

By: Uresti

H.B. No. 3325

A BILL TO BE ENTITLED

1 AN ACT

2 relating to providing all Texas newborns with a comprehensive
3 newborn screening program and establishing a Texas newborn
4 screening advisory committee

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

6 Subchapter A, Chapter 33, Health and Safety Code, is amended
7 as follows:

8 Sec. 33.001. DEFINITIONS. In this chapter:

9 (1) "Heritable disease" means an inherited disease
10 that may result in mental or physical retardation or death.

11 (2) "Hypothyroidism" means a condition that may cause
12 severe mental retardation if not treated.

13 (3) "Other benefit" means a benefit, other than a
14 benefit under this chapter, to which an individual is entitled for
15 the payment of the costs of services. The term includes:

16 (A) benefits available under:

17 (i) an insurance policy, group health plan,
18 or prepaid medical care plan;

19 (ii) Title XVIII of the Social Security Act
20 (42 U.S.C. Section 1395);

21 (iii) Title XIX of the Social Security Act
22 (42 U.S.C. Section 1396);

23 (iv) the Veterans' Administration;

24 (v) the Civilian Health and Medical Program

1 of the Uniformed Services; or

2 (vi) workers' compensation or any other
3 compulsory employers insurance program;

4 (B) a public program created by federal or state
5 law or by ordinance or rule of a municipality or political
6 subdivision of the state, except those benefits created by the
7 establishment of a municipal or county hospital, a joint
8 municipal-county hospital, a county hospital authority, a hospital
9 district, or by the facilities of a publicly supported medical
10 school; and

11 (C) benefits resulting from a cause of action for
12 health care expenses, or a settlement or judgment based on the cause
13 of action, if the expenses are related to the need for services
14 provided under this chapter.

15 (4) "Phenylketonuria" means an inherited condition
16 that may cause severe mental retardation if not treated.

17 (5) "Screening test" means a rapid analytical
18 procedure to determine the need for further diagnostic evaluation.

19 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

20 Sec. 33.002. DETECTION AND TREATMENT PROGRAM
21 ESTABLISHED. (a) The department shall carry out a comprehensive
22 program to combat morbidity, including mental retardation, and
23 mortality in persons who have phenylketonuria, other heritable
24 diseases, or hypothyroidism, and such other conditions as specified
25 by the Board.

26 (b) The State Board of Health shall determine and specify
27 the conditions that will be included in the comprehensive newborn

1 screening program in addition to those conditions listed in (a) of
2 this section, upon the advice and recommendations of the Newborn
3 Screening Advisory Committee. The Department of State Health
4 Services shall maintain a list and description of each of the
5 conditions included in the comprehensive newborn screening
6 program, which shall be made available to physicians and other
7 health care providers. The Board shall adopt rules necessary to
8 carry out the program, including a rule specifying other treatable
9 diseases covered by this chapter.

10 (c) The department may establish and maintain a laboratory
11 to:

12 (1) conduct experiments, projects, and other
13 activities necessary to develop screening or diagnostic tests for
14 the early detection of phenylketonuria, other heritable diseases,
15 and hypothyroidism;

16 (2) develop ways and means or discover methods to be
17 used to prevent or treat phenylketonuria, other heritable diseases,
18 and hypothyroidism; and

19 (3) serve other purposes considered necessary by the
20 department to carry out the program.

21 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

22 Sec. 33.003. COOPERATION OF HEALTH CARE PROVIDERS AND
23 GOVERNMENTAL ENTITIES. (a) The department may invite all
24 physicians, hospitals, and other health care providers in the state
25 that provide maternity and newborn infant care to cooperate and
26 participate in any program established by the department under this
27 chapter.

1 (b) Other boards, agencies, departments, and political
2 subdivisions of the state capable of assisting the department in
3 carrying out the program may cooperate with the department and are
4 encouraged to furnish their services and facilities to the program.
5 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

6 Sec. 33.004. NEWBORN SCREENING ADVISORY COMMITTEE AND
7 EFFICACY, COST EFFECTIVENESS OF PROGRAM. A Newborn Screening
8 Advisory Committee shall be established comprised of seven (7)
9 members, which shall include two (2) members appointed by the
10 Speaker of the House of Representatives, two (2) members appointed
11 by the Lieutenant Governor, and three (3) members appointed by the
12 Governor, and shall include the Commissioner of State Health
13 Services, at least two (2) pediatricians and one (1) consumer
14 representative from a family that has experience with a newborn
15 affected with a heritable disease.

16 The Department of State Health Services shall provide on-going
17 surveillance of the comprehensive newborn screening program so that
18 Newborn Screening Advisory Committee members can determine its
19 efficacy, cost effectiveness, and to ensure that needed adjustments
20 to the program occur in a timely fashion with appropriate comment by
21 clinicians and other pediatric specialists.

22 SUBCHAPTER B. NEWBORN SCREENING

23 Sec. 33.011. TEST REQUIREMENT. (a) The physician
24 attending a newborn child or the person attending the delivery of a
25 newborn child that is not attended by a physician shall subject the
26 child to screening tests approved by the State Board of Health to
27 detect those conditions listed in Section 33.002 and the other

1 conditions specified by the State Board of Health for the
2 comprehensive newborn screening program.

3 (b) The department may prescribe the screening test
4 procedures to be used and the standards of accuracy and precision
5 required for each test.

6 (c) The screening tests required by this section may be
7 performed by the laboratory established by the department or by a
8 laboratory approved by the department under Section 33.016.

9 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

10 Sec. 33.012. EXEMPTION. (a) Screening tests may not be
11 administered to a newborn child whose parents, managing
12 conservator, or guardian objects on the ground that the tests
13 conflict with the religious tenets or practices of an organized
14 church of which they are adherents.

15 (b) If a parent, managing conservator, or guardian objects
16 to the screening tests, the physician or the person attending the
17 newborn child that is not attended by a physician shall ensure that
18 the objection of the parent, managing conservator, or guardian is
19 entered into the medical record of the child. The parent, managing
20 conservator, or guardian shall sign the entry.

21 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

22 Sec. 33.013. LIMITATION ON LIABILITY. A physician,
23 technician, or other person administering the screening tests
24 required by this chapter is not liable or responsible because of the
25 failure or refusal of a parent, managing conservator, or guardian
26 to consent to the tests for which this chapter provides.

27 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

1 Sec. 33.014. DIAGNOSIS; FOLLOW-UP. (a) If, because of an
2 analysis of a specimen submitted under Section 33.011, the
3 department reasonably suspects that a newborn child may have
4 phenylketonuria, another heritable disease, or hypothyroidism, the
5 department shall notify the person who submits the specimen that
6 the results are abnormal and provide the test results to that
7 person. The department may notify one or more of the following that
8 the results of the analysis are abnormal and recommend that further
9 testing is necessary:

10 (1) the physician attending the newborn child or the
11 physician's designee;

12 (2) the person attending the delivery of the newborn
13 child that was not attended by a physician;

14 (3) the parents of the newborn child;

15 (4) the health authority of the jurisdiction in which
16 the newborn child was born or in which the child resides, if known;

17 or

18 (5) physicians who are cooperating pediatric
19 specialists for the program.

20 (b) If a screening test indicates that a newborn child is at
21 high risk, the department shall recommend that the child be placed
22 under the medical care of a licensed physician for diagnosis and
23 provide the name of a consultant pediatric specialist in the
24 child's geographic area.

25 (c) The department, the health authority, and the
26 consulting pediatric specialist may follow up a positive test with
27 the attending physician or with a parent of the newborn child if the

1 child was not attended by a physician at birth.

2 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

3 Sec. 33.015. REPORTS; RECORD KEEPING. (a) Each physician,
4 health authority, or other individual who has the information of a
5 confirmed case of a disorder for which a screening test is required
6 that has been detected by a mechanism other than identification
7 through a screening of a specimen by the department's diagnostic
8 laboratory shall report the confirmed case to the department.

9 (b) The department may collect data to derive incidence and
10 prevalence rates of disorders covered by this chapter from the
11 information on the specimen form submitted to the department for
12 screening determinations.

13 (c) The department shall maintain a roster of children born
14 in this state who have been diagnosed as having one of the disorders
15 for which the screening tests are required.

16 (d) The department may cooperate with other states in the
17 development of a national roster of individuals who have been
18 diagnosed as having one of the disorders for which the screening
19 tests are required if:

20 (1) participation in the national roster encourages
21 systematic follow-up in the participating states;

22 (2) incidence and prevalence information is made
23 available to participating newborn screening programs in other
24 states; and

25 (3) each participating newborn screening program
26 subscribes to an agreement to protect the identity and diagnosis of
27 the individuals whose names are included in the national roster.

1 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

2 Sec. 33.016. APPROVAL OF LABORATORIES. (a) The department
3 may develop a program to approve any laboratory that wishes to
4 perform the tests required to be administered under this chapter.
5 To the extent that they are not otherwise provided in this chapter,
6 the board may adopt rules prescribing procedures and standards for
7 the conduct of the program.

8 (b) The department may prescribe the form and reasonable
9 requirements for the application and the procedures for processing
10 the application.

11 (c) The department may prescribe the test procedure to be
12 employed and the standards of accuracy and precision required for
13 each test.

14 (d) The department may extend or renew any approval in
15 accordance with reasonable procedures prescribed by the board.

16 (e) The department may for good cause, after notice to the
17 affected laboratory and a hearing if requested, restrict, suspend,
18 or revoke any approval granted under this section.

19 (f) Hearings under this section shall be conducted in
20 accordance with the hearing rules adopted by the board and the
21 applicable provisions of Chapter 2001, Government Code.

22 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991;
23 Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

24 SUBCHAPTER C. NEWBORN SCREENING PROGRAM SERVICES

25 Sec. 33.031. COORDINATION WITH CHILDREN WITH SPECIAL HEALTH
26 CARE NEEDS SERVICES. (a) All newborn children and other
27 individuals under 21 years of age who have been screened, have been

1 found to be presumptively positive through the newborn screening
2 program, and may be financially eligible may be referred to the
3 department's services program for children with special health care
4 needs.

5 (b) An individual who is determined to be eligible for
6 services under the services program for children with special
7 health care needs shall be given approved services through that
8 program. An individual who does not meet that eligibility criteria
9 shall be referred to the newborn screening program for a
10 determination of eligibility for newborn screening program
11 services.

12 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991;
13 Acts 1999, 76th Leg., ch. 1505, Sec. 3.11, eff. Sept. 1, 1999.

14 Sec. 33.032. PROGRAM SERVICES. (a) Within the limits of
15 funds available for this purpose and in cooperation with the
16 individual's physician, the department may provide services
17 directly or through approved providers to individuals of any age
18 who meet the eligibility criteria specified by board rules on the
19 confirmation of a positive test for phenylketonuria, other
20 heritable diseases, or hypothyroidism.

21 (b) The board may adopt:

22 (1) rules specifying the type, amount, and duration of
23 program services to be offered;

24 (2) rules establishing the criteria for eligibility
25 for services, including the medical and financial criteria;

26 (3) rules establishing the procedures necessary to
27 determine the medical, financial, and other eligibility of the

1 individual;

2 (4) substantive and procedural rules for applying for
3 program services and processing those applications;

4 (5) rules for providing services according to a
5 sliding scale of financial eligibility;

6 (6) substantive and procedural rules for the denial,
7 modification, suspension, and revocation of an individual's
8 approval to receive services; and

9 (7) substantive and procedural rules for the approval
10 of providers to furnish program services.

11 (c) The department may select providers according to the
12 criteria in the board's rules.

13 (d) The board may charge fees for the provision of services,
14 except that services may not be denied to an individual because of
15 the individual's inability to pay the fees.

16 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

17 Sec. 33.033. CONSENT. The department may not provide
18 services without the consent of the individual or, if the
19 individual is a minor, the minor's parent, managing conservator, or
20 guardian.

21 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

22 Sec. 33.034. DENIAL, MODIFICATION, SUSPENSION, AND
23 REVOCATION OF APPROVAL TO PROVIDE SERVICES. (a) After notice and
24 an opportunity for a fair hearing, the department may deny the
25 approval or modify, suspend, or revoke the approval of a person to
26 provide services under this chapter.

27 (b) Notice shall be given and the hearing shall be conducted

1 in accordance with the department's informal hearing procedures.

2 (c) Chapter 2001, Government Code, do not apply to the
3 notice and hearing required by this section.

4 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991;
5 Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

6 Sec. 33.035. INDIVIDUALS ELIGIBLE FOR SERVICES. (a) An
7 individual is not eligible to receive the services authorized by
8 this chapter at no cost or reduced cost to the extent that the
9 individual or the parent, managing conservator, guardian, or other
10 person with a legal obligation to support the individual is
11 eligible for some other benefit that would pay for all or part of
12 the services.

13 (b) The department may waive ineligibility under Subsection
14 (a) if the department finds that:

15 (1) good cause for the waiver is shown; and

16 (2) enforcement of the requirement would tend to
17 defeat the purpose of this chapter or disrupt the administration or
18 prevent the provision of services to an otherwise eligible
19 recipient.

20 (c) When an application for services is filed or at any time
21 that an individual is eligible for or receiving services, the
22 applicant or recipient shall inform the department of any other
23 benefit to which the applicant, recipient, or person with a legal
24 obligation to support the applicant or recipient may be entitled.

25 (d) The board by rule shall provide criteria for actions
26 taken under this section.

27 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

1 Sec. 33.036. DENIAL, MODIFICATION, SUSPENSION, AND
2 REVOCATION OF ELIGIBILITY TO RECEIVE SERVICES. (a) After notice
3 to the individual or, if the individual is a minor, the individual's
4 parent, managing conservator, or guardian and an opportunity for a
5 fair hearing, the department may deny, modify, suspend, or revoke
6 the determination of a person's eligibility to receive services at
7 no cost or at reduced cost under this chapter.

8 (b) Notice shall be given and the hearing shall be conducted
9 in accordance with the department's informal hearing procedures.

10 (c) Chapter 2001, Government Code, do not apply to the
11 notice and hearing required by this section.

12 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991;
13 Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

14 Sec. 33.037. REIMBURSEMENT. (a) The board may require an
15 individual or, if the individual is a minor, the minor's parent,
16 managing conservator, or guardian, or other person with a legal
17 obligation to support the individual to pay or reimburse the
18 department for all or part of the cost of the services provided.

19 (b) The recipient or the parent, managing conservator,
20 guardian, or other person with a legal obligation to support an
21 individual who has received services from the department that are
22 covered by some other benefit shall, when the other benefit is
23 received, reimburse the department for the cost of services
24 provided.

25 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

26 Sec. 33.038. RECOVERY OF COSTS. (a) The department is
27 entitled to recover an expenditure for services provided under this

1 chapter from:

2 (1) a person who does not reimburse the department as
3 required by this chapter; or

4 (2) a third party with a legal obligation to pay other
5 benefits and who has received prior written notice of the
6 department's interests in the other benefits.

7 (b) This section creates a separate and distinct cause of
8 action, and the commissioner may request the attorney general to
9 bring suit in the appropriate court of Travis County on behalf of
10 the department.

11 (c) In a judgment in favor of the department, the court may
12 award attorney fees, court costs, and interest accruing from the
13 date on which the department provides the service to the date on
14 which the department is reimbursed.

15 (d) The board by rule shall provide criteria for actions
16 taken under this section.

17 Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.