifically that:

11 (1) as soon as possible after September 1, 2005, the
12 Department of Family and Protective Services shall begin
13 implementing Section 264.106, Family Code, as amended by this
14 section;

15 (2) the executive commissioner of the Health and Human
16 Services Commission shall evaluate whether existing rate
17 structures are adequate to compensate substitute care providers who
18 enter into contracts under Section 264.106, Family Code, as amended
19 by this section, considering new functions to be served by the
20 providers and, if the existing rate structures are inadequate, the
21 executive commissioner shall adopt rules that adjust the rates paid
22 to the providers to appropriate levels;

23 (3) on and after September 1, 2008:

24 (A) all substitute care services, as defined by
25 Section 264.106(a), Family Code, as amended by this section, must
26 be provided by residential child-care facilities and child-placing
27 agencies with which the department contracts; and

1 (B) notwithstanding any other law, the
2 department may not directly provide those services; and

3 (4) not later than the 180th day after the initiation
4 of development of the transition plan, the Health and Human
5 Services Commission shall provide a detailed report on the progress
6 of development of the transition plan to:

7 (A) the Joint Committee on Restructuring
8 Substitute Care Services created by this Act;

9 (B) the Legislative Budget Board;

10 (C) the governor;

11 (D) the lieutenant governor;

12 (E) the speaker of the house of representatives;

13 and

14 (F) the legislature.

15 (c) The change in law made by Section 264.106, Family Code,
16 as amended by this section, applies only to a contract for
17 substitute care services that is entered into or renewed on or after
18 the effective date of this section. A contract that is entered into
19 or renewed before the effective date of this section is governed by
20 the law in effect on the date the contract was entered into or
21 renewed, and the former law is continued in effect for that purpose.

22 SECTION 1.36. JOINT COMMITTEE ON RESTRUCTURING SUBSTITUTE
23 CARE SERVICES. (a) The Joint Committee on Restructuring
24 Substitute Care Services shall:

25 (1) review the substitute care services transition
26 plan and any rules adopted by the executive commissioner of the
27 Health and Human Services Commission to implement the restructuring

1 of substitute care services under this article;

2 (2) monitor the implementation of Section 264.106,
3 Family Code, as amended by Section 1.35 of this article, by the
4 Department of Family and Protective Services; and

5 (3) make recommendations to state officials relating
6 to the implementation of Section 264.106, Family Code, as amended
7 by Section 1.35 of this article.

8 (b) The committee is composed of six members, who shall be
9 appointed in the following manner not later than October 31, 2005:

10 (1) three members appointed by the lieutenant
11 governor; and

12 (2) three members appointed by the speaker of the
13 house of representatives.

14 (c) One member appointed under Subsection (b)(1) of this
15 section and one member appointed under Subsection (b)(2) of this
16 section shall jointly serve as presiding officers.

17 (d) The committee shall meet at least monthly.

18 (e) Not later than December 31, 2006, the committee shall
19 submit a report to the legislature regarding the status of the
20 implementation of Section 264.106, Family Code, as amended by
21 Section 1.35 of this article.

22 (f) This section expires and the committee is abolished
23 October 31, 2008.

24 SECTION 1.37. (a) Section 264.107, Family Code, is amended
25 by adding Subsections (c)-(e) to read as follows:

26 (c) The department shall require the use of real-time
27 technology in the placement system to screen possible placement

1 options for a child and match the child's needs with the most
2 qualified providers with vacancies.

3 (d) The department shall institute a quality assistance
4 system to ensure that placement decisions are reliable and are made
5 in a consistent manner.

6 (e) The placement system must include procedures under
7 which the department makes reasonable efforts to locate a relative
8 caregiver placement for a child as soon as practicable after the
9 child is placed in substitute care and for as long as the child
10 remains in substitute care. The department shall continue to make
11 reasonable efforts to locate an appropriate relative caregiver
12 placement for a child if a court orders that the child may not be
13 placed with any relative caregiver identified in the proposed child
14 placement resources form provided under Section 261.307 or the
15 department determines, after an investigation, that no relative
16 caregiver identified in the form is an appropriate placement for
17 the child.

18 (b) During the implementation of the substitute care
19 transition plan required under Section 1.35 of this article for the
20 implementation of Section 264.106, Family Code, as amended by that
21 section, the Department of Family and Protective Services shall
22 contract with a behavioral health company in Texas that offers
23 third-party review services on behalf of children in private
24 residential care to evaluate each child who is placed with a private
25 substitute care provider and determine the appropriate placement
26 level for the child.

27 SECTION 1.38. Section 264.207(b), Family Code, is amended

1 to read as follows:

2 (b) To accomplish the goals stated in Subsection (a), the
3 department shall:

4 (1) establish time frames for the initial screening of
5 families seeking to adopt children;

6 (2) provide for the evaluation of the effectiveness of
7 the department's management-level employees in expeditiously
8 making permanent placements for children;

9 (3) establish, as feasible, comprehensive assessment
10 services in various locations in the state to determine the needs of
11 children and families served by the department;

12 (4) emphasize and centralize the monitoring and
13 promoting of the permanent placement of children receiving
14 department services;

15 (5) establish goals and performance measures in the
16 permanent placement of children;

17 (6) immediately seek private licensed child-placing
18 agencies to place a child in the department's managing
19 conservatorship if the goal of the child's permanency plan is for
20 the child to be adopted [~~who has been available for permanent~~
21 ~~placement for more than 90 days~~];

22 (7) provide information to private licensed
23 child-placing agencies concerning children under Subdivision (6);

24 (8) provide incentives for a private licensed
25 child-placing agency that places a child, as defined by Section
26 162.301, under Subdivision (6);

27 (9) encourage foster parents to be approved by the

1 department as both foster parents and adoptive parents;

2 (10) address failures by the department's service
3 regions in making permanent placements for children in a reasonable
4 time; and

5 (11) require the department's service regions to
6 participate in the Texas Adoption Resources Exchange.

7 SECTION 1.39. (a) Chapter 264, Family Code, is amended by
8 adding Subchapter J to read as follows:

9 SUBCHAPTER J. RELATIVE CAREGIVER PLACEMENT PROGRAM

10 Sec. 264.801. DEFINITIONS. In this subchapter:

11 (1) "Relative" means a person related to a child by
12 consanguinity as determined under Section 573.022, Government
13 Code.

14 (2) "Relative caregiver" means a relative who:

15 (A) provides substitute care for a child for whom
16 the department has been appointed managing conservator, but who is
17 not licensed or certified to operate a foster home, foster group
18 home, agency foster home, or agency foster group home under Chapter
19 49, Human Resources Code; or

20 (B) is subsequently appointed permanent managing
21 conservator of the child after providing care as described by
22 Paragraph (A).

23 Sec. 264.802. RELATIVE CAREGIVER PLACEMENT PROGRAM. (a)

24 The department shall develop and administer a program to:

25 (1) promote placing children for whom the department
26 is appointed managing conservator with relative caregivers; and

27 (2) facilitate relative caregiver placements by

1 providing assistance and services to those caregivers in accordance
2 with this subchapter and rules adopted by the executive
3 commissioner.

4 (b) The executive commissioner shall adopt rules necessary
5 to implement this subchapter. The rules must include eligibility
6 criteria for receiving assistance and services under this
7 subchapter.

8 Sec. 264.803. INVESTIGATION OF PROPOSED PLACEMENT. Before
9 placing a child with a proposed relative caregiver, the department
10 must conduct an investigation to determine whether the proposed
11 placement is in the child's best interests.

12 Sec. 264.804. RELATIVE CAREGIVER ASSISTANCE AGREEMENT. The
13 department shall enter into a relative caregiver assistance
14 agreement with each relative caregiver to provide monetary
15 assistance and additional support services to the relative
16 caregiver. The monetary assistance and support services may
17 include:

18 (1) a one-time cash payment of not more than \$1,000 to
19 the caregiver on the child's initial placement to assist the
20 caregiver in purchasing essential child-care items such as
21 furniture and clothing;

22 (2) case management services and training and
23 information about the child's needs until the caregiver is
24 appointed permanent managing conservator;

25 (3) referrals to appropriate state agencies
26 administering public benefits or assistance programs for which the
27 child, the caregiver, or the caregiver's family may qualify;

1 (4) family counseling not provided under the Medicaid
2 program for the caregiver's family for a period not to exceed two
3 years from the date of initial placement;

4 (5) if the caregiver meets the eligibility criteria
5 determined by rules adopted by the executive commissioner,
6 reimbursement of all child-care expenses incurred while the child
7 is under 13 years of age and while the department is the child's
8 managing conservator;

9 (6) if the caregiver meets the eligibility criteria
10 determined by rules adopted by the executive commissioner,
11 reimbursement of 50 percent of child-care expenses incurred after
12 the caregiver is appointed permanent managing conservator of the
13 child while the child is under 13 years of age; and

14 (7) reimbursement of other expenses, as determined by
15 rules adopted by the executive commissioner, not to exceed \$500 per
16 year for each child.

17 Sec. 264.805. COORDINATION WITH OTHER AGENCIES. The
18 department shall coordinate with other health and human services
19 agencies, as defined by Section 531.001, Government Code, to
20 provide assistance and services under this subchapter.

21 Sec. 264.806. FUNDS. The department and other state
22 agencies shall actively seek and use federal funds available for
23 the purposes of this subchapter.

24 (b) Not later than December 1, 2005, the executive
25 commissioner of the Health and Human Services Commission shall
26 adopt rules for implementing and administering the relative
27 caregiver placement program under Subchapter J, Chapter 264, Family

1 Code, as added by this section.

2 (c) Not later than March 1, 2006, the Department of Family
3 and Protective Services shall implement the relative caregiver
4 placement program in accordance with Subchapter J, Chapter 264,
5 Family Code, as added by this section.

6 ARTICLE 2. ADULT PROTECTIVE SERVICES SYSTEM

7 SECTION 2.01. Subchapter B, Chapter 40, Human Resources
8 Code, is amended by adding Section 40.0315 to read as follows:

9 Sec. 40.0315. INVESTIGATION UNIT FOR ADULT PROTECTIVE
10 SERVICES. (a) The adult protective services division of the
11 department shall maintain an investigation unit to investigate
12 allegations of abuse, neglect, and exploitation of elderly and
13 disabled persons reported to the division.

14 (b) An investigator in the unit shall determine whether an
15 elderly or disabled person who is the subject of a report made under
16 Section 48.051(a) may have suffered from abuse, neglect, or
17 exploitation as a result of the criminal conduct of another person.
18 If the investigator determines that criminal conduct may have
19 occurred, the investigator shall immediately notify the
20 appropriate law enforcement agency.

21 SECTION 2.02. Subchapter B, Chapter 40, Human Resources
22 Code, is amended by adding Section 40.035 to read as follows:

23 Sec. 40.035. TRAINING PROGRAM FOR ADULT PROTECTIVE
24 SERVICES; CONTINUING EDUCATION. (a) The department shall develop
25 and implement a training program that each newly hired or assigned
26 department employee must complete before:

27 (1) initiating an investigation of a report of alleged

1 abuse, neglect, or exploitation of an elderly or disabled person
2 under Chapter 48; or

3 (2) providing protective services to elderly or
4 disabled persons under that chapter.

5 (b) The training program must:

6 (1) provide the person with appropriate comprehensive
7 information regarding:

8 (A) the incidence and types of reports of abuse,
9 neglect, and exploitation of elderly or disabled persons that are
10 received by the department, including information concerning false
11 reports; and

12 (B) the use and proper implementation of:

13 (i) the risk assessment criteria developed
14 under Section 48.004; and

15 (ii) the legal procedures available under
16 Chapter 48 for the protection of elderly or disabled persons,
17 including the procedures for obtaining a court order for emergency
18 protective services under Section 48.208;

19 (2) include best practices for management of a case
20 from the intake process to the provision of guardianship services,
21 if any, including criteria that specify the circumstances under
22 which an employee should:

23 (A) consult a supervisor regarding a case; or

24 (B) refer an elderly or disabled person to an
25 appropriate public agency or community service provider for
26 guardianship or other long-term services after the delivery of
27 protective services to that person has been completed;

1 (3) provide appropriate specialized training in any
2 necessary topics, including:

3 (A) investigation of suspected financial
4 exploitation and self-neglect; and

5 (B) establishment and maintenance of working
6 relationships with community organizations and other local
7 providers who provide services to elderly and disabled persons;

8 (4) include on-the-job training;

9 (5) provide for the development of individualized
10 training plans; and

11 (6) include training in working with law enforcement
12 agencies and the court system when legal intervention is sought for
13 investigations, emergency orders, or the provision of guardianship
14 services.

15 (c) The department at least annually shall provide
16 comprehensive case management training to supervisors of
17 department employees who conduct investigations under Chapter 48.
18 The training must be designed to enable the supervisors to provide
19 guidance on investigations of reports of alleged abuse, neglect, or
20 exploitation that are complex or present unique problems.

21 (d) The department shall develop and implement appropriate
22 continuing education programs for employees of the adult protective
23 services division who have completed initial training under this
24 section. The continuing education programs must be designed to
25 provide an annual update regarding changes in:

26 (1) adult protective services division policies and
27 procedures; and

1 (2) applicable law, including statutory changes
2 affecting the adult protective services division or elderly or
3 disabled persons served by the division.

4 (e) A department employee required to participate in a
5 continuing education program under this section must complete the
6 program at least once each calendar year.

7 (f) The department shall:

8 (1) make curriculum developed for a training or
9 continuing education program under this section readily available
10 to department employees in written form; and

11 (2) periodically revise a training and continuing
12 education program established under this section as necessary to
13 satisfy training needs identified by the department or department
14 employees.

15 SECTION 2.03. (a) Subchapter C, Chapter 40, Human
16 Resources Code, is amended by adding Section 40.0515 to read as
17 follows:

18 Sec. 40.0515. QUALITY ASSURANCE PROGRAM FOR ADULT
19 PROTECTIVE SERVICES; QUARTERLY REPORTS. (a) The department shall
20 develop and implement a quality assurance program for adult
21 protective services provided by or on behalf of the department.

22 (b) In developing the program, the department shall
23 establish:

24 (1) client-centered outcome measures for each of the
25 following functions of the adult protective services program:

26 (A) intake process;

27 (B) investigations;

1 (C) risk assessment determinations;

2 (D) delivery of protective services; and

3 (E) provision of guardianship services;

4 (2) minimum job performance standards for
5 personnel and each work department of the adult protective services
6 division of the department; and

7 (3) procedures for conducting periodic performance
8 reviews to monitor compliance with the standards established under
9 Subdivision (2).

10 (c) The department shall promptly address a person's or work
11 department's failure to meet minimum job performance standards
12 established under Subsection (b)(2):

13 (1) by issuing to the person or work department, as
14 appropriate, a corrective action plan detailing the actions
15 required to comply with the standards; or

16 (2) if necessary, through disciplinary action,
17 including a person's demotion or discharge, for repeated failure to
18 meet the standards.

19 (d) Each employee of the adult protective services division
20 must receive a performance evaluation required by Section 40.032(c)
21 at least annually. The department shall ensure that disciplinary
22 or other corrective action is taken against a supervisor or other
23 managerial employee who is required to conduct a performance
24 evaluation and fails to complete that evaluation in a timely
25 manner.

26 (e) A summary of the findings of outcome measures
27 established and performance reviews conducted under this section

1 must be reported to regional directors and other senior management
2 employees of the adult protective services division.

3 (f) Each fiscal quarter the department shall file with the
4 governor and the presiding officer of each house of the legislature
5 a report that includes:

6 (1) a comprehensive review of the adult protective
7 services division's overall performance during the preceding
8 quarter; and

9 (2) a summary of the adult protective services
10 division's performance during the preceding quarter on each of the
11 outcome measures established under Subsection (b)(1).

12 (b) The Department of Family and Protective Services shall
13 submit the initial report required under Section 40.0515, Human
14 Resources Code, as added by this section, not later than October 1,
15 2005.

16 SECTION 2.04. Subchapter A, Chapter 48, Human Resources
17 Code, is amended by adding Section 48.004 to read as follows:

18 Sec. 48.004. RISK ASSESSMENT. The executive commissioner
19 of the Health and Human Services Commission by rule shall develop
20 and maintain risk assessment criteria for use by department
21 personnel in determining whether an elderly or disabled person is
22 in a state of abuse, neglect, or exploitation and needs protective
23 services. The criteria must provide for a comprehensive assessment
24 of the person's:

25 (1) environmental, physical, medical, mental health,
26 and financial condition; and

27 (2) social interaction and support.

1 SECTION 2.05. Section 48.051(a), Human Resources Code, is
2 amended to read as follows:

3 (a) Except as prescribed by Subsection (b), a person having
4 cause to believe that an elderly or disabled person is in the state
5 of abuse, neglect, or exploitation shall report the information
6 required by Subsection (d) immediately to the department. A person
7 may make a report required by this subsection through a
8 person-to-person telephone interview with local department
9 personnel, through a personal appearance at a department office, or
10 by calling a centralized toll-free telephone number.

11 SECTION 2.06. Section 48.101, Human Resources Code, is
12 amended by adding Subsections (g) and (g-1) to read as follows:

13 (g) The department may establish procedures to exchange
14 with a community service provider or local governmental entity
15 confidential information relating to a report made under Section
16 48.051(a) that is necessary for the department, provider, or entity
17 to provide protective services, health care services, housing
18 services, or social services to the person who is the subject of the
19 report. An exchange of information under this subsection does not
20 affect whether the information is subject to disclosure under
21 Chapter 552, Government Code.

22 (g-1) The executive commissioner of the Health and Human
23 Services Commission by rule shall provide policies and procedures
24 that are designed to guard against the unauthorized release or
25 dissemination of confidential information that is exchanged under
26 Subsection (g).

27 SECTION 2.07. Section 48.151, Human Resources Code, is

1 amended by adding Subsection (c-1) to read as follows:

2 (c-1) The department shall develop and implement a system to
3 ensure that, to the greatest extent possible, investigations
4 conducted by the department that involve especially complex issues
5 of abuse, neglect, or exploitation, such as issues associated with
6 self-neglect, mental health, or financial exploitation, are
7 assigned to personnel who have experience and training in those
8 issues.

9 SECTION 2.08. Subchapter D, Chapter 48, Human Resources
10 Code, is amended by adding Section 48.158 to read as follows:

11 Sec. 48.158. STATUS REPORT OF INVESTIGATION. (a)
12 Notwithstanding any other law, the department, on written request,
13 shall provide to a person who makes a report of alleged abuse,
14 neglect, or exploitation under Section 48.051(a) information on the
15 status of the investigation conducted with respect to the report,
16 unless the department determines that providing the information
17 would:

18 (1) jeopardize the investigation; or
19 (2) endanger the safety or welfare of the person who is
20 the subject of the report.

21 (b) The information provided under Subsection (a) must
22 include information relating to whether the department is providing
23 protective services to the person.

24 SECTION 2.09. Subchapter D, Chapter 48, Human Resources
25 Code, is amended by adding Section 48.159 to read as follows:

26 Sec. 48.159. INTERNAL REVIEW OF DEPARTMENT INVESTIGATION.
27 The department shall establish procedures for conducting an

1 internal review of completed investigations conducted by the
2 department under this chapter to:

3 (1) determine whether information obtained during the
4 intake process was sufficient and accurate;

5 (2) assess whether telephone calls were appropriately
6 routed;

7 (3) assess whether investigations were appropriately
8 classified and prioritized;

9 (4) evaluate the case reports for any special issues
10 or requirements;

11 (5) assess whether appropriate law enforcement
12 agencies were notified of any suspected criminal conduct; and

13 (6) identify other relevant information to enable the
14 department to take any corrective action necessary to improve the
15 process of conducting investigations under this chapter.

16 SECTION 2.10. Subchapter E, Chapter 48, Human Resources
17 Code, is amended by adding Section 48.2055 to read as follows:

18 Sec. 48.2055. TEMPORARY EMERGENCY SHELTERS. (a) The
19 department, in conjunction with the Department of Aging and
20 Disability Services and the Department of State Health Services,
21 shall develop and implement a program to provide temporary
22 emergency shelter to an elderly or disabled person for whom the
23 department obtains an emergency order under Section 48.208
24 requiring that the person be moved to safer surroundings.

25 (b) The department, the Department of Aging and Disability
26 Services, and the Department of State Health Services shall enter
27 into a memorandum of understanding to clearly define the

1 responsibilities of each agency under this section.

2 (c) The executive commissioner of the Health and Human
3 Services Commission shall adopt rules to implement this section.

4 SECTION 2.11. Section 48.208, Human Resources Code, is
5 amended by amending Subsection (c) and adding Subsections (c-1) and
6 (c-2) to read as follows:

7 (c) The petition shall be verified and shall include:

8 (1) the name, age, and address of the elderly or
9 disabled person who needs protective services;

10 (2) the nature of the abuse, neglect, or exploitation;

11 (3) the services needed; and

12 (4) a medical report signed by a physician that
13 contains the information required by Subsection (c-1) or a
14 psychological report signed by a psychologist licensed under
15 Chapter 501, Occupations Code, that contains the information
16 required by Subsection (c-2), ~~[stating that the person is suffering~~
17 ~~from abuse, neglect, or exploitation presenting a threat to life or~~
18 ~~physical safety and stating that the person is physically or~~
19 ~~mentally incapable of consenting to services]~~ unless the court
20 finds that an immediate danger to the health or safety of the
21 elderly or disabled person exists and there is not sufficient time
22 to obtain the medical or psychological report.

23 (c-1) A medical report obtained from a physician under
24 Subsection (c)(4) must state that the person:

25 (1) is suffering from abuse, neglect, or exploitation
26 presenting a threat to life or physical safety; and

27 (2) is physically or mentally incapable of consenting

1 to services.

2 (c-2) A psychological report obtained from a licensed
3 psychologist under Subsection (c)(4) must state that the person:

4 (1) is suffering from abuse, neglect, or exploitation
5 presenting a threat to life or physical safety; and

6 (2) is mentally incapable of consenting to services.

7 SECTION 2.12. Section 48.209(c), Human Resources Code, is
8 amended to read as follows:

9 (c) The [~~If appropriate, the~~] department shall [~~may~~]
10 contract with [~~a political subdivision of this state,~~] a private
11 agency[~~, or another state agency~~] for the provision of guardianship
12 services under this section. The department [~~or a political~~
13 ~~subdivision of the state or state agency with which the department~~
14 ~~contracts under this section~~] is not required to post a bond or pay
15 any cost or fee otherwise required by the Texas Probate Code.

16 SECTION 2.13. (a) Subchapter B, Chapter 531, Government
17 Code, is amended by adding Section 531.0551 to read as follows:

18 Sec. 531.0551. MEMORANDUM OF UNDERSTANDING ON SERVICES FOR
19 CERTAIN ELDERLY OR DISABLED PERSONS NEEDING MULTIAGENCY SERVICES.

20 (a) In this section, "disabled person," "elderly person," and
21 "protective services" have the meanings assigned by Section 48.002,
22 Human Resources Code.

23 (b) The commission and each health and human services agency
24 shall adopt a joint memorandum of understanding to implement a
25 system of local-level interagency staffing groups to coordinate
26 services for an elderly or disabled person who needs multiagency
27 services in addition to receiving protective services from or on

1 behalf of the Department of Family and Protective Services.

2 (c) The memorandum must:

3 (1) clarify the financial and statutory
4 responsibilities of each agency with respect to elderly or disabled
5 persons needing multiagency services in addition to protective
6 services, including subcategories of funding for different
7 services such as case management, arranging for psychiatric and
8 health evaluation, home care, health care, and investigation
9 services;

10 (2) include a functional definition of "elderly and
11 disabled persons needing multiagency services in addition to
12 protective services";

13 (3) define procedures for interagency cost sharing;

14 (4) define procedures aimed at eliminating
15 duplication of services relating to assessment and diagnosis,
16 treatment, social services, residential placement and care, and
17 case management of elderly and disabled persons needing multiagency
18 services in addition to protective services;

19 (5) define procedures for addressing disputes between
20 the agencies that relate to the agencies' areas of service
21 responsibilities;

22 (6) provide that each local-level interagency
23 staffing group includes:

24 (A) a local representative of each agency;

25 (B) one or more representatives of local private
26 sector agencies;

27 (C) a representative of a local law enforcement

1 agency;

2 (D) a health care provider; and

3 (E) one or more family members or caregivers of
4 elderly or disabled persons needing multiagency services in
5 addition to protective services;

6 (7) provide that the local representative of each
7 agency has authority to contribute agency resources to solving
8 problems identified by the local-level interagency staffing group;

9 (8) provide that if an elderly or disabled person's
10 needs exceed the resources of an agency or an agency is not able to
11 provide all the services an elderly or disabled person requires,
12 the agency may, with the consent of the person's legal guardian, if
13 applicable, submit a referral on behalf of the person or the
14 person's case history to the local-level interagency staffing group
15 for consideration;

16 (9) provide that a local-level interagency staffing
17 group may be called together by a representative of any member
18 agency;

19 (10) provide that an agency representative may be
20 excused from attending a meeting if the staffing group determines
21 that the age or needs of the person to be considered are clearly not
22 within the agency's service responsibilities, provided that each
23 agency representative is encouraged to attend all meetings to
24 contribute to the collective ability of the staffing group to solve
25 an elderly or disabled person's need for multiagency services in
26 addition to protective services;

27 (11) provide that records that are used or developed

1 by a local-level interagency staffing group or its members and that
2 relate to a particular elderly or disabled person are confidential
3 and may not be released to any other person or agency except as
4 provided by this section or by other law; and

5 (12) provide a procedure that permits the agencies and
6 local-level interagency staffing groups to share confidential
7 information while preserving the confidential nature of the
8 information.

9 (d) The agencies that participate in the formulation of the
10 memorandum of understanding shall consult with and solicit input
11 from advocacy and consumer groups.

12 (e) Each agency shall adopt the memorandum of understanding
13 and all revisions to the memorandum. Not later than the last month
14 of each state fiscal year, each agency shall review and update the
15 memorandum. The agencies shall develop revisions as necessary to
16 reflect major agency reorganizations or statutory changes
17 affecting the agencies.

18 (f) The agencies shall ensure that a state-level
19 interagency staffing group provides to the executive commissioner
20 of the Health and Human Services Commission, the commissioner of
21 each agency, the governor, the lieutenant governor, the speaker of
22 the house of representatives, and the presiding officers of each
23 house and senate standing committee having jurisdiction over adult
24 protective services a biennial report that includes:

25 (1) the number of elderly or disabled persons served
26 through the local-level interagency staffing groups established
27 under this section and the outcomes of the services provided;

1 (2) a description of any barriers identified to the
2 state's ability to provide effective services to elderly or
3 disabled persons needing multiagency services in addition to
4 protective services; and

5 (3) any other information relevant to improving the
6 delivery of services to elderly or disabled persons needing
7 multiagency services in addition to protective services.

8 (b) Not later than March 1, 2006, the Department of Family
9 and Protective Services, the Health and Human Services Commission,
10 the Department of Aging and Disability Services, the Department of
11 State Health Services, and the Department of Assistive and
12 Rehabilitative Services shall adopt a joint memorandum of
13 understanding as prescribed by Section 531.0551, Government Code,
14 as added by this section.

15 SECTION 2.14. The heading of Section 531.055, Government
16 Code, is amended to read as follows:

17 Sec. 531.055. MEMORANDUM OF UNDERSTANDING ON SERVICES FOR
18 CERTAIN PERSONS NEEDING MULTIAGENCY SERVICES.

19 SECTION 2.15. Sections 531.055(a), (b), and (e), Government
20 Code, are amended to read as follows:

21 (a) Each health and human services agency, the Texas Council
22 on Offenders with Mental Impairments, the Texas Department of
23 Criminal Justice, the Texas Department of Housing and Community
24 Affairs, the Texas Education Agency, the Texas Workforce
25 Commission, and the Texas Youth Commission shall adopt a joint
26 memorandum of understanding to promote a system of local-level
27 interagency staffing groups to coordinate services for persons

1 needing multiagency services other than elderly or disabled persons
2 served through the local-level interagency staffing groups
3 established under Section 531.0551.

4 (b) The memorandum must:

5 (1) clarify the statutory responsibilities of each
6 agency in relation to persons needing multiagency services other
7 than elderly or disabled persons served under Section 531.0551,
8 including subcategories for different services such as prevention,
9 family preservation and strengthening, aging in place, emergency
10 shelter, diagnosis and evaluation, residential care, after-care,
11 information and referral, medical care, and investigation
12 services;

13 (2) include a functional definition for purposes of
14 this section of "persons needing multiagency services";

15 (3) outline membership, officers, and necessary
16 standing committees of local-level interagency staffing groups;

17 (4) define procedures aimed at eliminating
18 duplication of services relating to assessment and diagnosis,
19 treatment, residential placement and care, and case management of
20 persons needing multiagency services;

21 (5) define procedures for addressing disputes between
22 the agencies that relate to the agencies' areas of service
23 responsibilities;

24 (6) provide that each local-level interagency
25 staffing group includes:

26 (A) a local representative of each agency;

27 (B) representatives of local private sector

1 agencies; and

2 (C) family members or caregivers of persons,
3 other than elderly or disabled persons served under Section
4 531.0551, who need [~~needing~~] multiagency services or other current
5 or previous consumers of multiagency services acting as general
6 consumer advocates;

7 (7) provide that the local representative of each
8 agency has authority to contribute agency resources to solving
9 problems identified by the local-level interagency staffing group;

10 (8) provide that if a person's needs exceed the
11 resources of an agency, the agency may, with the consent of the
12 person's legal guardian, if applicable, submit a referral on behalf
13 of the person to the local-level interagency staffing group for
14 consideration;

15 (9) provide that a local-level interagency staffing
16 group may be called together by a representative of any member
17 agency;

18 (10) provide that an agency representative may be
19 excused from attending a meeting if the staffing group determines
20 that the age or needs of the person to be considered are clearly not
21 within the agency's service responsibilities, provided that each
22 agency representative is encouraged to attend all meetings to
23 contribute to the collective ability of the staffing group to solve
24 a person's need for multiagency services;

25 (11) define the relationship between state-level
26 interagency staffing groups and local-level interagency staffing
27 groups in a manner that defines, supports, and maintains local

1 autonomy;

2 (12) provide that records that are used or developed
3 by a local-level interagency staffing group or its members that
4 relate to a particular person are confidential and may not be
5 released to any other person or agency except as provided by this
6 section or by other law; and

7 (13) provide a procedure that permits the agencies to
8 share confidential information while preserving the confidential
9 nature of the information.

10 (e) The agencies shall ensure that a state-level
11 interagency staffing group provides a biennial report to the
12 executive director of each agency, the legislature, and the
13 governor that includes:

14 (1) the number of persons served through the
15 local-level interagency staffing groups established under this
16 section and the outcomes of the services provided;

17 (2) a description of any barriers identified to the
18 state's ability to provide effective services to persons needing
19 multiagency services other than elderly or disabled persons served
20 through the local-level interagency staffing groups established
21 under Section 531.0551; and

22 (3) any other information relevant to improving the
23 delivery of services to persons needing multiagency services other
24 than elderly or disabled persons described by Subdivision (2).

25 ARTICLE 3. EFFECTIVE DATE

26 SECTION 3.01. This Act takes effect September 1, 2005.