

By: Zaffirini

S.B. No. 22

A BILL TO BE ENTITLED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

AN ACT

relating to the care and custody of foster children and the duties and responsibilities of the Health and Human Services Commission and the Department of Family and Protective Services concerning the care and custody of those children.

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

SECTION 1. Section 39.052(a), Education Code, is amended to read as follows:

(a) Each school year, the agency shall prepare and distribute to each school district and licensed foster care facility a report card for each campus, including foster care facilities within the district. The campus report cards must be based on the most current data available disaggregated by student groups. Campus performance must be compared to previous campus and district performance, current district performance, state established standards, and comparable campus group performance.

SECTION 2. Section 39.053(a), Education Code, is amended to read as follows:

(a) Each board of trustees shall publish an annual report describing the educational performance of the district and of each campus and licensed foster care facility in the district that includes uniform student performance and descriptive information as determined under rules adopted by the commissioner. The annual report must also include:

1 (1) campus performance objectives established under
2 Section 11.253 and the progress of each campus toward those
3 objectives, which shall be available to the public;

4 (2) the performance rating for the district as
5 provided under Section 39.072(a) and the performance rating of each
6 campus in the district as provided under Section 39.072(c);

7 (3) the district's current special education
8 compliance status with the agency;

9 (4) a statement of the number, rate, and type of
10 violent or criminal incidents that occurred on each district
11 campus, to the extent permitted under the Family Educational Rights
12 and Privacy Act of 1974 (20 U.S.C. Section 1232g); or

13 (5) information concerning school violence prevention
14 and violence intervention policies and procedures that the district
15 is using to protect students; ~~and~~

16 (6) the findings that result from evaluations
17 conducted under the Safe and Drug-Free Schools and Communities Act
18 of 1994 (20 U.S.C. Section 7101 et seq.) and its subsequent
19 amendments; and

20 (7) information received under Section 51.403(e) for
21 each high school campus in the district, presented in a form
22 determined by the commissioner.

23 SECTION 3. (a) Section 39.182, Education Code, is amended
24 by amending Subsection (a) and adding Subsection (d) to read as
25 follows:

26 (a) Not later than December 1 of each year, the agency shall
27 prepare and deliver to the governor, the lieutenant governor, the

1 speaker of the house of representatives, each member of the
2 legislature, the Legislative Budget Board, and the clerks of the
3 standing committees of the senate and house of representatives with
4 primary jurisdiction over the public school system a comprehensive
5 report covering the preceding school year and containing:

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

9 (2) an evaluation of the status of education in the
10 state as reflected by the academic excellence indicators adopted
11 under Section 39.051;

12 (3) a summary compilation of overall student
13 performance on academic skills assessment instruments required by
14 Section 39.023 with the number and percentage of students exempted
15 from the administration of those instruments and the basis of the
16 exemptions, aggregated by grade level, subject area, campus, and
17 district, with appropriate interpretations and analysis, and
18 disaggregated by race, ethnicity, gender, and socioeconomic
19 status;

20 (4) a summary compilation of overall performance of
21 students placed in an alternative education program established
22 under Section 37.008 on academic skills assessment instruments
23 required by Section 39.023 with the number of those students
24 exempted from the administration of those instruments and the basis
25 of the exemptions, aggregated by district, grade level, and subject
26 area, with appropriate interpretations and analysis, and
27 disaggregated by race, ethnicity, gender, and socioeconomic

1 status;

2 (5) a summary compilation of overall performance of
3 students at risk of dropping out of school, as defined by Section
4 29.081(d), on academic skills assessment instruments required by
5 Section 39.023 with the number of those students exempted from the
6 administration of those instruments and the basis of the
7 exemptions, aggregated by district, grade level, and subject area,
8 with appropriate interpretations and analysis, and disaggregated
9 by race, ethnicity, gender, and socioeconomic status;

10 (6) a summary compilation of the overall performance
11 of students in foster care or other residential care under the
12 conservatorship of the Department of Family and Protective Services
13 on academic skills assessment instruments required by Section
14 39.023 with the number of those students exempted from the
15 administration of those instruments and the basis of the
16 exemptions, aggregated by district, grade level, and subject area,
17 with appropriate interpretations and analysis, and disaggregated
18 by race, ethnicity, gender, and socioeconomic status;

19 (7) [~~(6)~~] an evaluation of the correlation between
20 student grades and student performance on academic skills
21 assessment instruments required by Section 39.023;

22 (8) [~~(7)~~] a statement of the dropout rate of students
23 in grade levels 7 through 12, expressed in the aggregate and by
24 grade level, and a statement of the completion rates of students for
25 grade levels 9 through 12;

26 (9) [~~(8)~~] a statement of:

27 (A) the completion rate of students who enter

1 grade level 9 and graduate not more than four years later;

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

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

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

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

14 (10) [~~(9)~~] a statement of the projected
15 cross-sectional and longitudinal dropout rates for grade levels 9
16 through 12 for the next five years, assuming no state action is
17 taken to reduce the dropout rate;

18 (11) [~~(10)~~] a description of a systematic, measurable
19 plan for reducing the projected cross-sectional and longitudinal
20 dropout rates to five percent or less for the 1997-1998 school year;

21 (12) a summary of the educational status of students
22 in foster care or other residential care under the conservatorship
23 of the Department of Family and Protective Services, grades PK-12,
24 which includes their achievement on the academic skills assessment
25 instruments required by Section 39.023, college entrance
26 examinations, dropout rates, retention rates and high school
27 graduation rates, a systematic plan for improving the educational

1 status and lowering the dropout rate of these children and an
2 evaluation of the success of the plan;

3 (13) [~~(11)~~] a summary of the information required by
4 Section 29.083 regarding grade level retention of students and
5 information concerning:

6 (A) the number and percentage of students
7 retained; and

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

10 (14) [~~(12)~~] information, aggregated by district type
11 and disaggregated by race, ethnicity, gender, and socioeconomic
12 status, on:

13 (A) the number of students placed in an
14 alternative education program established under Section 37.008;

15 (B) the average length of a student's placement
16 in an alternative education program established under Section
17 37.008;

18 (C) the academic performance of students on
19 assessment instruments required under Section 39.023(a) during the
20 year preceding and during the year following placement in an
21 alternative education program; and

22 (D) the dropout rates of students who have been
23 placed in an alternative education program established under
24 Section 37.008;

25 (15) [~~(13)~~] a list of each school district or campus
26 that does not satisfy performance standards, with an explanation of
27 the actions taken by the commissioner to improve student

1 performance in the district or campus and an evaluation of the
2 results of those actions;

3 (16) [~~(14)~~] an evaluation of the status of the
4 curriculum taught in public schools, with recommendations for
5 legislative changes necessary to improve or modify the curriculum
6 required by Section 28.002;

7 (17) [~~(15)~~] a description of all funds received by and
8 each activity and expenditure of the agency;

9 (18) [~~(16)~~] a summary and analysis of the
10 instructional expenditures ratios and instructional employees
11 ratios of school districts computed under Section 44.0071;

12 (19) [~~(17)~~] a summary of the effect of deregulation,
13 including exemptions and waivers granted under Section 7.056 or
14 39.112;

15 (20) [~~(18)~~] a statement of the total number and length
16 of reports that school districts and school district employees must
17 submit to the agency, identifying which reports are required by
18 federal statute or rule, state statute, or agency rule, and a
19 summary of the agency's efforts to reduce overall reporting
20 requirements;

21 (21) [~~(19)~~] a list of each school district that is not
22 in compliance with state special education requirements,
23 including:

24 (A) the period for which the district has not
25 been in compliance;

26 (B) the manner in which the agency considered the
27 district's failure to comply in determining the district's

1 accreditation status; and

2 (C) an explanation of the actions taken by the
3 commissioner to ensure compliance and an evaluation of the results
4 of those actions;

5 (22) [~~(20)~~] a comparison of the performance of
6 open-enrollment charter schools and school districts on the
7 academic excellence indicators specified in Section 39.051(b) and
8 accountability measures adopted under Section 39.051(g), with a
9 separately aggregated comparison of the performance of
10 open-enrollment charter schools predominantly serving students at
11 risk of dropping out of school, as defined by Section 29.081(d),
12 with the performance of school districts; and

13 (23) [~~(21)~~] any additional information considered
14 important by the commissioner or the State Board of Education.

15 (d) The agency shall annually provide to the Department of
16 Family and Protective Services the data on the educational status
17 and academic performance of students in foster or other residential
18 care under the conservatorship of the department.

19 (b) The Texas Education Agency, in coordination with the
20 Legislative Budget Board, shall:

21 (1) develop a set of results-based performance
22 measures to evaluate the academic achievement of students in foster
23 care or other residential care under the conservatorship of the
24 Department of Family and Protective Services; and

25 (2) include the measures in the state dropout plan
26 beginning in 2006.

27 SECTION 4. Section 42.006(c), Education Code, is amended to

1 read as follows:

2 (c) Annually, the commissioner shall review the Public
3 Education Information Management System and shall repeal or amend
4 rules that require school districts to provide information through
5 the Public Education Information Management System that is not
6 necessary. In reviewing and revising the Public Education
7 Information Management System, the commissioner shall develop
8 rules to ensure that the system:

9 (1) provides useful, accurate, and timely information
10 on student demographics and academic performance, personnel, and
11 school district finances;

12 (2) contains only the data necessary for the
13 legislature and the agency to perform their legally authorized
14 functions in overseeing the public education system; ~~and~~

15 (3) does not contain any information related to
16 instructional methods, except as required by federal law; and

17 (4) provides useful, accurate and timely information
18 on the educational conditions and academic performance of students
19 in foster care.

20 SECTION 5. Section 54.211, Education Code, is amended to
21 read as follows:

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

25 (1) was in foster care or other residential care under
26 the conservatorship of the Department of Family and Protective ~~and~~
27 ~~Regulatory~~ Services on or after:

1 (A) the day preceding the student's 18th
2 birthday;

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

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

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

9 (A) the third anniversary of the date the student
10 was discharged from the foster or other residential care, the date
11 the student graduated from high school, or the date the student
12 received the equivalent of a high school diploma, whichever date is
13 earliest; or

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

15 (b) The Texas Education Agency and the Texas Higher
16 Education Coordinating Board shall develop outreach programs for
17 students in foster or other residential care in grades 9-12 to
18 ensure that they are aware of the availability of the exemption from
19 the payment of tuition and fees authorized in this section.

20 SECTION 6. Section 261.310, Family Code, is amended by
21 adding Subsection (e) to read as follows:

22 (e) The department, in conjunction with the Department of
23 Public Safety, shall provide advanced training to its residential
24 licensing investigators in investigative protocols and techniques.

25 SECTION 7. Section 261.002, Family Code, is amended by
26 adding Subsection (c) to read as follows:

27 (c) The department shall enter into agreements with other

1 states to allow for the exchange of reports of child abuse or
2 neglect in other states' central registry systems. The department
3 shall use information obtained under this section in performing the
4 background checks required under Section 42.056, Human Resources
5 Code. The department shall cooperate with federal agencies and
6 shall provide information and report to the appropriate Federal
7 agencies maintaining the national registry for child abuse and
8 neglect.

9 SECTION 8. Subchapter E, Chapter 261, Family Code is
10 amended by adding Section 261.410 to read as follows:

11 Sec. 261.410. REPORT OF ABUSE BY OTHER CHILDREN. (a) The
12 department shall require a residential care facility to report each
13 incident of physical or sexual abuse committed by one child on
14 another child.

15 (b) Using information received under Subsection (a), the
16 department shall compile a report including information regarding:

17 (1) the number of cases of physical and sexual abuse
18 committed by one child on another;

19 (2) identifying the foster care home or facility;

20 (3) the dates the allegations of abuse were made;

21 (4) the dates each investigation was started and
22 concluded;

23 (5) the findings and results of each investigation;

24 and

25 (6) information regarding the number of children
26 involved in each incident investigated.

27 (c) The department may adopt rules to administer this

1 section.

2 (d) In this section:

3 (1) "Physical abuse" means:

4 (A) physical injury that results in substantial
5 harm to the child, or the genuine threat of substantial harm from
6 physical injury to the child, including an injury that is at
7 variance with the history or explanation given and excluding an
8 accident or reasonable discipline by a parent, guardian, or
9 managing or possessory conservator that does not expose the child
10 to a substantial risk of harm; or

11 (B) failure to make a reasonable effort to
12 prevent an action by another person that results in physical injury
13 that results in substantial harm to the child.

14 (2) "Sexual abuse" means:

15 (A) sexual conduct harmful to a child's mental,
16 emotional, or physical welfare, including conduct that constitutes
17 the offense of indecency with a child under Section 21.11, Penal
18 Code, sexual assault under Section 22.011, Penal Code, or
19 aggravated sexual assault under Section 22.021, Penal Code;

20 (B) failure to make a reasonable effort to
21 prevent sexual conduct harmful to a child;

22 (C) compelling or encouraging the child to engage
23 in sexual conduct as defined by Section 43.01, Penal Code;

24 (D) causing, permitting, encouraging, engaging
25 in, or allowing the photographing, filming, or depicting of the
26 child if the person knew or should have known that the resulting
27 photograph, film, or depiction of the child is obscene as defined by

1 Section 43.21, Penal Code, or pornographic; or

2 (E) causing, permitting, encouraging, engaging
3 in, or allowing a sexual performance by a child as defined by
4 Section 43.25, Penal Code.

5 SECTION 9. (a) Subchapter E, Chapter 261, Family Code is
6 amended by adding Section 261.411 to read as follows:

7 Sec. 261.411. INVESTIGATIONS OF FACILITIES REGULATED BY
8 DEPARTMENT. (a) The department shall thoroughly investigate all
9 complaints, allegations, or reports of abuse, neglect, or
10 exploitation received arising out of a residential child care
11 facility regulated by the department.

12 (b) In addition to other investigative procedures provided
13 by law or by rule authorized in this subchapter, an investigation
14 under this section shall include:

15 (1) an interview of the individual reporting the
16 complaint or allegation;

17 (2) an interview with each alleged perpetrator and
18 victim;

19 (3) an interviews of staff or any other individual
20 reasonably believed to have information relevant to the
21 investigation;

22 (4) a review of any other information that would
23 corroborate the allegation or complaint, including facility
24 records, children's records, employee records, medical records,
25 school records, utility records, criminal records, and records of
26 the department; and

27 (5) a background check of any individual alleged to

1 have abused, neglected, or neglectfully supervised a child at a
2 facility.

3 (c) The department shall list on its public website the date
4 of a call to the statewide intake system, the beginning date of an
5 investigation, the ending date of an investigation, and the results
6 of an investigation. The department also shall provide this
7 information for any investigation that has been administratively
8 closed.

9 (d) The department shall make unannounced visits to
10 facilities when investigating reports received through its
11 hotline.

12 (e) The Health and Human Services Commission shall randomly
13 review reports and investigations made under this section to ensure
14 that they are made timely and comply with the requirements of this
15 section.

16 (f) The Health and Human Services Commission shall report to
17 the legislature and the governor annually the total number of
18 reports received and investigations conducted under this section.
19 The report must include an assessment of the timeliness and
20 thoroughness of the investigations.

21 (g) The Department of Public Safety shall assist in training
22 department staff in advanced methods for conducting investigations
23 of abuse and neglect at residential child care facilities.

24 (h) During the course of an investigation conducted under
25 this section, if it is alleged that a person subject to an
26 investigation has engaged in illegal drug use, the department shall
27 require that person to be tested for drugs within 24-hours of the

1 receipt of notice of the allegation.

2 (i) The department shall adopt rules and establish
3 standards and procedures to administer this section.

4 (b) The Department of Family and Protective Services shall
5 adopt the rules required by Section 261.411, Family Code, as added
6 by Subsection (a) of this section, not later than January 1, 2006.

7 SECTION 10. Section 263.102(a), Family Code, is amended to
8 read as follows:

9 (a) The service plan must:

10 (1) be specific;

11 (2) be in writing;

12 (3) be prepared by the department or other agency in
13 conference with the child's parents;

14 (4) state appropriate deadlines;

15 (5) state whether the goal of the plan is:

16 (A) return of the child to the child's parents;

17 (B) termination of parental rights and placement
18 of the child for adoption; or

19 (C) because of the child's special needs or
20 exceptional circumstances, continuation of the child's care out of
21 the child's home;

22 (6) state steps that are necessary to:

23 (A) return the child to the child's home if the
24 placement is in foster care;

25 (B) enable the child to remain in the child's
26 home with the assistance of a service plan if the placement is in
27 the home under the department's or other agency's supervision; or

1 (C) otherwise provide a permanent safe placement
2 for the child;

3 (7) state the actions and responsibilities that are
4 necessary for the child's parents to take to achieve the plan goal
5 during the period of the service plan and the assistance to be
6 provided to the parents by the department or other authorized
7 agency toward meeting that goal;

8 (8) state the actions and responsibilities that are
9 necessary to ensure the child's attendance at school and maintain
10 or improve the child's academic success in school;

11 (9) [~~8~~] state the name of the person with the
12 department or other agency whom the child's parents may contact for
13 information relating to the child if other than the person
14 preparing the plan; and

15 (10) [~~9~~] prescribe any other term or condition that
16 the department or other agency determines to be necessary to the
17 service plan's success.

18 SECTION 11. Section 263.502(c), Family Code, is amended to
19 read as follows:

20 (c) The placement review report must:

21 (1) evaluate whether the child's current placement is
22 appropriate for meeting the child's needs;

23 (2) evaluate whether efforts have been made to ensure
24 placement of the child in the least restrictive environment
25 consistent with the best interest and special needs of the child if
26 the child is placed in institutional care;

27 (3) identify the services that are needed to assist a

1 child who is at least 16 years of age in making the transition from
2 substitute care to independent living if the services are available
3 in the community;

4 (4) evaluate whether the child's current educational
5 placement is appropriate for meeting the child's academic needs;

6 (5) [~~(4)~~] identify other plans or services that are
7 needed to meet the child's special needs or circumstances; and

8 (6) [~~(5)~~] describe the efforts of the department or
9 authorized agency to place the child for adoption if parental
10 rights to the child have been terminated and the child is eligible
11 for adoption.

12 SECTION 12. Section 264.001, Family Code, is amended to
13 read as follows:

14 Sec. 264.001. DEFINITIONS [~~DEFINITION~~]. In this
15 chapter: [7]

16 (1) "Commission" means the Health and Human Services
17 Commission.

18 (2) "Department" [~~"department"~~] means the Department
19 of Family and Protective [~~and Regulatory~~] Services.

20 (3) "Psychotropic medication" means a drug that
21 affects the mind through action on the central nervous system and is
22 prescribed for depression, schizophrenia, attention deficit
23 hyperactivity disorder, seizures, and a variety of other similar
24 conditions.

25 SECTION 13. Section 264.002, Family Code, is amended by
26 adding Subsection (f) to read as follows:

27 (f) Notwithstanding any other law, the department may not

1 perform directly or provide any daily care or case management
2 activities or functions under this section after August 31, 2008.
3 Beginning on September 1, 2008, all those activities and functions
4 shall be outsourced in accordance with Section 264.106. The
5 transition to outsourcing shall commence and be accomplished in
6 accordance with the timing and procedures provided in Section
7 264.106.

8 SECTION 14. Section 264.004, Family Code, is amended by
9 adding Subsection (d) to read as follows:

10 (d) Effective September 1, 2008, no state funds
11 appropriated to the department for daily care and case management
12 activities for foster children may be used except to fund the
13 outsourcing of those activities in accordance with Section 264.106.

14 SECTION 15. Section 264.101, Family Code, is amended by
15 amending Subsection (d) and adding Subsection (g) to read as
16 follows:

17 (d) The commission [~~Board of Protective and Regulatory~~
18 ~~Services~~] may adopt rules that:

19 (1) establish criteria and guidelines for the payment
20 of foster care, including medical care, for a child and for
21 providing care for a child after the child becomes 18 years of age
22 if the child is regularly attending high school, an institution of
23 higher education, or a vocational or technical program; and

24 (2) prescribe the maximum amount of state funds that a
25 residential facility may spend on non-direct residential services,
26 including administrative expenses.

27 (g) The commission shall recover the funds that exceed any

1 caps established under Subsection (d).

2 SECTION 16. Section 264.105, Family Code, is amended to
3 read as follows:

4 Sec. 264.105. MAXIMIZING FEDERAL FUNDING [~~MEDICAL SERVICES~~
5 ~~PAYMENTS~~]. (a) The department shall attempt to maximize the use
6 of federal funding to provide medical care payments authorized by
7 Section 264.101(c) for children for whom the department has been
8 named managing conservator.

9 (b) The commission and the department shall attempt to
10 maximize the use of federal funding to care for children who have
11 developmental disabilities or mental retardation and for whom the
12 department has been named managing conservator. To achieve this
13 objective, the commission may amend the agreement described in
14 Section 32.021(b), Human Resources Code, or request appropriate
15 waivers from the federal government concerning any requirement of
16 Title IV, Social Security Act (42 U.S.C. Section 601 et seq.) or
17 other federal law.

18 (c) For each child receiving foster care under this
19 subchapter that is eligible to participate in the medical
20 assistance program under Chapter 32, Human Resources Code, the
21 department shall promptly:

22 (1) inform the person providing the care about the
23 child's eligibility; and

24 (2) ensure that the person has received any
25 identification card or similar document that is needed to claim
26 benefits under Chapter 32.

27 (d) The department shall train a provider of foster care to

1 a child who is eligible to participate in the medical assistance
2 program under Chapter 32, Human Resources Code, about the
3 procedures for claiming benefits under that program.

4 (e) The department shall establish procedures or adopt
5 rules to ensure that a child receiving foster care under this
6 subchapter receives timely medical services, including dental
7 care, as required by:

8 (1) Title IV, Social Security Act (42 U.S.C. Section
9 601 et seq.); and

10 (2) any procedures established or rules adopted by the
11 department to satisfy the requirements of Title IV.

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

14 Sec. 264.106. [~~CONTRACTS FOR~~] OUTSOURCING OF SUBSTITUTE
15 CARE SERVICES. (a) It is the policy of this state that beginning
16 September 1, 2008, the provision of all foster care services
17 entrusted to the department shall be outsourced in accordance with
18 this section, and that there be a transition to complete
19 outsourcing, which shall commence not later than September 1, 2005.
20 As soon as practicable after that date, the department shall
21 institute a rulemaking proceeding in accordance with Chapter 2001,
22 Government Code, to adopt substantive and procedural rules to carry
23 out the intent and purpose of this section and the transition to
24 outsourcing to be completed not later than September 1, 2008. [~~The~~
25 department shall:

26 [~~(1) assess the need for substitute care services~~
27 throughout the state, and

1 ~~[(2) contract with substitute care providers only to~~
2 ~~the extent necessary to meet the need for those services.]~~

3 (b) During the transition period and at all times after
4 August 31, 2008, the department shall contract ~~[Before contracting]~~
5 with a substitute care provider, as defined herein, ~~[the department~~
6 ~~shall determine whether.]~~ for the provision of all foster care
7 services assigned to the department under this chapter; provided,
8 however, that the outsourcing of foster care services shall not
9 affect or inhibit the rights of the state as the managing
10 conservator of a foster child. The department shall retain the
11 responsibility for monitoring the quality of contracted services
12 and programs and ensuring that the same are provided in accordance
13 with federal and state law and the rules of the department, the
14 Department of State Health Services, and the Texas Commission on
15 Environmental Quality. This subsection shall be construed to
16 effectuate the intent that the transition to outsourcing be
17 commenced immediately upon the effective date of this section and
18 be completed not later than September 1, 2008.

19 ~~[(1) community resources are available to support~~
20 ~~children placed under the provider's care, and~~

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

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

27 (1) enable the department to monitor the effectiveness

1 of the provider's services; and

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

5 (d) A substitute care provider shall use caseworker-child
6 visitation as one of the performance criteria required by
7 Subsection (c)(2) and establish formal guidelines and
8 documentation standards for caseworker-child visitation.

9 (e) [~~(d)~~] In determining whether to contract with a
10 substitute care provider, the department shall consider the
11 provider's performance under any previous contract for substitute
12 care services between the department and the provider.

13 (f) [~~(e)~~] In this section, "substitute care provider" means
14 [~~a person who provides residential care for children for 24 hours a~~
15 ~~day, including~~]:

16 (1) a child-care institution, as defined by Section
17 42.002, Human Resources Code; or

18 (2) a child-placing agency, as defined by Section
19 42.002, Human Resources Code[+]

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

22 [~~(4) an agency group home or agency home, as defined by~~
23 ~~Section 42.002, Human Resources Code, other than an agency group~~
24 ~~home, agency home, or a foster home verified or certified by the~~
25 ~~department]~~.

26 (g) A transition task force is hereby created to

27 (1) review the transition plan, including the

1 substantive and procedural rules required to be adopted under
2 subsection (a);

3 (2) monitor the department's implementation of the
4 transition; and

5 (3) report to the lieutenant governor, speaker of the
6 house and the legislative budget board concerning the transition at
7 least once each quarter.

8 (h) The task force shall be composed of three members to be
9 appointed no later than October 1, 2005, consisting of
10 representatives appointed by each of the following:

11 (1) the lieutenant governor;

12 (2) the speaker of the house of representatives, and;

13 (3) the comptroller of public accounts.

14 (i) The representative of the comptroller of public
15 accounts shall serve as the presiding officer of the task force.

16 (j) The task force shall meet at least monthly and shall
17 make recommendations to advance the implementation of the
18 transition. The department shall affirmatively address the
19 recommendations of the task force by rulemaking or decision, as
20 appropriate, within (30) days of receipt thereof.

21 (k) The task force is abolished effective August 31,
22 2008.

23 (b) Section 264.106(d), Family Code, as added by Subsection
24 (a) of this section, applies only to a contract that is entered into
25 or renewed on or after the effective date of this section. A
26 contract entered into or renewed before that date is governed by the
27 law in effect on the date the contract is entered into or renewed

1 and the former law is continued in effect for that purpose.

2 SECTION 18. Subchapter B, Chapter 264, Family Code, is
3 amended by adding Section 264.1062 to read as follows:

4 Sec. 264.1062. FOSTER CHILD EDUCATIONAL PERFORMANCE. The
5 department shall monitor the educational performance and
6 educational placement of a foster child, under objective criteria
7 developed by the department. The educational performance shall be
8 considered in department evaluations of foster parents and
9 department caseworkers.

10 SECTION 19. Section 264.1075, Family Code, is amended to
11 read as follows:

12 Sec. 264.1075. ASSESSING THE NEEDS OF A CHILD [~~USE OF~~
13 ~~ASSESSMENT SERVICES~~]. (a) As soon as possible after a child
14 begins receiving foster care under this subchapter, the department
15 shall assess whether the child has a developmental disability or
16 mental retardation. The commission shall establish the procedures
17 that the department uses to make an assessment under this
18 subsection. The procedures may include screening or participation
19 by:

20 (1) a private person experienced in the developmental
21 disabilities or mental retardation of children; or

22 (2) a local mental retardation authority.

23 (b) Before placing a child in substitute care, the
24 department shall use assessment services provided by a child-care
25 facility or child-placing agency in accordance with Section
26 42.0425, Human Resources Code, to determine the appropriate
27 substitute care for the child.

1 SECTION 20. Subchapter B, Chapter 264, Family Code, is
2 amended by adding section 264.1076 to read as follows:

3 Sec. 264.1076. THE FOSTER CARE DEVELOPMENTAL DISABILITIES
4 ADVISORY COMMITTEE. (a) The committee shall advise the department
5 about the care of foster children with developmental disabilities
6 or mental retardation, including effective methods for:

7 (1) minimizing the number of foster children placed in
8 institutions and maximizing the number of foster children receiving
9 community based care;

10 (2) training and supporting persons who provide foster
11 care in a residential setting about the particular needs of
12 children with developmental disabilities or mental retardation;

13 (3) training employees of the department to promptly
14 identify foster children with developmental disabilities or mental
15 retardation;

16 (4) monitoring the care provided in residential
17 settings to foster children with developmental disabilities or
18 mental retardation;

19 (5) recruiting individuals to provide foster care in a
20 residential setting to children with developmental disabilities or
21 mental retardation; and

22 (6) contracting with persons to care for foster
23 children with developmental disabilities or mental retardation.

24 (b) The commission shall determine the number of persons who
25 serve on the committee.

26 (c) The commission shall appoint the members of the
27 committee and determine each member's length of service. In making

1 appointments to the committee, the commission shall attempt to
2 include:

3 (1) representatives of the commission and other
4 relevant state agencies;

5 (2) providers of services to persons with
6 developmental disabilities or mental retardation;

7 (3) persons who formerly received care under this
8 subchapter as foster children;

9 (4) persons with expertise about developmental
10 disabilities or mental retardation;

11 (5) persons who advocate for the rights of children
12 with developmental disabilities or mental retardation; and

13 (6) persons related to children with developmental
14 disabilities or mental retardation.

15 (d) Chapter 2110, Government Code, does not apply to the
16 committee.

17 (e) The commission or the department may pay any expenses
18 incurred by the committee.

19 (f) In this section, "Committee" means the advisory
20 committee to the department about the care of foster children with
21 developmental disabilities or mental retardation.

22 SECTION 21. (a) Subchapter B, Chapter 264, Family Code, is
23 amended by adding Section 264.115 to read as follows:

24 Sec. 264.115. CONTRACTS BETWEEN RESIDENTIAL TREATMENT
25 CENTERS AND ON-SITE CHARTER SCHOOLS. A contract between a
26 residential treatment center or similar facility that provides
27 services to a child who is receiving foster care under this

1 subchapter and a charter school located at the center must require
2 the school to participate in the school health and related services
3 reimbursement program administered by the commission.

4 (b) Section 264.115, Family Code, as added by Subsection (a)
5 of this section, applies only to a contract entered into on or after
6 the effective date of this section. A contract entered into before
7 the effective date of this section is governed by the law in effect
8 on the date the contract is entered into, and that law is continued
9 in effect for this purpose.

10 SECTION 22. Subchapter B, Chapter 264, Family Code, is
11 amended by adding Sections 264.116-264.120 to read as follows:

12 Sec. 264.116. FOSTER CARE MEDICAL REVIEW TEAM. (a) The
13 commission shall create a foster care medical review team to review
14 the diagnostic services, medication, treatment, and therapy
15 delivered to children in foster care. The commission's deputy
16 commissioner for health services shall coordinate the team.

17 (b) The team should include:

18 (1) child psychiatrists;

19 (2) psychologists;

20 (3) pediatricians;

21 (4) pharmacologists;

22 (5) pharmacists;

23 (6) staff assigned to the commission's drug
24 utilization review program;

25 (7) the Texas State Board of Medical Examiners;

26 (8) state medical schools; and

27 (9) other professionals with experience in diagnostic

1 services, medication, treatment, and therapy delivered to
2 children.

3 (c) The team shall develop a best practices manual
4 documenting the appropriate use of medications for foster children.

5 (d) The team shall advise department staff on methods to
6 evaluate the appropriate use of psychotropic medications and
7 therapy as an outcome for foster children.

8 (e) The commission must report the team's results to the
9 governor, lieutenant governor, and speaker of the house of
10 representatives not later than January 1, 2006. The report shall
11 include:

12 (1) an explanation of the review of the diagnostic
13 services, medication, treatment, and therapy delivered to children
14 in foster care required by this section;

15 (2) a description of the development and distribution
16 of the best practices manual developed by the team;

17 (3) a description of the methods used in evaluating
18 the use of psychotropic medications;

19 (4) recommendations for the improvement of diagnostic
20 services, medication, treatment, and therapy delivered to children
21 in foster care;

22 (5) recommendations for changes in the Medicaid
23 program to address improvements in the evaluation, placement and
24 care of medically fragile children as defined in section 264.119;
25 and

26 (6) other information the commission determines is
27 appropriate.

1 Sec. 264.117. MONITORING USE OF MEDICATIONS. The staff
2 assigned to the commission's drug utilization review program shall
3 monitor the use of medications for foster children by annually
4 matching Medicaid identification numbers and examining a sample of
5 the data.

6 Sec. 264.118. AUTHORIZATION FOR CERTAIN MEDICATIONS.

7 (a) Administration of a psychotropic medication to a foster child
8 requires the prior approval of the department managing conservator,
9 a foster parent, and a parent or legal guardian who has not lost or
10 surrendered the parent's parental rights.

11 (b) Before starting any medication, children and their
12 caretakers shall be provided information on their prescribed
13 medications in accordance with the guidelines of the American
14 Academy of Child and Adolescent Psychiatry.

15 Sec. 264.119. MEDICAL PASSPORT. (a) The department shall
16 develop a medical "passport" for each foster child. The passport
17 shall include the child's complete medication, medical, and therapy
18 history.

19 (b) The child or child's caretaker shall present the
20 passport during each physician or therapist visit to ensure that
21 each physician or therapist has a complete record of the child's
22 medical treatment.

23 (c) The passport shall be part of the child's department
24 record and shall stay with the child as they change placements,
25 physicians, or therapists and as long as the child is in foster
26 care.

27 (d) The department shall evaluate technology options that

1 may be expanded to include the medical histories of foster
2 children.

3 Sec. 264.120. MEDICALLY FRAGILE. (a) Not later than
4 January 1, 2006, the commission and the department shall implement
5 a Medicaid catastrophic case management program for medically
6 fragile foster children under the department's care.

7 (b) A medically fragile child is a child who:

8 (1) is younger than age 21;

9 (2) has a serious, ongoing illness or a chronic
10 condition that:

11 (A) has lasted or is anticipated to last at least
12 twelve months;

13 (B) requires daily or has required as least one
14 month of hospitalization; and

15 (C) requires ongoing medical treatments and
16 monitoring by appropriately trained personnel, which may include
17 parents or other family members;

18 (3) requires the routine use of a medical device or the
19 use of assistive technology to compensate for the loss of
20 usefulness of a body function needed to participate in activities
21 of daily living; and

22 (4) lives with an ongoing threat to the child's
23 continued well-being.

24 (c) The commission may contract with children's hospitals
25 or other providers for case management services.

26 (d) The foster care medical review team created under
27 Section 264.115 shall review cases of medically fragile children

1 and shall establish best practices guidelines for their evaluation,
2 placement, and care.

3 SECTION 23. Subchapter B, Chapter 264, Family Code, is
4 amended by adding Section 264.121 to read as follows:

5 Sec. 264.121. PREPARATION FOR ADULT LIVING PROGRAM.

6 (a) The commission and the department shall maximize funding from
7 all available federal sources to support the program.

8 (b) The commission and the department may require the
9 assistance of any state agency that has expertise about available
10 federal funding to support the program.

11 (c) The commission shall ensure that the agreement
12 described in Section 32.021(b), Human Resources Code, is consistent
13 with the requirements of Subsection (a).

14 (d) The department shall enter into cooperative agreements
15 with the Texas Workforce Commission and local workforce development
16 boards to facilitate the effectiveness of the program. The
17 department, the Texas Workforce Commission, and those boards shall
18 maintain one-stop centers for foster care children to obtain
19 services under the program.

20 (e) The department may enter into an agreement with any
21 private person to facilitate the effectiveness of the program,
22 including maintenance of the one-stop centers described in
23 Subsection (d).

24 (f) In this section:

25 (1) "Local workforce development board" means a local
26 workforce development board created under Chapter 2308, Government
27 Code.

1 (2) "Program" means the program administered by the
2 department that prepares foster children for independent living as
3 adults.

4 SECTION 24. Subchapter B, Chapter 264, Family Code, is
5 amended by adding Section 264.122 to read as follows:

6 Sec. 264.122. ANNUAL CONFIDENTIAL SURVEY. (a) The
7 department shall conduct an annual survey of each child provided
8 foster care who is at least age 10. The survey shall include
9 questions regarding:

- 10 (1) the quality of care and living conditions;
11 (2) the quality of food;
12 (3) recreational opportunities;
13 (4) any improvements that could be made to improve the
14 child's quality of life; and
15 (5) any other factor that the department considers
16 relevant to the child's quality of care.

17 (b) The department shall adopt procedures in conducting the
18 surveys to ensure that the identities of the respondents remain
19 confidential.

20 (c) The department may adopt rules to administer this
21 section.

22 (d) The results of the surveys conducted under this section
23 shall be reported annually to the Legislative Budget Board, the
24 governor's office of budget and planning, the legislature, and the
25 Health and Human Services Commission.

26 SECTION 25. Chapter 264, Family Code, is amended by adding
27 Subchapter B-1 to read as follows:

1 SUBCHAPTER B-1. TEXAS FOSTER GRANDMAS AND GRANDPAS PROGRAM.

2 Sec. 264.171. IMPLEMENTATION. (a) The department shall
3 partner with volunteer and advocacy organizations to develop and
4 implement the Texas Foster Grandmas and Grandpas Program. The
5 program shall provide a source of volunteer senior citizens to
6 mentor children in foster care facilities.

7 (b) From funds available for that purpose, the department
8 may reimburse senior volunteers who participate in the program for
9 actual and necessary expenses incurred from program participation,
10 including travel expenses. The department shall develop guidelines
11 that outline reimbursable expenses.

12 (c) Each senior volunteer is subject to a state and national
13 criminal background check as provided in Sections 411.114 and
14 411.087, Government Code.

15 (d) Each senior volunteer shall be supervised by foster care
16 facility staff.

17 (e) The program is subject to Chapter 2109, Government Code.

18 Sec. 264.172. COORDINATION WITH NONPROFIT ORGANIZATIONS.
19 The department shall work with nonprofit organizations to solicit
20 contributions for the program developed and implemented under this
21 subchapter.

22 Sec. 264.173. PARTNERING WITH THE TEXAS EDUCATION AGENCY.

23 (a) It is the intent of the legislature to coordinate potential
24 sources of funding that may be available to improve the delivery of
25 services to foster children. Sources of funding may include grants
26 for educational programs and services that may serve foster
27 children.

1 (b) The department shall partner with the Texas Education
2 Agency to evaluate and solicit gifts, grants, and donations for the
3 program.

4 Sec. 264.174. PUBLICITY. Each state agency that serves
5 children, youth, or families shall publicize the program on the
6 agency's websites and other relevant publications, including Texas
7 Online.

8 Sec. 264.175. SERVICE AWARDS. The department shall work
9 with nonprofit organizations to recognize program participants
10 through annual volunteer service awards.

11 SECTION 26. Section 264.201, Family Code, is amended by
12 adding Subsection (f) to read as follows:

13 (f) When the department applies to the federal government
14 under Title IV, Social Security Act (42 U.S.C. Section 601 et seq.)
15 for reimbursement of the department's administrative costs, the
16 department shall apply under the part of Title IV that maximizes the
17 amount of the reimbursement. This subsection applies only if
18 applicable law authorizes the department to use the reimbursement
19 to provide services directly or by contract under this subchapter.

20 SECTION 27. Section 264.301, Family Code, is amended by
21 adding Subsection (c) to read as follows:

22 (c) When the department applies to the federal government
23 under Title IV, Social Security Act (42 U.S.C. Section 601 et seq.)
24 for reimbursement of the department's administrative costs, the
25 department shall apply under the part of Title IV that maximizes the
26 amount of the reimbursement. This subsection applies only if
27 applicable law authorizes the department to use the reimbursement

1 to provide services under this subchapter.

2 SECTION 28. Section 531.003, Government Code, is amended to
3 read as follows:

4 Sec. 531.003. GOALS. The commission's goals are to:

5 (1) maximize federal funds through the efficient use
6 of available state and local resources;

7 (2) provide a system that delivers prompt,
8 comprehensive, effective services to the people of this state by:

9 (A) improving access to health and human services
10 at the local level; ~~and~~

11 (B) eliminating architectural, communications,
12 programmatic, and transportation barriers; and

13 (C) ensuring that all of its contracts are
14 awarded fairly and in accordance with existing law, and that all of
15 its contracts, contractors, subcontractors, funds and expenditures
16 under those contracts, are monitored and reported in accordance
17 with applicable law in the best interests of the state and the
18 people of this state;

19 (3) promote the health of the people of this state by:

20 (A) reducing the incidence of disease and
21 disabling conditions;

22 (B) increasing the availability of health care
23 services;

24 (C) improving the quality of health care
25 services;

26 (D) addressing the high incidence of certain
27 illnesses and conditions of minority populations;

- 1 (E) increasing the availability of trained
2 health care professionals;
- 3 (F) improving knowledge of health care needs;
- 4 (G) reducing infant death and disease;
- 5 (H) reducing the impact of mental disorders in
6 adults;
- 7 (I) reducing the impact of emotional
8 disturbances in children;
- 9 (J) increasing participation in nutrition
10 programs;
- 11 (K) increasing nutritional education; and
- 12 (L) reducing substance abuse;
- 13 (4) foster the development of responsible,
14 productive, and self-sufficient citizens by:
- 15 (A) improving workforce skills;
- 16 (B) increasing employment, earnings, and
17 benefits;
- 18 (C) increasing housing opportunities;
- 19 (D) increasing child-care and other
20 dependent-care services;
- 21 (E) improving education and vocational training
22 to meet specific career goals;
- 23 (F) reducing school dropouts;
- 24 (G) reducing teen pregnancy;
- 25 (H) improving parental effectiveness;
- 26 (I) increasing support services for people with
27 disabilities;

1 (J) increasing services to help people with
2 disabilities maintain or increase their independence;

3 (K) improving access to work sites,
4 accommodations, transportation, and other public places and
5 activities covered by the federal Americans with Disabilities Act
6 of 1990 (42 U.S.C. Section 12101 et seq.); and

7 (L) improving services to juvenile offenders;

8 (5) provide needed resources and services to the
9 people of this state when they cannot provide or care for themselves
10 by:

11 (A) increasing support services for adults and
12 their families during periods of unemployment, financial need, or
13 homelessness;

14 (B) reducing extended dependency on basic
15 support services; and

16 (C) increasing the availability and diversity of
17 long-term care provided to support people with chronic conditions
18 in settings that focus on community-based services with options
19 ranging from their own homes to total-care facilities;

20 (6) protect the physical and emotional safety of all
21 the people of this state by:

22 (A) reducing abuse, neglect, and exploitation of
23 elderly people and adults with disabilities;

24 (B) reducing child abuse and neglect;

25 (C) reducing family violence;

26 (D) increasing services to truants and runaways,
27 children at risk of truancy or running away, and their families;

1 (E) reducing crime and juvenile delinquency;

2 (F) reducing community health risks; and

3 (G) improving regulation, accountability, and
4 monitoring of health and human services providers; ~~and~~

5 (7) improve the coordination and delivery of
6 children's services; and

7 (8) hold health and human services providers
8 accountable to this state and the people of this state for all funds
9 accepted or managed by the providers.

10 SECTION 29. Section 531.0055(b), Government Code, is
11 amended to read as follows:

12 (b) The commission shall:

13 (1) supervise the administration and operation of the
14 Medicaid program, including the administration and operation of the
15 Medicaid managed care system in accordance with Section 531.021;

16 (2) perform information systems planning and
17 management for health and human services agencies under Section
18 531.0273, with:

19 (A) the provision of information technology
20 services at health and human services agencies considered to be a
21 centralized administrative support service either performed by
22 commission personnel or performed under a contract with the
23 commission; and

24 (B) an emphasis on research and implementation on
25 a demonstration or pilot basis of appropriate and efficient uses of
26 new and existing technology to improve the operation of health and
27 human services agencies and delivery of health and human services;

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

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

8 (A) the child health plan program;

9 (B) the financial assistance program under
10 Chapter 31, Human Resources Code;

11 (C) the medical assistance program under Chapter
12 32, Human Resources Code;

13 (D) the nutritional assistance programs under
14 Chapter 33, Human Resources Code;

15 (E) long-term care services, as defined by
16 Section 22.0011, Human Resources Code;

17 (F) community-based support services identified
18 or provided in accordance with Section 531.02481; and

19 (G) other health and human services programs, as
20 appropriate; ~~and~~

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

23 (6) ensure that the Department of Family and
24 Protective Services contracts and places foster children with
25 charitable providers to the fullest extent possible.

26 SECTION 30. Chapter 531, Government Code, is amended by
27 adding Subchapter G-2 to read as follows:

1 SUBCHAPTER G-2. COMBINING AVAILABLE FUNDING FOR WRAP-AROUND
2 MANAGED CARE OF FOSTER CHILDREN.

3 Sec. 531.261. DEFINITIONS. In this subchapter:

4 (1) "Foster child" means a child eligible for state
5 services under Chapter 264, Family Code.

6 (2) "Section 1915(c) Medicaid waiver" means a
7 federally funded Medicaid program of the state that is authorized
8 under Section 1915(c), Social Security Act (42 U.S.C. Section
9 1396n(c)).

10 (3) "Title IV-E waiver program" means an authorized
11 program that provides for federal financial participation under
12 Title IV-E, Social Security Act (42 U.S.C. Section 670 et seq.).

13 (4) "Wrap-around managed care" means the
14 consolidation of federal, state, and local funding available to
15 provide a wide variety of services tailored to meet the particular
16 needs of foster children.

17 Sec. 531.262. PILOT "WRAP-AROUND" MANAGED CARE PROGRAM.

18 (a) The commission shall develop a pilot program to consolidate
19 available funding from federal, state, and local sources to provide
20 an integrated level of services that meet the needs of foster
21 children.

22 (b) The program may include:

23 (1) applying for Section 1915(c) Medicaid waivers
24 authorized under the Social Security Act;

25 (2) expanding existing Section 1915(c) Medicaid
26 waivers;

27 (3) creating a Title IV-E waiver program; or

1 (4) using savings from other programs to maximize
2 federal funding for the wrap-around managed care program.

3 Sec. 531.263. POPULATION SERVED. (a) The program may
4 target:

5 (1) a particular population, such as:

6 (A) teens with behavioral problems; or

7 (B) children at risk of entering foster care; or

8 (2) a geographic area, such as a region with a high
9 percentage of children switching placements.

10 (b) The population served should include foster children
11 requiring high-cost services, such as inpatient hospital care or
12 inpatient psychiatric facilities.

13 Sec. 531.264. REPORT. The commission shall report the
14 results of the pilot to the governor and Legislative Budget Board
15 not later than November 1, 2006. The report shall include:

16 (1) sources of federal, state, and local funds
17 available for wrap-around managed care;

18 (2) guidelines for integrating services for foster
19 children served under the program;

20 (3) target populations that may be served by the
21 program;

22 (4) criteria for expansion of the program to target
23 populations; and

24 (5) other information the commission determines is
25 necessary to the success of the program.

26 SECTION 31. Chapter 531, Government Code, is amended by
27 adding Subchapter G-3 to read as follows:

1 SUBCHAPTER G-3. POOLED FUNDING FOR PREVENTATIVE SERVICES.

2 Sec. 531.271. RESOURCES. The commission and the Department
3 of Family and Protective Services shall develop and implement a
4 plan to pool funding with other state agencies and local
5 communities to provide preventative services designed to keep
6 children out of foster care.

7 Sec. 531.272. PREVENTATIVE SERVICES. Preventative
8 services may include:

- 9 (1) child and family counseling;
10 (2) instruction in parental and homemaking skills;
11 (3) parent support services;
12 (4) temporary respite care; and
13 (5) crisis services.

14 Sec. 531.273. REPORT. The commission shall include the
15 results of the pooled funding preventative services plan under this
16 subchapter in the report to the governor and Legislative Budget
17 Board required by Section 531.264.

18 SECTION 32. (a) Section 2155.144, Government Code, is
19 amended by amending Subsections (h), (i), (j), (k), (m), and (o) and
20 by adding Subsection (o-1) to read as follows:

21 (h) (1) The Health and Human Services Commission shall adopt
22 rules and procedures for the acquisition of goods and services
23 under this section that apply to all health and human services
24 agencies, including rules adopted with the commission's assistance
25 that allow an agency to make purchases through a group purchasing
26 program except when a better value is available through another
27 procurement method. The rules of the health and human services

1 agencies must be consistent with the rules of the Health and Human
2 Services Commission.

3 (2) The Health and Human Services Commission shall
4 create a foster care performance team to develop criteria to be
5 included in all foster care contracts. The team shall develop
6 clearly defined and measurable standards for foster care contracts
7 directly relating to factors within the control of the providers.
8 The team shall develop performance standards which shall include
9 measurable criteria for identification of foster care service
10 providers that do not provide quality care and that should not
11 receive additional contract awards and whose contracts should be
12 revoked.

13 (3) The foster care performance team created under
14 Subdivision (2) shall include contracting experts from multiple
15 state agencies, foster care providers and clients,
16 performance-based contract experts from the state auditor's
17 office, other state agencies, and other experts in outcome-based
18 contracts.

19 (4) The Health and Human Services Commission shall
20 create an alternative payment plan in all foster care services
21 contracts to encourage the reduction of the period that children
22 are in intensive levels of care. The incentive payment plan must
23 provide several alternative payment mechanisms to encourage foster
24 care contractors to improve the quality of care, encourage
25 efficient use of funding, or reduce the period of intensive care of
26 children under program-related client services contracts for
27 foster care, taking into consideration:

- 1 (A) managed care;
- 2 (B) bonuses or penalties; or
- 3 (C) regional payment mechanisms to further
- 4 create financial incentives, improve the quality of care and
- 5 encourage efficient use of funding, or other appropriate financial
- 6 mechanisms.

7 (5) The Health and Human Services Commission shall, in
8 the development of the alternative payment plan required by
9 Subdivision (4), design financial models considering plans for
10 outsourcing and input from local officials, foster care providers,
11 and other interested persons.

12 (i) The [~~Subject to Section 531.0055(c), the~~] Health and
13 Human Services Commission shall develop, update annually, and
14 provide to the state auditor for review a single statewide risk
15 analysis procedure. The commission and each [~~Each~~] health and
16 human services agency shall comply with the procedure. The
17 procedure must provide for:

18 (1) assessing the risk of fraud, abuse, or waste in
19 health and human services agencies contractor selection processes,
20 contract provisions, and payment and reimbursement rates and
21 methods for the different types of goods and services for which
22 health and human services agencies contract;

23 (2) identifying contracts that require enhanced
24 contract monitoring; [~~and~~]

25 (3) coordinating contract monitoring efforts among
26 health and human services agencies; and

27 (4) evaluating contracts for the care of children that

1 are effectively designed and monitored to minimize risk to the
2 life, health, safety and well-being of children, especially those
3 in foster care.

4 (j) The [~~Subject to Section 531.0055(c), the~~] Health and
5 Human Services Commission shall publish and provide to the state
6 auditor for review, and shall update at least annually, a contract
7 management handbook that establishes consistent contracting
8 policies and practices to be followed by all health and human
9 services agencies. The handbook shall be consistent with the
10 contract management handbook developed by the Health and Human
11 Services Commission for its agency contracts and shall supplement
12 and be consistent with the contracts management guide developed by
13 the contract advisory team under Chapter 2262. The handbook [~~may~~]
14 shall include standard contract provisions and formats for health
15 and human services agencies to incorporate [~~as applicable~~] in their
16 contracts and standard procedures for enforcing and monitoring
17 these provisions and formats. The handbook shall also include
18 standard contract provisions, formats and procedures that
19 specifically address, and refer to by date of the report, each of
20 the state auditor's and comptroller's major findings and
21 recommendations to the Health and Human Services Commission, or any
22 health and human service agency, on contracting. Without limiting
23 the foregoing requirements, the handbook shall include standard
24 contract provisions, formats and procedures that specifically
25 define and mandate:

26 (1) disclosure by all proposed contractors prior to
27 contract and contractor evaluation of any actual or potential

1 related party transactions, relationships, interests, and any
2 other actual or potential conflict of interest transactions and
3 relationships under or related to any proposed contract with or
4 administered by the Health and Human Services Commission or any
5 health and human services agency;

6 (2) disclosure by all proposed contractors prior to
7 contract evaluation under Subdivision (1) of the previous ten years
8 ownership and business history of the proposed contracting entity
9 and the proposed contracting entity's individual owners and key
10 personnel, including all other contracts with the state and all
11 work of a similar nature performed or contracted to be performed
12 with the state or any other entity, in or outside the state, during
13 that previous ten years;

14 (3) disclosure updates by all contractors throughout
15 the contract terms of any actual or potential changes to any
16 disclosures under the handbook's provisions, formats and
17 procedures under Subdivisions (1) and (2);

18 (4) measurable performance standards for a
19 contractor's delivery of services, including deadlines for
20 delivery, and evaluation under specific criteria prior to written
21 acceptance by the state;

22 (5) schedule of payments for measurable deliverables
23 received and accepted in writing by the state as in compliance with
24 all contract requirements prior to approval of payments;

25 (6) consequences of the contractor's failure to comply
26 with specific requirements of the contract, such as failure to
27 disclose or update disclosures under Subdivisions (1)-(3), failure

1 to meet performance standards under Subdivision (4), and failure to
2 submit compliant deliverables under Subdivision (5), including
3 payment of liquidated and other damages, refunding of prior
4 payments under the contracts, forfeiture of payments under the
5 contracts, immediate contract termination for cause, and
6 disbarment from future contracts with the Health and Human Services
7 Commission and the state;

8 (7) open and competitive, public solicitation of
9 contracts and contractors, with contract provisions included,
10 through notice to all interested parties posted on the Texas
11 Marketplace; and

12 (8) other provisions, formats and procedures
13 recommended by the state auditor.

14 (k) The [~~Subject to Section 531.0055(c), the~~] Health and
15 Human Services Commission, in cooperation with the comptroller,
16 shall establish a central contract management database that
17 identifies each contract made with a health and human services
18 agency. The commission may use the database to monitor health and
19 human services agency contracts, and health and human services
20 agencies may use the database in contracting. A state agency shall
21 send to the commission in the manner prescribed by the commission
22 the information the agency possesses that the commission requires
23 for inclusion in the database.

24 (m) The [~~Subject to Section 531.0055(c), the~~] Health and
25 Human Services Commission shall develop and implement a statewide
26 plan to ensure that each entity that contracts with a health and
27 human services agency and any subcontractor of the entity complies

1 with the accessibility requirements of the Americans with
2 Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

3 (o) The Health and Human Services Commission shall prepare
4 an annual report that assesses the compliance of each health and
5 human services agency with the requirements imposed under this
6 section, and compliance of the commission and each agency with the
7 major findings and recommendations of the state auditor and the
8 comptroller in reports to the commission or agency on contracting,
9 and that identifies any material risk to the state or to the clients
10 of the health and human services agency that results from the
11 agency's procurement and contracting practices. The commission may
12 request the assistance of the state auditor in preparing the
13 report. The state auditor shall conduct reviews as necessary to
14 assess compliance under this subsection as determined by the
15 Legislative Audit Committee. The commission shall file the report
16 with the governor, the lieutenant governor, and the speaker of the
17 house of representatives not later than December 15 of each year.

18 (o-1) The relationships and interests described in
19 Subsection (j) include all relationships or interests the proposed
20 contractor has or may have with any party to a proposed or actual
21 transaction with the state or the contractor if a reasonable person
22 could expect the proposed or actual relationship or interest to
23 constitute a conflict of interest, create even the appearance of
24 impropriety, or diminish the proposed contractor's independence of
25 judgment, any performances under the contract or any of the
26 contractor's responsibilities to the state. The relationships and
27 interests described in Subsection (j) include all direct, indirect,

1 personal, private, commercial, or business relationships and
2 interests, regardless of whether they are pecuniary.

3 (b) Section 2155.144, Government Code, as amended by
4 Subsection (a) of this section, applies only to a contract that is
5 entered into or renewed on or after the effective date of this
6 section. A contract entered into or renewed before that date is
7 governed by the law in effect on the date the contract was entered
8 into or renewed and the former law is continued in effect for that
9 purpose.

10 (c) Not later than September 1, 2005, the Health and Human
11 Services Commission shall complete and provide to the state auditor
12 the initial, updated single statewide risk analysis procedure
13 required under Section 2155.144(i), Government Code, as amended by
14 Subsection (a) of this section.

15 (d) Not later than September 1, 2005, the Health and Human
16 Services Commission shall complete, publish, and provide to the
17 state auditor and the Contract Advisory Team under Subchapter C,
18 Chapter 2262, Government Code, the updated handbook required by
19 Section 2155.144(j), Government Code, as amended by Subsection (a)
20 of this section.

21 (e) Section 2155.144(j) and (o), Government Code, as
22 amended by Subsection (a) of this section and relating to the state
23 auditor's and comptroller's major findings and recommendations to
24 the Health and Human Services Commission or a health and human
25 services agency on contracting, apply to reports dated on or after
26 January 1, 1999, from the state auditor and the comptroller to the
27 commission or a health and human services agency.

1 SECTION 33. (a) Subchapter C, Chapter 2155, Government
2 Code is amended by adding Section 2155.1442 to read as follows:

3 Sec. 2155.1442. FOSTER CARE RESIDENTIAL CONTRACTS. The
4 Health and Human Services Commission shall approve, prior to
5 signature, all contracts tentatively awarded, subject to such
6 approval by the commission, by the Department of Family and
7 Protective Services, or its designee for the care of foster
8 children. Prior to approval, the commission shall ensure that each
9 contract:

10 (1) includes provisions, formats, and procedures in
11 the commission's handbook published under Section 2155.144,
12 including those required under Section 2155.144(j)(1)-(8);

13 (2) requires the department's contract management
14 employees to make no less than four unannounced visits per year to
15 the contractor's facilities and report their findings to the Health
16 and Human Services Commission; and

17 (3) prevents a contractor or other residential care
18 provider from rejecting or removing foster children from its
19 facility prior to completion of a departmental review and receiving
20 written approval from the department's executive director.

21 (b) Section 2155.1442(c), Government Code, as added by
22 Subsection (a) of this section, applies only to a contract that is
23 entered into or renewed on or after the effective date of this
24 section. A contract entered into or renewed before that date is
25 governed by the law in effect on the date the contract was entered
26 into or renewed and the former law is continued in effect for that
27 purpose.

1 SECTION 34. (a) Subchapter C, Chapter 2155, Government
2 Code, is amended by adding Section 2155.1443 to read as follows:

3 Sec. 2155.1443. FOSTER CARE RESIDENTIAL CONTRACT
4 MANAGEMENT. (a) The state auditor shall conduct a management
5 review of the contract management employees of the Health and Human
6 Services Commission and the Department of Family and Protective
7 Services and make recommendations regarding the organization of,
8 and skills and educational requirements for, those employees. The
9 state auditor shall, in this review, also make recommendations
10 regarding the implementation of financial accountability
11 provisions and processes to ensure effective and efficient
12 expenditure of state and other contract funds. The state auditor
13 shall report annually to the governor, lieutenant governor, the
14 speaker of the house of representatives, and the comptroller on the
15 auditor's recommendations and the commission's and the department's
16 implementation of each recommendation.

17 (b) The Health and Human Services Commission, in
18 coordination with the state auditor, shall perform complete,
19 on-site financial audits of selected contractors as needed. The
20 state auditor shall select these contractors based on the
21 contract's risk assessment rating, allegations of fraud or misuse
22 of state or other contract funds, or other appropriate audit
23 selection criteria. The state auditor shall include findings from
24 these on-site financial audits in the annual report to the governor
25 and other representatives of the state as required by Section
26 2155.1443(a). The state auditor, however, shall immediately report
27 to the governor and other representatives under Subsection (a) any

1 findings of fraud or other misuse of state or other contract funds.

2 (c) The executive director of the Department of Family and
3 Protective Services shall review and provide final approval, on
4 behalf of the department, for each contract related to the care of
5 foster children and their families that has an anticipated value
6 over \$25,000 in any one contract year. Other than the oversight of
7 the Health and Human Services Commission of the department's
8 contracts, this final contract approval authority may not be
9 delegated to other department employees or another agency.

10 (d) The executive director of the Department of Family and
11 Protective Services shall ensure that all files related to
12 contracts for the residential care of foster children are complete
13 and accurately reflect a contractor's actual, updated contract
14 performance on an ongoing basis. The executive director shall
15 ensure that the files are retained and available to the state
16 auditor and other representatives of the state in either paper,
17 digital, or image form, and in accordance with the department's
18 records retention procedures, for no less than ten years after the
19 end of the contract term or final resolution of any issues under a
20 terminated or expired contract, whichever is later. The department
21 shall develop a database using information in the files to track
22 contractor performance, governance, and employees. The department
23 shall use the database to assist the department in performing
24 background criminal and financial checks on proposed contractors
25 and contractors, their corporate and other ownership, related
26 parties, and employees.

27 (e) The department may develop an Internet-based system to

1 enable contractors to review their reimbursement accounts or other
2 pertinent financial data and reconcile their accounts.

3 (b) Section 2155.1443, Government Code, as added by
4 Subsection (a) of this section, applies only to a contract that is
5 entered into or renewed on or after the effective date of this
6 section. A contract entered into or renewed before that date is
7 governed by the law in effect on the date the contract is entered
8 into or renewed and the former law is continued in effect for that
9 purpose.

10 (c) Not later than December 1, 2005, the state auditor shall
11 complete and publish the management review and report required by
12 Section 2155.1443(a)-(b), Government Code, as added by Subsection
13 (a) of this section.

14 (d) Not later than September 1, 2005, the Health and Human
15 Services Commission, in coordination with the state auditor, shall
16 begin the on-site financial reviews of selected contractors
17 required by Section 2155.1443(b), Government Code, as added by
18 Subsection (a) of this section.

19 (e) Not later than December 1, 2005, the Department of
20 Family and Protective Services shall complete the database required
21 by Section 2155.1443(d), Government Code, as added by Subsection
22 (a) of this section.

23 SECTION 35. (a) Section 32.024, Human Resources Code, is
24 amended by adding Subsection (aa) to read as follows:

25 (aa) The Health and Human Services Commission shall include
26 in any agreement described in Section 32.021(b) a provision
27 providing for payment of the cost of providing rehabilitative

1 services to a child in a residential treatment center or a similar
2 facility if:

3 (1) the Department of Family and Protective Services
4 has been named managing conservator of the child; and

5 (2) federal matching funds are available for the
6 payment.

7 (b) This subsection applies if an agreement described in
8 Section 32.021(b), Human Resources Code, does not include on the
9 effective date of this section the provision described in Section
10 32.024(aa), Human Resources Code, as added by Subsection (a) of
11 this section. As authorized by federal law concerning the
12 amendment of state plans for medical assistance, the Health and
13 Human Services Commission, with the cooperation and assistance of
14 the Department of Family and Protective Services, shall amend the
15 agreement to include the provision. The amendment shall be
16 completed as soon as possible after the effective date of this
17 section.

18 SECTION 36. (a) Section 40.058(b)-(c), Human Resources
19 Code, is amended by amending Subsections (b) and (c) and adding
20 Subsections (f)-(i) to read as follows:

21 (b) A contract for the purchase of program-related client
22 services must include:

23 (1) clearly defined goals and outcomes that can be
24 measured to determine whether the objectives of the program are
25 being achieved;

26 (2) clearly defined sanctions or penalties for
27 noncompliance with contract terms; [~~and~~]

1 (3) clearly specified accounting, reporting, and
2 auditing requirements applicable to money received under the
3 contract; and

4 (4) clearly defined performance standards that relate
5 directly to the quality of care provided to residents of foster care
6 facilities.

7 (c) The department shall monitor a contractor's performance
8 under a contract for the purchase of program-related client
9 services. In monitoring performance, the department shall:

10 (1) use a risk-assessment methodology to ensure
11 compliance with financial and performance requirements under the
12 contract; ~~and~~

13 (2) obtain and evaluate program cost information to
14 ensure that all costs, including administrative costs, are
15 reasonable and necessary to achieve program objectives; and

16 (3) review and evaluate all foster care service
17 provider contracts against the performance standards set forth in
18 Subsection (b)(4) for compliance with all performance standards of
19 the contract.

20 (f) The department shall terminate a contract with a
21 foster-care service provider contract if the contractor does not
22 meet the specific performance standards set forth in Subsections
23 (b)(4) and (c)(3). The department may not award or renew a foster
24 care services contract with such contractor if the contractor does
25 not meet such performance standards.

26 (g) The Health and Human Services Commission shall create a
27 foster care performance team to develop performance criteria for

1 foster care contracts. The team shall include contracting experts
2 from multiple state agencies, foster care providers and clients,
3 performance-based contract experts from the state auditor, other
4 state agencies, and other experts in outcome-based contracts. The
5 department shall adopt the clearly defined performance standards
6 for inclusion in foster care contracts as developed and recommended
7 by the team. The team shall develop clearly defined and measurable
8 standards for foster care contracts directly relating to factors
9 within the control of the providers. The team shall develop
10 performance standards which shall include measurable criteria for
11 identification of foster care service providers that do not provide
12 quality care and that should not receive additional contract awards
13 and whose contracts should be revoked.

14 (h) The department shall use performance-based contracting
15 as recommended by the Health & Human Services Commission's foster
16 care performance team as provided in Section 2155.144(h)(2),
17 Government Code.

18 (i) The department shall use alternative payment
19 contracting in its foster care contracts as recommended by the
20 Health & Human Services Commission and provided in Section
21 2155.144(h)(2), Government Code.

22 (b) Section 40.058(b)(4), (c)(3), (f), and (g), Human
23 Resources Code, as added by Subsection (a) of this section, applies
24 only to a program-related client services contract for the delivery
25 of foster care services or residential treatment center services or
26 similar services that is entered into or renewed on or after the
27 effective date of this section. A contract for those services

1 entered into or renewed before that date is governed by the law in
2 effect on the date the contract is entered into or renewed and the
3 former law is continued in effect for that purpose.

4 SECTION 37. (a) Subchapter A, Chapter 42, Human Resources
5 Code, is amended by adding Section 42.003, to read as follow:

6 Sec. 42.003. INFORMATION. The department shall require
7 caseworkers to update information in the foster children database
8 within 24 hours of a change in the child's placement location or
9 runaway status.

10 (b) The Department of Family and Protective Services shall
11 adopt rules and establish standards, policies, and procedures to
12 implement and administer Section 42.003, Human Resources Code, as
13 added by Subsection (a) of this section, not later than January 1,
14 2006.

15 SECTION 38. Subchapter A, Chapter 42, Human Resources Code,
16 is amended by adding Section 42.004 to read as follows:

17 Sec. 42.004. DATABASE OF MISSING CHILDREN. (a) The
18 department shall establish and maintain a separate database
19 dedicated to information about children in the foster care system
20 whose location is unknown.

21 (b) The database shall include photographs and other
22 identifying information, as well as medical and placement history.

23 (c) The information in the database shall be made available
24 to law enforcement agencies, the medical community, schools, and
25 others who would be involved in statewide efforts to locate missing
26 foster children.

27 (d) Notwithstanding any other statute, information

1 described in this section is considered to be public information.

2 SECTION 39. Subchapter A, Chapter 42, Human Resources Code,
3 is amended by adding Section 42.005, to read as follows:

4 Sec. 42.005. INTAKE DATABASE. (a) The department shall
5 ensure that its statewide computerized intake system is designed
6 and operated in such a way that the system identifies each call that
7 relates to a foster child.

8 (b) All cases involving calls to which Subsection (a)
9 applies shall be tracked and assigned in such a way that it is
10 clearly known to any employee working on the case that the matter
11 involves a foster child.

12 (b) The Department of Family and Protective Services shall
13 adopt rules and establish standards, policies, and procedures to
14 implement and administer Section 42.005, Human Resources Code, as
15 added by Subsection (a) of this section, not later than January 1,
16 2006.

17 SECTION 40. (a) Subchapter A, Chapter 42, Human Resources
18 Code, is amended by adding Section 42.006 to read as follows:

19 Sec. 42.006. MISSING CHILDREN WEBSITE. (a) The department
20 shall develop and implement a program to display on its internet
21 website the name, age, photograph, and location information about
22 any child in the foster care system who has been reported as
23 missing. The department may also display other relevant
24 information that the department determines will be useful in
25 efforts to locate and ensure the safety of a child described in this
26 section.

27 (b) Notwithstanding any other statute, information required

1 to be provided under this section is considered to be public
2 information.

3 (c) The department shall regularly update the website by
4 adding additional information that becomes available and by
5 deleting the information about a child who is no longer missing.

6 (b) The Department of Family and Protective Services shall
7 adopt rules and establish standards, policies, and procedures to
8 implement and administer Section 42.006, Human Resources Code, as
9 added by Subsection (a) of this section, not later than January 1,
10 2006.

11 SECTION 41. Section 42.041, Human Resources Code, is
12 amended by adding Subsections (f)-(j) to read as follows:

13 (f) Not later than September 1, 2005, the department shall
14 institute a rulemaking proceeding under Chapter 2001, Government
15 Code, for the complete review and revision of its licensing rules.
16 The revised rules must be more stringent and expressly provide for
17 the licensing of all residential care facilities that are subject
18 to this section, including all therapeutic camps and associated
19 campsites. The revised rules must provide for the revocation of any
20 license for failure to comply with a rule of the Department of State
21 Health Services, for any violation of a rule of the department, or
22 for any other reason as determined by the department. The revised
23 rules shall ensure that the license of any facility engaged in
24 repetitive or recurring violations of the department's licensing
25 standards are revoked. The revised rules shall be adopted in time
26 for them to take effect not later than January 1, 2006.

27 (g) Each therapeutic camp or associated campsite must be

1 licensed by the department. The department's rules that govern the
2 qualifications that apply to staff of a residential treatment
3 center shall apply to all staff of a therapeutic camp. No
4 therapeutic camp or associated campsite may provide residential
5 care for any period longer than 21 days, unless licensed as a
6 permanent therapeutic camp.

7 (h) No officer, director, board member, or administrator of
8 any residential care facility that has been the subject of license
9 revocation, or that has voluntarily relinquished its license upon
10 investigation, may hold a license or operate a residential child
11 care facility in the state, and no licensed facility may employ any
12 such officer, director, board member, or administrator.

13 (i) Each licensed residential childcare facility shall be
14 inspected at least annually by the Texas Department of State Health
15 Services and the Texas Commission on Environmental Quality for
16 compliance with health and environmental regulations. In addition,
17 the department shall conduct at least an annual inspection, and
18 more frequent inspections as may be warranted by conditions, of
19 each licensed residential care facility to ensure compliance with
20 all licensing standards applicable to the facility established by
21 the department. The department through such inspections shall
22 determine compliance with all licensing standards. The department
23 shall provide training at least annually to all staff that visit
24 residential child care facilities that shall include training
25 regarding licensing standards.

26 (j) The department shall establish a database, accessible
27 by all foster care facilities and caregivers, identifying and

1 describing its licensing requirements and the best practices to be
2 followed in providing residential foster care.

3 SECTION 42. (a) Section 42.042, Human Resources Code, is
4 amended by adding Subsection (q) to read as follows:

5 (q) Each licensed residential or foster home shall notify
6 the department and the appropriate local law enforcement agency
7 immediately upon determining that a child is missing from the
8 facility or foster home.

9 (b) The Department of Family and Protective Services shall
10 adopt rules and establish standards, policies, and procedures to
11 implement and administer Section 42.042(q), Human Resources Code,
12 as added by Subsection (a) of this section, not later than January
13 1, 2006.

14 SECTION 43. (a) Subchapter C, Chapter 42, Human Resources
15 Code, is amended by adding Section 42.0428 to read as follows:

16 Sec. 42.0428. PERSONAL RESTRAINT METHODS. (a) The
17 department shall identify and maintain a list of approved behavior
18 management systems that incorporate personal restraints that are
19 appropriate and safe for use with children.

20 (b) The department shall develop licensing standards that
21 include requirements to use only the approved personal restraint
22 techniques and procedures identified under Subsection (a). The
23 standards also must include training requirements for persons
24 utilizing personal restraint at licensed child-care facilities and
25 a requirement that the training be conducted only by persons
26 certified to conduct the training.

27 (c) The department shall adopt rules and establish

1 standards, policies, and procedures to administer this section.

2 (b) The Department of Family and Protective Services shall
3 adopt the rules required by Section 42.0428, Human Resources Code,
4 as added by Subsection (a) of this section, not later than January
5 1, 2006.

6 SECTION 44. Section 42.044, Human Resources Code, is
7 amended by adding Subsections (e)-(g) to read as follows:

8 (e) The department shall maintain standardized criteria and
9 questions for the inspections and investigations conducted by the
10 department's employees under this section.

11 (f) An employee of the department who conducts an inspection
12 or investigation under this section shall document fully in the
13 division's database:

14 (1) the results of the inspection or investigation;

15 (2) the reasoning for any recommendation or decision
16 made by the employee during the inspection or investigation; and

17 (3) any action related to the investigation that is
18 taken by the employee after the inspection or investigation is
19 completed.

20 (g) The department shall maintain an independent quality
21 assurance program that audits the department's inspection or
22 investigatory reports under this section for accuracy and
23 completeness. An audit that is conducted in compliance with
24 generally recognized sampling techniques satisfies the
25 requirements of this subsection. The department shall retain the
26 results of an audit conducted under this subsection for at least
27 five years after the audit is completed.

1 SECTION 45. Section 42.0442, Human Resources Code, is
2 amended by adding Subsection (d) to read as follows:

3 (d) The department shall make the data collected by the
4 department under this section directly available to judges,
5 juvenile probation officers, and investigators from the Juvenile
6 Probation Commission for the purpose of administering programs or
7 enforcing laws within the jurisdiction of the respective judge,
8 juvenile probation officer, or Juvenile Probation Commission
9 investigator. If a child-care inspection database is developed as
10 provided by this section, the department shall make the information
11 available through that database or other available electronic
12 information systems. Access to data information under this
13 subsection shall mean full viewing access.

14 SECTION 46. Section 42.046, Human Resources Code, is
15 amended by adding Subsections (e)-(g) to read as follows:

16 (e) The department shall maintain standardized criteria and
17 questions for the investigations conducted by the department's
18 employees under this section.

19 (f) An employee of the department who conducts an
20 investigation under this section shall document fully in the
21 division's database:

- 22 (1) the results of the investigation;
23 (2) the reasoning for any recommendation or decision
24 made by the employee during the investigation; and
25 (3) any action related to the investigation that is
26 taken by the employee after the investigation is completed.

27 (g) The department shall maintain an independent quality

1 assurance program that audits the department's investigatory
2 reports under this section for accuracy and completeness. An audit
3 that is conducted in compliance with generally recognized sampling
4 techniques satisfies the requirements of this subsection. The
5 department shall retain the results of an audit conducted under
6 this subsection for at least five years after the audit is
7 completed.

8 SECTION 47. Section 42.056, Human Resources Code, is
9 amended by amending Subsection (b) and adding Subsections (d)-(f)
10 to read as follows:

11 (b) The department shall conduct background and criminal
12 history checks using:

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

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

18 (3) the department's records of reported abuse and
19 neglect.

20 (d) The department shall provide the results of a background
21 or criminal history check conducted under this section regarding a
22 prospective employee to a director, owner, or operator of a
23 residential child care facility.

24 (e) The department shall provide information regarding a
25 person's prior employment in Texas residential childcare to any
26 prospective employer as part of a background check under this
27 section.

1 (f) No person described in Subsection (a)(1) or (2) may
2 provide direct care or have direct access to a child in a
3 residential child care facility prior to the completion of the
4 person's background check, criminal history check, and mandatory
5 drug test.

6 SECTION 48. (a) Subchapter C, Chapter 42, Human Resources
7 Code, is amended by adding Section 42.057 to read as follows:

8 Sec. 42.057. RISK ASSESSMENT (a) The department shall
9 perform a risk assessment of any employee or volunteer who has been
10 convicted of a crime before the individual is allowed access to a
11 child who is provided care under this chapter. The department shall
12 develop similar criteria for any person 14 years of age or older who
13 will regularly or frequently be staying at the facility or home
14 while children are being provided care.

15 (b) The department shall develop and maintain risk
16 assessment criteria to ensure the safety and well-being of a
17 child's physical or mental health or welfare.

18 (c) The department shall adopt rules to administer this
19 section.

20 (b) The Department of Family and Protective Services shall
21 adopt rules under Section 42.057, Human Resources Code, as added by
22 Subsection (a) of this section, not later than January 1, 2006.

23 SECTION 49. (a) Subchapter C, Chapter 42, Human Resources
24 Code, is amended by adding Section 42.058 to read as follows:

25 Sec. 42.058. REQUIRED CHILD FATALITY INVESTIGATION.
26 (a) The department shall investigate the death of a child in
27 foster care or other residential care. The investigation shall

1 include a review of the child's living arrangements, the
2 circumstances involved in the death, and any recommendations for
3 policy or procedural changes that could help prevent the death or
4 extend the life of a child in a similar circumstance.

5 (b) The department shall refer all unexpected deaths for
6 investigation in accordance with the procedures outlined in
7 Sections 264.514 and 264.515, Family Code.

8 (c) The department shall prescribe the content and form of
9 information to be included in the child's death investigation file.

10 The file shall include at a minimum:

11 (1) the results of any investigation performed under
12 this section;

13 (2) the department's child death report forms, intake,
14 and licensing investigation reports;

15 (3) any referral to a child fatality committee;

16 (4) any medical examiner report, autopsy report,
17 medical record, police report, photograph, or recording related to
18 the death;

19 (5) the child's facility admissions, treatment, and
20 service plans;

21 (6) a list of any medications administered to the
22 child;

23 (7) the child's foster home placement history records;

24 (8) a list of any licensing violations of the
25 child-care facility that provided care to the child;

26 (9) a description of any prior allegations of abuse or
27 neglect against the child's caregiver; and

1 (10) any log or progress notes concerning the child
2 not otherwise described in this subsection.

3 (d) A copy of the investigation file shall be maintained at
4 both the department's central office and the appropriate department
5 regional office.

6 (e) The department shall forward the full contents of the
7 child's death investigation file to the state risk manager and the
8 appropriate internal and external child fatality review team
9 committees.

10 (f) The department shall adopt rules and establish policies
11 and procedures to administer this section.

12 (g) In this section, "unexpected death" has the meaning
13 assigned by Section 264.501, Family Code.

14 (b) The Department of Family and Protective Services shall
15 adopt the rules required by Section 42.058, Human Resources Code,
16 as added by Subsection (a) of this section, not later than January
17 1, 2006.

18 SECTION 50. (a) Subchapter C, Chapter 42, Human Resources
19 Code is amended by adding Section 42.061 to read as follows:

20 Sec. 42.061. PLACEMENTS OF CERTAIN CHILDREN. (a) The
21 department shall prohibit the placement of a child who has:

22 (1) been convicted of a sexually related offense;
23 (2) pleaded guilty to a sexually related offense;
24 (3) pleaded nolo contendere or no contest to a
25 sexually related offense; or

26 (4) been reported to have a history of inappropriate
27 sexual conduct with a child in a residential child care facility who

1 has no record or history of sexually related conduct.

2 (b) The department shall prohibit the placement of a child
3 who has:

4 (1) been convicted of assault, battery, or other
5 violent offense;

6 (2) pleaded guilty to assault, battery, or other
7 violent offense;

8 (3) pleaded nolo contendere or no contest to assault,
9 battery, or other violent offense; or

10 (4) been reported to have a history of violent
11 behavior with a child in a residential child care facility who does
12 not have a record or history of violent behavior.

13 (c) The department shall prohibit the placement of a child
14 who has a history or record of having been sexually abused with a
15 child in a residential child care facility who does not have a
16 history of being sexually abused, unless a psychologist or licensed
17 therapist has determined that it is in the best interest of both
18 children to be placed together.

19 (d) The department shall review all current placements to
20 ensure compliance with this section.

21 (e) The department shall adopt rules to administer this
22 section.

23 (b) The Department of Family and Protective Services shall
24 adopt the rules required by Section 42.061(e), Human Resources
25 Code, as added by Subsection (a) of this section, not later than
26 January 1, 2006.

27 SECTION 51. Subchapter C, Chapter 42, Human Resources Code,

1 is amended by adding Section 42.062 to read as follows:

2 Sec. 42.062. DRUG TESTING. (a) Each residential child
3 care provider regulated by the department shall establish and
4 maintain a drug testing policy for its employees. The provider may
5 adopt the model drug testing policy adopted by the department under
6 Subsection (b) or another policy.

7 (b) The department by rule shall adopt a model drug testing
8 policy for use by foster care providers. The policy must be
9 designed to ensure the safety of child residents through
10 appropriate drug testing and to protect the rights of employees.
11 The policy must require random, unannounced drug testing for each
12 employee that has direct contact with a child resident of the foster
13 care facility.

14 (c) The department shall require a drug test of a person who
15 directly cares for or has access to a child in a residential care
16 facility within 24 hours after the department receives notice of an
17 allegation that the person has abused drugs.

18 SECTION 52. Subchapter C, Chapter 42, Human Resources Code,
19 is amended by adding Section 42.063 to read as follows:

20 Sec. 42.063. REPORTING OF INCIDENTS AND VIOLATIONS. (a) A
21 person that is required to obtain a license under Section 42.041
22 shall report to the department each serious incident involving a
23 child who receives services from the person, regardless of whether
24 the department is the managing conservator of the child.

25 (b) A person that is required to obtain a license under
26 Section 42.041 shall report to the department any potential
27 violation of a requirement of this chapter.

1 (c) An employee of a person described in Subsection (a) or
2 (b) is required to report suspected abuse or neglect directly to the
3 statewide intake system.

4 (d) An employee or volunteer of a child-care institution,
5 child placing agency, foster home, or foster group home shall
6 report any serious incident directly to the department if the
7 incident involves a child under the care of the institution or home.

8 (e) A foster parent shall report any serious incident
9 directly to the department if the incident involves a child under
10 the care of the parent.

11 (f) An employee of the department shall report to the
12 department any potential violation of a requirement of this
13 chapter.

14 (g) A report under this section must be provided according
15 to the rules adopted and procedures established by the department.

16 (h) In this section, "serious incident" means any suspected
17 or actual incident that threatens or impairs the basic health,
18 safety, or well-being of a child. The term includes:

19 (1) the arrest, abuse, neglect, exploitation, running
20 away, attempted suicide, or death of a child;

21 (2) a critical injury of a child; and

22 (3) an illness of a child that requires
23 hospitalization.

24 SECTION 53. (a) The department shall study the feasibility
25 of requiring psychological testing of all foster care provider
26 employees who have direct contact with children. The purpose of the
27 study is to:

1 (1) identify the psychological tests that would
2 provide a means to identify individuals who may pose a danger or
3 risk to children in foster care;

4 (2) determine the least costly approaches to
5 implementing a policy of required psychological testing; and

6 (3) recommend policies to ensure the appropriate and
7 lawful use of the tests.

8 (b) In conducting the study, the department shall consult
9 with local police, fire, and emergency medical services departments
10 that use psychological testing to screen recruits.

11 (c) The department may use funds appropriated for foster
12 care purposes to perform the study or to contract with another
13 entity to perform the study on the department's behalf.

14 (d) The department shall report the findings of the study to
15 the legislature and the governor.

16 (e) In this section, "department" means the Department of
17 Family and Protective Services.

18 SECTION 54. (a) Except as provided in Subsections (b) and
19 (c) of this section, this Act takes effect immediately if it
20 receives a vote of two-thirds of all the members elected to each
21 house, as provided by Section 39, Article III, Texas Constitution.
22 If this Act does not receive the vote necessary for immediate
23 effect, this Act takes effect September 1, 2005.

24 (b) Sections 6, 7, 8, 9, 13, 14, 24, 37, 38, 39, 40, 41, 42,
25 43, 45, 47, 48, 49, 50, 51, and 53 of this Act take effect September
26 1, 2005.

27 (c) Sections 44, 46, and 52 of this Act take effect January

S.B. No. 22

1 1, 2006.