

AN ACT

relating to the administration, quality, and efficiency of health care, health and human services, and health benefits programs in this state; creating an offense; providing penalties.

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

ARTICLE 1. ADMINISTRATION OF AND EFFICIENCY, COST-SAVING, AND FRAUD PREVENTION MEASURES FOR CERTAIN HEALTH AND HUMAN SERVICES AND HEALTH BENEFITS PROGRAMS

SECTION 1.01. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.02417, 531.024171, and 531.024172 to read as follows:

Sec. 531.02417. MEDICAID NURSING SERVICES ASSESSMENTS.

(a) In this section, "acute nursing services" means home health skilled nursing services, home health aide services, and private duty nursing services.

(b) If cost-effective, the commission shall develop an objective assessment process for use in assessing a Medicaid recipient's needs for acute nursing services. If the commission develops an objective assessment process under this section, the commission shall require that:

(1) the assessment be conducted:

(A) by a state employee or contractor who is a registered nurse who is licensed to practice in this state and who is not the person who will deliver any necessary services to the

1 recipient and is not affiliated with the person who will deliver
2 those services; and

3 (B) in a timely manner so as to protect the health
4 and safety of the recipient by avoiding unnecessary delays in
5 service delivery; and

6 (2) the process include:

7 (A) an assessment of specified criteria and
8 documentation of the assessment results on a standard form;

9 (B) an assessment of whether the recipient should
10 be referred for additional assessments regarding the recipient's
11 needs for therapy services, as defined by Section 531.024171,
12 attendant care services, and durable medical equipment; and

13 (C) completion by the person conducting the
14 assessment of any documents related to obtaining prior
15 authorization for necessary nursing services.

16 (c) If the commission develops the objective assessment
17 process under Subsection (b), the commission shall:

18 (1) implement the process within the Medicaid
19 fee-for-service model and the primary care case management Medicaid
20 managed care model; and

21 (2) take necessary actions, including modifying
22 contracts with managed care organizations under Chapter 533 to the
23 extent allowed by law, to implement the process within the STAR and
24 STAR + PLUS Medicaid managed care programs.

25 (d) Unless the commission determines that the assessment is
26 feasible and beneficial, an assessment under Subsection (b)(2)(B)
27 of whether a recipient should be referred for additional therapy

1 services shall be waived if the recipient's need for therapy
2 services has been established by a recommendation from a therapist
3 providing care prior to discharge of the recipient from a licensed
4 hospital or nursing home. The assessment may not be waived if the
5 recommendation is made by a therapist who will deliver any services
6 to the recipient or is affiliated with a person who will deliver
7 those services when the recipient is discharged from the licensed
8 hospital or nursing home.

9 (e) The executive commissioner shall adopt rules providing
10 for a process by which a provider of acute nursing services who
11 disagrees with the results of the assessment conducted under
12 Subsection (b) may request and obtain a review of those results.

13 Sec. 531.024171. THERAPY SERVICES ASSESSMENTS. (a) In
14 this section, "therapy services" includes occupational, physical,
15 and speech therapy services.

16 (b) After implementing the objective assessment process for
17 acute nursing services in accordance with Section 531.02417, the
18 commission shall consider whether implementing age- and
19 diagnosis-appropriate objective assessment processes for assessing
20 the needs of a Medicaid recipient for therapy services would be
21 feasible and beneficial.

22 (c) If the commission determines that implementing age- and
23 diagnosis-appropriate processes with respect to one or more types
24 of therapy services is feasible and would be beneficial, the
25 commission may implement the processes within:

- 26 (1) the Medicaid fee-for-service model;
27 (2) the primary care case management Medicaid managed

1 care model; and

2 (3) the STAR and STAR + PLUS Medicaid managed care
3 programs.

4 (d) An objective assessment process implemented under this
5 section must include a process that allows a provider of therapy
6 services to request and obtain a review of the results of an
7 assessment conducted as provided by this section that is comparable
8 to the process implemented under rules adopted under Section
9 531.02417(e).

10 Sec. 531.024172. ELECTRONIC VISIT VERIFICATION SYSTEM.

11 (a) In this section, "acute nursing services" has the meaning
12 assigned by Section 531.02417.

13 (b) If it is cost-effective and feasible, the commission
14 shall implement an electronic visit verification system to
15 electronically verify and document, through a telephone or
16 computer-based system, basic information relating to the delivery
17 of Medicaid acute nursing services, including:

18 (1) the provider's name;

19 (2) the recipient's name; and

20 (3) the date and time the provider begins and ends each
21 service delivery visit.

22 (b) Not later than September 1, 2012, the Health and Human
23 Services Commission shall implement the electronic visit
24 verification system required by Section 531.024172, Government
25 Code, as added by this section, if the commission determines that
26 implementation of that system is cost-effective and feasible.

27 SECTION 1.02. (a) Subsection (e), Section 533.0025,

1 Government Code, is amended to read as follows:

2 (e) The commission shall determine the most cost-effective
3 alignment of managed care service delivery areas. The commissioner
4 may consider the number of lives impacted, the usual source of
5 health care services for residents in an area, and other factors
6 that impact the delivery of health care services in the area
7 ~~[Notwithstanding Subsection (b)(1), the commission may not provide~~
8 ~~medical assistance using a health maintenance organization in~~
9 ~~Cameron County, Hidalgo County, or Maverick County]~~.

10 (b) Subchapter A, Chapter 533, Government Code, is amended
11 by adding Sections 533.0027, 533.0028, and 533.0029 to read as
12 follows:

13 Sec. 533.0027. PROCEDURES TO ENSURE CERTAIN RECIPIENTS ARE
14 ENROLLED IN SAME MANAGED CARE PLAN. The commission shall ensure
15 that all recipients who are children and who reside in the same
16 household may, at the family's election, be enrolled in the same
17 managed care plan.

18 Sec. 533.0028. EVALUATION OF CERTAIN STAR + PLUS MEDICAID
19 MANAGED CARE PROGRAM SERVICES. The external quality review
20 organization shall periodically conduct studies and surveys to
21 assess the quality of care and satisfaction with health care
22 services provided to enrollees in the STAR + PLUS Medicaid managed
23 care program who are eligible to receive health care benefits under
24 both the Medicaid and Medicare programs.

25 Sec. 533.0029. PROMOTION AND PRINCIPLES OF
26 PATIENT-CENTERED MEDICAL HOMES FOR RECIPIENTS. (a) For purposes
27 of this section, a "patient-centered medical home" means a medical

1 relationship:

2 (1) between a primary care physician and a child or
3 adult patient in which the physician:

4 (A) provides comprehensive primary care to the
5 patient; and

6 (B) facilitates partnerships between the
7 physician, the patient, acute care and other care providers, and,
8 when appropriate, the patient's family; and

9 (2) that encompasses the following primary
10 principles:

11 (A) the patient has an ongoing relationship with
12 the physician, who is trained to be the first contact for the
13 patient and to provide continuous and comprehensive care to the
14 patient;

15 (B) the physician leads a team of individuals at
16 the practice level who are collectively responsible for the ongoing
17 care of the patient;

18 (C) the physician is responsible for providing
19 all of the care the patient needs or for coordinating with other
20 qualified providers to provide care to the patient throughout the
21 patient's life, including preventive care, acute care, chronic
22 care, and end-of-life care;

23 (D) the patient's care is coordinated across
24 health care facilities and the patient's community and is
25 facilitated by registries, information technology, and health
26 information exchange systems to ensure that the patient receives
27 care when and where the patient wants and needs the care and in a

1 culturally and linguistically appropriate manner; and

2 (E) quality and safe care is provided.

3 (b) The commission shall, to the extent possible, work to
4 ensure that managed care organizations:

5 (1) promote the development of patient-centered
6 medical homes for recipients; and

7 (2) provide payment incentives for providers that meet
8 the requirements of a patient-centered medical home.

9 (c) Section 533.003, Government Code, is amended to read as
10 follows:

11 Sec. 533.003. CONSIDERATIONS IN AWARDING CONTRACTS.

12 (a) In awarding contracts to managed care organizations, the
13 commission shall:

14 (1) give preference to organizations that have
15 significant participation in the organization's provider network
16 from each health care provider in the region who has traditionally
17 provided care to Medicaid and charity care patients;

18 (2) give extra consideration to organizations that
19 agree to assure continuity of care for at least three months beyond
20 the period of Medicaid eligibility for recipients;

21 (3) consider the need to use different managed care
22 plans to meet the needs of different populations; ~~and~~

23 (4) consider the ability of organizations to process
24 Medicaid claims electronically; and

25 (5) in the initial implementation of managed care in
26 the South Texas service region, give extra consideration to an
27 organization that either:

1 (A) is locally owned, managed, and operated, if
2 one exists; or

3 (B) is in compliance with the requirements of
4 Section 533.004.

5 (b) The commission, in considering approval of a
6 subcontract between a managed care organization and a pharmacy
7 benefit manager for the provision of prescription drug benefits
8 under the Medicaid program, shall review and consider whether the
9 pharmacy benefit manager has been in the preceding three years:

10 (1) convicted of an offense involving a material
11 misrepresentation or an act of fraud or of another violation of
12 state or federal criminal law;

13 (2) adjudicated to have committed a breach of
14 contract; or

15 (3) assessed a penalty or fine in the amount of
16 \$500,000 or more in a state or federal administrative proceeding.

17 (d) Section 533.005, Government Code, is amended by
18 amending Subsection (a) and adding Subsection (a-1) to read as
19 follows:

20 (a) A contract between a managed care organization and the
21 commission for the organization to provide health care services to
22 recipients must contain:

23 (1) procedures to ensure accountability to the state
24 for the provision of health care services, including procedures for
25 financial reporting, quality assurance, utilization review, and
26 assurance of contract and subcontract compliance;

27 (2) capitation rates that ensure the cost-effective

1 provision of quality health care;

2 (3) a requirement that the managed care organization
3 provide ready access to a person who assists recipients in
4 resolving issues relating to enrollment, plan administration,
5 education and training, access to services, and grievance
6 procedures;

7 (4) a requirement that the managed care organization
8 provide ready access to a person who assists providers in resolving
9 issues relating to payment, plan administration, education and
10 training, and grievance procedures;

11 (5) a requirement that the managed care organization
12 provide information and referral about the availability of
13 educational, social, and other community services that could
14 benefit a recipient;

15 (6) procedures for recipient outreach and education;

16 (7) a requirement that the managed care organization
17 make payment to a physician or provider for health care services
18 rendered to a recipient under a managed care plan not later than the
19 45th day after the date a claim for payment is received with
20 documentation reasonably necessary for the managed care
21 organization to process the claim, or within a period, not to exceed
22 60 days, specified by a written agreement between the physician or
23 provider and the managed care organization;

24 (8) a requirement that the commission, on the date of a
25 recipient's enrollment in a managed care plan issued by the managed
26 care organization, inform the organization of the recipient's
27 Medicaid certification date;

1 (9) a requirement that the managed care organization
2 comply with Section 533.006 as a condition of contract retention
3 and renewal;

4 (10) a requirement that the managed care organization
5 provide the information required by Section 533.012 and otherwise
6 comply and cooperate with the commission's office of inspector
7 general and the office of the attorney general;

8 (11) a requirement that the managed care
9 organization's usages of out-of-network providers or groups of
10 out-of-network providers may not exceed limits for those usages
11 relating to total inpatient admissions, total outpatient services,
12 and emergency room admissions determined by the commission;

13 (12) if the commission finds that a managed care
14 organization has violated Subdivision (11), a requirement that the
15 managed care organization reimburse an out-of-network provider for
16 health care services at a rate that is equal to the allowable rate
17 for those services, as determined under Sections 32.028 and
18 32.0281, Human Resources Code;

19 (13) a requirement that the organization use advanced
20 practice nurses in addition to physicians as primary care providers
21 to increase the availability of primary care providers in the
22 organization's provider network;

23 (14) a requirement that the managed care organization
24 reimburse a federally qualified health center or rural health
25 clinic for health care services provided to a recipient outside of
26 regular business hours, including on a weekend day or holiday, at a
27 rate that is equal to the allowable rate for those services as

1 determined under Section 32.028, Human Resources Code, if the
2 recipient does not have a referral from the recipient's primary
3 care physician; ~~and~~

4 (15) a requirement that the managed care organization
5 develop, implement, and maintain a system for tracking and
6 resolving all provider appeals related to claims payment, including
7 a process that will require:

8 (A) a tracking mechanism to document the status
9 and final disposition of each provider's claims payment appeal;

10 (B) the contracting with physicians who are not
11 network providers and who are of the same or related specialty as
12 the appealing physician to resolve claims disputes related to
13 denial on the basis of medical necessity that remain unresolved
14 subsequent to a provider appeal; and

15 (C) the determination of the physician resolving
16 the dispute to be binding on the managed care organization and
17 provider;

18 (16) a requirement that a medical director who is
19 authorized to make medical necessity determinations is available to
20 the region where the managed care organization provides health care
21 services;

22 (17) a requirement that the managed care organization
23 ensure that a medical director and patient care coordinators and
24 provider and recipient support services personnel are located in
25 the South Texas service region, if the managed care organization
26 provides a managed care plan in that region;

27 (18) a requirement that the managed care organization

1 provide special programs and materials for recipients with limited
2 English proficiency or low literacy skills;

3 (19) a requirement that the managed care organization
4 develop and establish a process for responding to provider appeals
5 in the region where the organization provides health care services;

6 (20) a requirement that the managed care organization
7 develop and submit to the commission, before the organization
8 begins to provide health care services to recipients, a
9 comprehensive plan that describes how the organization's provider
10 network will provide recipients sufficient access to:

11 (A) preventive care;

12 (B) primary care;

13 (C) specialty care;

14 (D) after-hours urgent care; and

15 (E) chronic care;

16 (21) a requirement that the managed care organization
17 demonstrate to the commission, before the organization begins to
18 provide health care services to recipients, that:

19 (A) the organization's provider network has the
20 capacity to serve the number of recipients expected to enroll in a
21 managed care plan offered by the organization;

22 (B) the organization's provider network
23 includes:

24 (i) a sufficient number of primary care
25 providers;

26 (ii) a sufficient variety of provider
27 types; and

1 (iii) providers located throughout the
2 region where the organization will provide health care services;
3 and

4 (C) health care services will be accessible to
5 recipients through the organization's provider network to a
6 comparable extent that health care services would be available to
7 recipients under a fee-for-service or primary care case management
8 model of Medicaid managed care;

9 (22) a requirement that the managed care organization
10 develop a monitoring program for measuring the quality of the
11 health care services provided by the organization's provider
12 network that:

13 (A) incorporates the National Committee for
14 Quality Assurance's Healthcare Effectiveness Data and Information
15 Set (HEDIS) measures;

16 (B) focuses on measuring outcomes; and

17 (C) includes the collection and analysis of
18 clinical data relating to prenatal care, preventive care, mental
19 health care, and the treatment of acute and chronic health
20 conditions and substance abuse;

21 (23) subject to Subsection (a-1), a requirement that
22 the managed care organization develop, implement, and maintain an
23 outpatient pharmacy benefit plan for its enrolled recipients:

24 (A) that exclusively employs the vendor drug
25 program formulary and preserves the state's ability to reduce
26 waste, fraud, and abuse under the Medicaid program;

27 (B) that adheres to the applicable preferred drug

1 list adopted by the commission under Section 531.072;

2 (C) that includes the prior authorization
3 procedures and requirements prescribed by or implemented under
4 Sections 531.073(b), (c), and (g) for the vendor drug program;

5 (D) for purposes of which the managed care
6 organization:

7 (i) may not negotiate or collect rebates
8 associated with pharmacy products on the vendor drug program
9 formulary; and

10 (ii) may not receive drug rebate or pricing
11 information that is confidential under Section 531.071;

12 (E) that complies with the prohibition under
13 Section 531.089;

14 (F) under which the managed care organization may
15 not prohibit, limit, or interfere with a recipient's selection of a
16 pharmacy or pharmacist of the recipient's choice for the provision
17 of pharmaceutical services under the plan through the imposition of
18 different copayments;

19 (G) that allows the managed care organization or
20 any subcontracted pharmacy benefit manager to contract with a
21 pharmacist or pharmacy providers separately for specialty pharmacy
22 services, except that:

23 (i) the managed care organization and
24 pharmacy benefit manager are prohibited from allowing exclusive
25 contracts with a specialty pharmacy owned wholly or partly by the
26 pharmacy benefit manager responsible for the administration of the
27 pharmacy benefit program; and

1 (ii) the managed care organization and
2 pharmacy benefit manager must adopt policies and procedures for
3 reclassifying prescription drugs from retail to specialty drugs,
4 and those policies and procedures must be consistent with rules
5 adopted by the executive commissioner and include notice to network
6 pharmacy providers from the managed care organization;

7 (H) under which the managed care organization may
8 not prevent a pharmacy or pharmacist from participating as a
9 provider if the pharmacy or pharmacist agrees to comply with the
10 financial terms and conditions of the contract as well as other
11 reasonable administrative and professional terms and conditions of
12 the contract;

13 (I) under which the managed care organization may
14 include mail-order pharmacies in its networks, but may not require
15 enrolled recipients to use those pharmacies, and may not charge an
16 enrolled recipient who opts to use this service a fee, including
17 postage and handling fees; and

18 (J) under which the managed care organization or
19 pharmacy benefit manager, as applicable, must pay claims in
20 accordance with Section 843.339, Insurance Code; and

21 (24) a requirement that the managed care organization
22 and any entity with which the managed care organization contracts
23 for the performance of services under a managed care plan disclose,
24 at no cost, to the commission and, on request, the office of the
25 attorney general all discounts, incentives, rebates, fees, free
26 goods, bundling arrangements, and other agreements affecting the
27 net cost of goods or services provided under the plan.

1 (a-1) The requirements imposed by Subsections (a)(23)(A),
2 (B), and (C) do not apply, and may not be enforced, on and after
3 August 31, 2013.

4 (e) Subchapter A, Chapter 533, Government Code, is amended
5 by adding Section 533.0066 to read as follows:

6 Sec. 533.0066. PROVIDER INCENTIVES. The commission shall,
7 to the extent possible, work to ensure that managed care
8 organizations provide payment incentives to health care providers
9 in the organizations' networks whose performance in promoting
10 recipients' use of preventive services exceeds minimum established
11 standards.

12 (f) Section 533.0071, Government Code, is amended to read as
13 follows:

14 Sec. 533.0071. ADMINISTRATION OF CONTRACTS. The commission
15 shall make every effort to improve the administration of contracts
16 with managed care organizations. To improve the administration of
17 these contracts, the commission shall:

18 (1) ensure that the commission has appropriate
19 expertise and qualified staff to effectively manage contracts with
20 managed care organizations under the Medicaid managed care program;

21 (2) evaluate options for Medicaid payment recovery
22 from managed care organizations if the enrollee dies or is
23 incarcerated or if an enrollee is enrolled in more than one state
24 program or is covered by another liable third party insurer;

25 (3) maximize Medicaid payment recovery options by
26 contracting with private vendors to assist in the recovery of
27 capitation payments, payments from other liable third parties, and

1 other payments made to managed care organizations with respect to
2 enrollees who leave the managed care program;

3 (4) decrease the administrative burdens of managed
4 care for the state, the managed care organizations, and the
5 providers under managed care networks to the extent that those
6 changes are compatible with state law and existing Medicaid managed
7 care contracts, including decreasing those burdens by:

8 (A) where possible, decreasing the duplication
9 of administrative reporting requirements for the managed care
10 organizations, such as requirements for the submission of encounter
11 data, quality reports, historically underutilized business
12 reports, and claims payment summary reports;

13 (B) allowing managed care organizations to
14 provide updated address information directly to the commission for
15 correction in the state system;

16 (C) promoting consistency and uniformity among
17 managed care organization policies, including policies relating to
18 the preauthorization process, lengths of hospital stays, filing
19 deadlines, levels of care, and case management services; ~~and~~

20 (D) reviewing the appropriateness of primary
21 care case management requirements in the admission and clinical
22 criteria process, such as requirements relating to including a
23 separate cover sheet for all communications, submitting
24 handwritten communications instead of electronic or typed review
25 processes, and admitting patients listed on separate
26 notifications; and

27 (E) providing a single portal through which

1 providers in any managed care organization's provider network may
2 submit claims; and

3 (5) reserve the right to amend the managed care
4 organization's process for resolving provider appeals of denials
5 based on medical necessity to include an independent review process
6 established by the commission for final determination of these
7 disputes.

8 (g) Subchapter A, Chapter 533, Government Code, is amended
9 by adding Section 533.0073 to read as follows:

10 Sec. 533.0073. MEDICAL DIRECTOR QUALIFICATIONS. A person
11 who serves as a medical director for a managed care plan must be a
12 physician licensed to practice medicine in this state under
13 Subtitle B, Title 3, Occupations Code.

14 (h) Subsections (a) and (c), Section 533.0076, Government
15 Code, are amended to read as follows:

16 (a) Except as provided by Subsections (b) and (c), and to
17 the extent permitted by federal law, ~~[the commission may prohibit]~~
18 a recipient enrolled ~~[from disenrolling]~~ in a managed care plan
19 under this chapter may not disenroll from that plan and enroll
20 ~~[enrolling]~~ in another managed care plan during the 12-month period
21 after the date the recipient initially enrolls in a plan.

22 (c) The commission shall allow a recipient who is enrolled
23 in a managed care plan under this chapter to disenroll from ~~[in]~~
24 that plan and enroll in another managed care plan:

25 (1) at any time for cause in accordance with federal
26 law; and

27 (2) once for any reason after the periods described by

1 Subsections (a) and (b).

2 (i) Subsections (a), (b), (c), and (e), Section 533.012,
3 Government Code, are amended to read as follows:

4 (a) Each managed care organization contracting with the
5 commission under this chapter shall submit the following, at no
6 cost, to the commission and, on request, the office of the attorney
7 general:

8 (1) a description of any financial or other business
9 relationship between the organization and any subcontractor
10 providing health care services under the contract;

11 (2) a copy of each type of contract between the
12 organization and a subcontractor relating to the delivery of or
13 payment for health care services;

14 (3) a description of the fraud control program used by
15 any subcontractor that delivers health care services; and

16 (4) a description and breakdown of all funds paid to or
17 by the managed care organization, including a health maintenance
18 organization, primary care case management provider, pharmacy
19 benefit manager, and [~~an~~] exclusive provider organization,
20 necessary for the commission to determine the actual cost of
21 administering the managed care plan.

22 (b) The information submitted under this section must be
23 submitted in the form required by the commission or the office of
24 the attorney general, as applicable, and be updated as required by
25 the commission or the office of the attorney general, as
26 applicable.

27 (c) The commission's office of investigations and

1 enforcement or the office of the attorney general, as applicable,
2 shall review the information submitted under this section as
3 appropriate in the investigation of fraud in the Medicaid managed
4 care program.

5 (e) Information submitted to the commission or the office of
6 the attorney general, as applicable, under Subsection (a)(1) is
7 confidential and not subject to disclosure under Chapter 552,
8 Government Code.

9 (j) The heading to Section 32.046, Human Resources Code, is
10 amended to read as follows:

11 Sec. 32.046. [~~VENDOR DRUG PROGRAM,~~] SANCTIONS AND PENALTIES
12 RELATED TO THE PROVISION OF PHARMACY PRODUCTS.

13 (k) Subsection (a), Section 32.046, Human Resources Code,
14 is amended to read as follows:

15 (a) The executive commissioner of the Health and Human
16 Services Commission [~~department~~] shall adopt rules governing
17 sanctions and penalties that apply to a provider who participates
18 in the vendor drug program or is enrolled as a network pharmacy
19 provider of a managed care organization contracting with the
20 commission under Chapter 533, Government Code, or its subcontractor
21 and who submits an improper claim for reimbursement under the
22 program.

23 (l) Subsection (d), Section 533.012, Government Code, is
24 repealed.

25 (m) Not later than December 1, 2013, the Health and Human
26 Services Commission shall submit a report to the legislature
27 regarding the commission's work to ensure that Medicaid managed

1 care organizations promote the development of patient-centered
2 medical homes for recipients of medical assistance as required
3 under Section 533.0029, Government Code, as added by this section.

4 (n) The Health and Human Services Commission shall, in a
5 contract between the commission and a managed care organization
6 under Chapter 533, Government Code, that is entered into or renewed
7 on or after the effective date of this Act, include the provisions
8 required by Subsection (a), Section 533.005, Government Code, as
9 amended by this section.

10 (o) Section 533.0073, Government Code, as added by this
11 section, applies only to a person hired or otherwise retained as the
12 medical director of a Medicaid managed care plan on or after the
13 effective date of this Act. A person hired or otherwise retained
14 before the effective date of this Act is governed by the law in
15 effect immediately before the effective date of this Act, and that
16 law is continued in effect for that purpose.

17 (p) Subsections (a) and (c), Section 533.0076, Government
18 Code, as amended by this section, apply only to a request for
19 disenrollment from a Medicaid managed care plan under Chapter 533,
20 Government Code, made by a recipient on or after the effective date
21 of this Act. A request made by a recipient before that date is
22 governed by the law in effect on the date the request was made, and
23 the former law is continued in effect for that purpose.

24 SECTION 1.03. (a) Section 62.101, Health and Safety Code,
25 is amended by adding Subsection (a-1) to read as follows:

26 (a-1) A child who is the dependent of an employee of an
27 agency of this state and who meets the requirements of Subsection

1 (a) may be eligible for health benefits coverage in accordance with
2 42 U.S.C. Section 1397jj(b)(6) and any other applicable law or
3 regulations.

4 (b) Sections 1551.159 and 1551.312, Insurance Code, are
5 repealed.

6 (c) The State Kids Insurance Program operated by the
7 Employees Retirement System of Texas is abolished on the effective
8 date of this Act. The Health and Human Services Commission shall:

9 (1) establish a process in cooperation with the
10 Employees Retirement System of Texas to facilitate the enrollment
11 of eligible children in the child health plan program established
12 under Chapter 62, Health and Safety Code, on or before the date
13 those children are scheduled to stop receiving dependent child
14 coverage under the State Kids Insurance Program; and

15 (2) modify any applicable administrative procedures
16 to ensure that children described by this subsection maintain
17 continuous health benefits coverage while transitioning from
18 enrollment in the State Kids Insurance Program to enrollment in the
19 child health plan program.

20 SECTION 1.04. (a) Subchapter B, Chapter 31, Human
21 Resources Code, is amended by adding Section 31.0326 to read as
22 follows:

23 Sec. 31.0326. VERIFICATION OF IDENTITY AND PREVENTION OF
24 DUPLICATE PARTICIPATION. The Health and Human Services Commission
25 shall use appropriate technology to:

26 (1) confirm the identity of applicants for benefits
27 under the financial assistance program; and

1 (2) prevent duplicate participation in the program by
2 a person.

3 (b) Chapter 33, Human Resources Code, is amended by adding
4 Section 33.0231 to read as follows:

5 Sec. 33.0231. VERIFICATION OF IDENTITY AND PREVENTION OF
6 DUPLICATE PARTICIPATION IN SNAP. The department shall use
7 appropriate technology to:

8 (1) confirm the identity of applicants for benefits
9 under the supplemental nutrition assistance program; and

10 (2) prevent duplicate participation in the program by
11 a person.

12 (c) Section 531.109, Government Code, is amended by adding
13 Subsection (d) to read as follows:

14 (d) Absent an allegation of fraud, waste, or abuse, the
15 commission may conduct an annual review of claims under this
16 section only after the commission has completed the prior year's
17 annual review of claims.

18 (d) If H.B. No. 710, Acts of the 82nd Legislature, Regular
19 Session, 2011, does not become law, Section 31.0325, Human
20 Resources Code, is repealed.

21 (e) If H.B. No. 710, Acts of the 82nd Legislature, Regular
22 Session, 2011, becomes law, Section 31.0326, Human Resources Code,
23 as added by this section, has no effect.

24 (f) If H.B. No. 710, Acts of the 82nd Legislature, Regular
25 Session, 2011, becomes law, Section 33.0231, Human Resources Code,
26 as added by that Act, is repealed.

27 SECTION 1.05. (a) Section 242.033, Health and Safety Code,

1 is amended by amending Subsection (d) and adding Subsection (g) to
2 read as follows:

3 (d) Except as provided by Subsection (f), a license is
4 renewable every three [~~two~~] years after:

5 (1) an inspection, unless an inspection is not
6 required as provided by Section 242.047;

7 (2) payment of the license fee; and

8 (3) department approval of the report filed every
9 three [~~two~~] years by the licensee.

10 (g) The executive commissioner by rule shall adopt a system
11 under which an appropriate number of licenses issued by the
12 department under this chapter expire on staggered dates occurring
13 in each three-year period. If the expiration date of a license
14 changes as a result of this subsection, the department shall
15 prorate the licensing fee relating to that license as appropriate.

16 (b) Subsection (e-1), Section 242.159, Health and Safety
17 Code, is amended to read as follows:

18 (e-1) An institution is not required to comply with
19 Subsections (a) and (e) until September 1, 2014 [~~2012~~]. This
20 subsection expires January 1, 2015 [~~2013~~].

21 (c) Subtitle B, Title 4, Health and Safety Code, is amended
22 by adding Chapter 260A to read as follows:

23 CHAPTER 260A. REPORTS OF ABUSE, NEGLECT, AND EXPLOITATION OF
24 RESIDENTS OF CERTAIN FACILITIES

25 Sec. 260A.001. DEFINITIONS. In this chapter:

26 (1) "Abuse" means:

27 (A) the negligent or wilful infliction of injury,

1 unreasonable confinement, intimidation, or cruel punishment with
2 resulting physical or emotional harm or pain to a resident by the
3 resident's caregiver, family member, or other individual who has an
4 ongoing relationship with the resident; or

5 (B) sexual abuse of a resident, including any
6 involuntary or nonconsensual sexual conduct that would constitute
7 an offense under Section 21.08, Penal Code (indecent exposure), or
8 Chapter 22, Penal Code (assaultive offenses), committed by the
9 resident's caregiver, family member, or other individual who has an
10 ongoing relationship with the resident.

11 (2) "Department" means the Department of Aging and
12 Disability Services.

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

15 (4) "Exploitation" means the illegal or improper act
16 or process of a caregiver, family member, or other individual who
17 has an ongoing relationship with the resident using the resources
18 of a resident for monetary or personal benefit, profit, or gain
19 without the informed consent of the resident.

20 (5) "Facility" means:

21 (A) an institution as that term is defined by
22 Section 242.002; and

23 (B) an assisted living facility as that term is
24 defined by Section 247.002.

25 (6) "Neglect" means the failure to provide for one's
26 self the goods or services, including medical services, which are
27 necessary to avoid physical or emotional harm or pain or the failure

1 of a caregiver to provide such goods or services.

2 (7) "Resident" means an individual, including a
3 patient, who resides in a facility.

4 Sec. 260A.002. REPORTING OF ABUSE, NEGLECT, AND
5 EXPLOITATION. (a) A person, including an owner or employee of a
6 facility, who has cause to believe that the physical or mental
7 health or welfare of a resident has been or may be adversely
8 affected by abuse, neglect, or exploitation caused by another
9 person shall report the abuse, neglect, or exploitation in
10 accordance with this chapter.

11 (b) Each facility shall require each employee of the
12 facility, as a condition of employment with the facility, to sign a
13 statement that the employee realizes that the employee may be
14 criminally liable for failure to report those abuses.

15 (c) A person shall make an oral report immediately on
16 learning of the abuse, neglect, or exploitation and shall make a
17 written report to the department not later than the fifth day after
18 the oral report is made.

19 Sec. 260A.003. CONTENTS OF REPORT. (a) A report of abuse,
20 neglect, or exploitation is nonaccusatory and reflects the
21 reporting person's belief that a resident has been or will be
22 abused, neglected, or exploited or has died of abuse or neglect.

23 (b) The report must contain:

24 (1) the name and address of the resident;

25 (2) the name and address of the person responsible for
26 the care of the resident, if available; and

27 (3) other relevant information.

1 (c) Except for an anonymous report under Section 260A.004, a
2 report of abuse, neglect, or exploitation under Section 260A.002
3 should also include the address or phone number of the person making
4 the report so that an investigator can contact the person for any
5 necessary additional information. The phone number, address, and
6 name of the person making the report must be deleted from any copy
7 of any type of report that is released to the public, to the
8 facility, or to an owner or agent of the facility.

9 Sec. 260A.004. ANONYMOUS REPORTS OF ABUSE, NEGLECT, OR
10 EXPLOITATION. (a) An anonymous report of abuse, neglect, or
11 exploitation, although not encouraged, shall be received and acted
12 on in the same manner as an acknowledged report.

13 (b) An anonymous report about a specific individual that
14 accuses the individual of abuse, neglect, or exploitation need not
15 be investigated.

16 Sec. 260A.005. TELEPHONE HOTLINE; PROCESSING OF REPORTS.

17 (a) The department shall operate the department's telephone
18 hotline to:

19 (1) receive reports of abuse, neglect, or
20 exploitation; and

21 (2) dispatch investigators.

22 (b) A report of abuse, neglect, or exploitation shall be
23 made to the department's telephone hotline or to a local or state
24 law enforcement agency. A report made relating to abuse, neglect,
25 or exploitation or another complaint described by Section
26 260A.007(c)(1) shall be made to the department's telephone hotline
27 and to the law enforcement agency described by Section 260A.017(a).

1 (c) Except as provided by Section 260A.017, a local or state
2 law enforcement agency that receives a report of abuse, neglect, or
3 exploitation shall refer the report to the department.

4 Sec. 260A.006. NOTICE. (a) Each facility shall
5 prominently and conspicuously post a sign for display in a public
6 area of the facility that is readily available to residents,
7 employees, and visitors.

8 (b) The sign must include the statement: CASES OF SUSPECTED
9 ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO THE TEXAS
10 DEPARTMENT OF AGING AND DISABILITY SERVICES BY CALLING (insert
11 telephone hotline number).

12 (c) A facility shall provide the telephone hotline number to
13 an immediate family member of a resident of the facility upon the
14 resident's admission into the facility.

15 Sec. 260A.007. INVESTIGATION AND REPORT OF DEPARTMENT.

16 (a) The department shall make a thorough investigation after
17 receiving an oral or written report of abuse, neglect, or
18 exploitation under Section 260A.002 or another complaint alleging
19 abuse, neglect, or exploitation.

20 (b) The primary purpose of the investigation is the
21 protection of the resident.

22 (c) The department shall begin the investigation:

23 (1) within 24 hours after receipt of the report or
24 other allegation, if the report of abuse, neglect, exploitation, or
25 other complaint alleges that:

26 (A) a resident's health or safety is in imminent
27 danger;

1 (B) a resident has recently died because of
2 conduct alleged in the report of abuse, neglect, exploitation, or
3 other complaint;

4 (C) a resident has been hospitalized or been
5 treated in an emergency room because of conduct alleged in the
6 report of abuse, neglect, exploitation, or other complaint;

7 (D) a resident has been a victim of any act or
8 attempted act described by Section 21.02, 21.11, 22.011, or 22.021,
9 Penal Code; or

10 (E) a resident has suffered bodily injury, as
11 that term is defined by Section 1.07, Penal Code, because of conduct
12 alleged in the report of abuse, neglect, exploitation, or other
13 complaint; or

14 (2) before the end of the next working day after the
15 date of receipt of the report of abuse, neglect, exploitation, or
16 other complaint, if the report or complaint alleges the existence
17 of circumstances that could result in abuse, neglect, or
18 exploitation and that could place a resident's health or safety in
19 imminent danger.

20 (d) The department shall adopt rules governing the conduct
21 of investigations, including procedures to ensure that the
22 complainant and the resident, the resident's next of kin, and any
23 person designated to receive information concerning the resident
24 receive periodic information regarding the investigation.

25 (e) In investigating the report of abuse, neglect,
26 exploitation, or other complaint, the investigator for the
27 department shall:

1 (1) make an unannounced visit to the facility to
2 determine the nature and cause of the alleged abuse, neglect, or
3 exploitation of the resident;

4 (2) interview each available witness, including the
5 resident who suffered the alleged abuse, neglect, or exploitation
6 if the resident is able to communicate or another resident or other
7 witness identified by any source as having personal knowledge
8 relevant to the report of abuse, neglect, exploitation, or other
9 complaint;

10 (3) personally inspect any physical circumstance that
11 is relevant and material to the report of abuse, neglect,
12 exploitation, or other complaint and that may be objectively
13 observed;

14 (4) make a photographic record of any injury to a
15 resident, subject to Subsection (n); and

16 (5) write an investigation report that includes:
17 (A) the investigator's personal observations;
18 (B) a review of relevant documents and records;
19 (C) a summary of each witness statement,
20 including the statement of the resident that suffered the alleged
21 abuse, neglect, or exploitation and any other resident interviewed
22 in the investigation; and

23 (D) a statement of the factual basis for the
24 findings for each incident or problem alleged in the report or other
25 allegation.

26 (f) An investigator for an investigating agency shall
27 conduct an interview under Subsection (e)(2) in private unless the

1 witness expressly requests that the interview not be private.

2 (g) Not later than the 30th day after the date the
3 investigation is complete, the investigator shall prepare the
4 written report required by Subsection (e). The department shall
5 make the investigation report available to the public on request
6 after the date the department's letter of determination is
7 complete. The department shall delete from any copy made available
8 to the public:

9 (1) the name of:

10 (A) any resident, unless the department receives
11 written authorization from a resident or the resident's legal
12 representative requesting the resident's name be left in the
13 report;

14 (B) the person making the report of abuse,
15 neglect, exploitation, or other complaint; and

16 (C) an individual interviewed in the
17 investigation; and

18 (2) photographs of any injury to the resident.

19 (h) In the investigation, the department shall determine:

20 (1) the nature, extent, and cause of the abuse,
21 neglect, or exploitation;

22 (2) the identity of the person responsible for the
23 abuse, neglect, or exploitation;

24 (3) the names and conditions of the other residents;

25 (4) an evaluation of the persons responsible for the
26 care of the residents;

27 (5) the adequacy of the facility environment; and

1 (6) any other information required by the department.

2 (i) If the department attempts to carry out an on-site
3 investigation and it is shown that admission to the facility or any
4 place where the resident is located cannot be obtained, a probate or
5 county court shall order the person responsible for the care of the
6 resident or the person in charge of a place where the resident is
7 located to allow entrance for the interview and investigation.

8 (j) Before the completion of the investigation, the
9 department shall file a petition for temporary care and protection
10 of the resident if the department determines that immediate removal
11 is necessary to protect the resident from further abuse, neglect,
12 or exploitation.

13 (k) The department shall make a complete final written
14 report of the investigation and submit the report and its
15 recommendations to the district attorney and, if a law enforcement
16 agency has not investigated the report of abuse, neglect,
17 exploitation, or other complaint, to the appropriate law
18 enforcement agency.

19 (l) Within 24 hours after receipt of a report of abuse,
20 neglect, exploitation, or other complaint described by Subsection
21 (c)(1), the department shall report the report or complaint to the
22 law enforcement agency described by Section 260A.017(a). The
23 department shall cooperate with that law enforcement agency in the
24 investigation of the report or complaint as described by Section
25 260A.017.

26 (m) The inability or unwillingness of a local law
27 enforcement agency to conduct a joint investigation under Section

1 260A.017 does not constitute grounds to prevent or prohibit the
2 department from performing its duties under this chapter. The
3 department shall document any instance in which a law enforcement
4 agency is unable or unwilling to conduct a joint investigation
5 under Section 260A.017.

6 (n) If the department determines that, before a
7 photographic record of an injury to a resident may be made under
8 Subsection (e), consent is required under state or federal law, the
9 investigator:

10 (1) shall seek to obtain any required consent; and

11 (2) may not make the photographic record unless the
12 consent is obtained.

13 Sec. 260A.008. CONFIDENTIALITY. A report, record, or
14 working paper used or developed in an investigation made under this
15 chapter and the name, address, and phone number of any person making
16 a report under this chapter are confidential and may be disclosed
17 only for purposes consistent with rules adopted by the executive
18 commissioner. The report, record, or working paper and the name,
19 address, and phone number of the person making the report shall be
20 disclosed to a law enforcement agency as necessary to permit the law
21 enforcement agency to investigate a report of abuse, neglect,
22 exploitation, or other complaint in accordance with Section
23 260A.017.

24 Sec. 260A.009. IMMUNITY. (a) A person who reports as
25 provided by this chapter is immune from civil or criminal liability
26 that, in the absence of the immunity, might result from making the
27 report.

1 (b) The immunity provided by this section extends to
2 participation in any judicial proceeding that results from the
3 report.

4 (c) This section does not apply to a person who reports in
5 bad faith or with malice.

6 Sec. 260A.010. PRIVILEGED COMMUNICATIONS. In a proceeding
7 regarding the abuse, neglect, or exploitation of a resident or the
8 cause of any abuse, neglect, or exploitation, evidence may not be
9 excluded on the ground of privileged communication except in the
10 case of a communication between an attorney and client.

11 Sec. 260A.011. CENTRAL REGISTRY. (a) The department shall
12 maintain in the city of Austin a central registry of reported cases
13 of resident abuse, neglect, or exploitation.

14 (b) The executive commissioner may adopt rules necessary to
15 carry out this section.

16 (c) The rules shall provide for cooperation with hospitals
17 and clinics in the exchange of reports of resident abuse, neglect,
18 or exploitation.

19 Sec. 260A.012. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A
20 person commits an offense if the person has cause to believe that a
21 resident's physical or mental health or welfare has been or may be
22 further adversely affected by abuse, neglect, or exploitation and
23 knowingly fails to report in accordance with Section 260A.002.

24 (b) An offense under this section is a Class A misdemeanor.

25 Sec. 260A.013. BAD FAITH, MALICIOUS, OR RECKLESS REPORTING;
26 CRIMINAL PENALTY. (a) A person commits an offense if the person
27 reports under this chapter in bad faith, maliciously, or

1 recklessly.

2 (b) An offense under this section is a Class A misdemeanor.

3 (c) The criminal penalty provided by this section is in
4 addition to any civil penalties for which the person may be liable.

5 Sec. 260A.014. RETALIATION AGAINST EMPLOYEES PROHIBITED.

6 (a) In this section, "employee" means a person who is an employee
7 of a facility or any other person who provides services for a
8 facility for compensation, including a contract laborer for the
9 facility.

10 (b) An employee has a cause of action against a facility, or
11 the owner or another employee of the facility, that suspends or
12 terminates the employment of the person or otherwise disciplines or
13 discriminates or retaliates against the employee for reporting to
14 the employee's supervisor, an administrator of the facility, a
15 state regulatory agency, or a law enforcement agency a violation of
16 law, including a violation of Chapter 242 or 247 or a rule adopted
17 under Chapter 242 or 247, or for initiating or cooperating in any
18 investigation or proceeding of a governmental entity relating to
19 care, services, or conditions at the facility.

20 (c) The petitioner may recover:

21 (1) the greater of \$1,000 or actual damages, including
22 damages for mental anguish even if an injury other than mental
23 anguish is not shown, and damages for lost wages if the petitioner's
24 employment was suspended or terminated;

25 (2) exemplary damages;

26 (3) court costs; and

27 (4) reasonable attorney's fees.

1 (d) In addition to the amounts that may be recovered under
2 Subsection (c), a person whose employment is suspended or
3 terminated is entitled to appropriate injunctive relief,
4 including, if applicable:

- 5 (1) reinstatement in the person's former position; and
6 (2) reinstatement of lost fringe benefits or seniority
7 rights.

8 (e) The petitioner, not later than the 90th day after the
9 date on which the person's employment is suspended or terminated,
10 must bring suit or notify the Texas Workforce Commission of the
11 petitioner's intent to sue under this section. A petitioner who
12 notifies the Texas Workforce Commission under this subsection must
13 bring suit not later than the 90th day after the date of the
14 delivery of the notice to the commission. On receipt of the notice,
15 the commission shall notify the facility of the petitioner's intent
16 to bring suit under this section.

17 (f) The petitioner has the burden of proof, except that
18 there is a rebuttable presumption that the person's employment was
19 suspended or terminated for reporting abuse, neglect, or
20 exploitation if the person is suspended or terminated within 60
21 days after the date on which the person reported in good faith.

22 (g) A suit under this section may be brought in the district
23 court of the county in which:

- 24 (1) the plaintiff resides;
25 (2) the plaintiff was employed by the defendant; or
26 (3) the defendant conducts business.

27 (h) Each facility shall require each employee of the

1 facility, as a condition of employment with the facility, to sign a
2 statement that the employee understands the employee's rights under
3 this section. The statement must be part of the statement required
4 under Section 260A.002. If a facility does not require an employee
5 to read and sign the statement, the periods under Subsection (e) do
6 not apply, and the petitioner must bring suit not later than the
7 second anniversary of the date on which the person's employment is
8 suspended or terminated.

9 Sec. 260A.015. RETALIATION AGAINST VOLUNTEERS, RESIDENTS,
10 OR FAMILY MEMBERS OR GUARDIANS OF RESIDENTS. (a) A facility may
11 not retaliate or discriminate against a volunteer, resident, or
12 family member or guardian of a resident because the volunteer,
13 resident, resident's family member or guardian, or any other
14 person:

15 (1) makes a complaint or files a grievance concerning
16 the facility;

17 (2) reports a violation of law, including a violation
18 of Chapter 242 or 247 or a rule adopted under Chapter 242 or 247; or

19 (3) initiates or cooperates in an investigation or
20 proceeding of a governmental entity relating to care, services, or
21 conditions at the facility.

22 (b) A volunteer, resident, or family member or guardian of a
23 resident who is retaliated or discriminated against in violation of
24 Subsection (a) is entitled to sue for:

25 (1) injunctive relief;

26 (2) the greater of \$1,000 or actual damages, including
27 damages for mental anguish even if an injury other than mental

1 anguish is not shown;

2 (3) exemplary damages;

3 (4) court costs; and

4 (5) reasonable attorney's fees.

5 (c) A volunteer, resident, or family member or guardian of a
6 resident who seeks relief under this section must report the
7 alleged violation not later than the 180th day after the date on
8 which the alleged violation of this section occurred or was
9 discovered by the volunteer, resident, or family member or guardian
10 of the resident through reasonable diligence.

11 (d) A suit under this section may be brought in the district
12 court of the county in which the facility is located or in a
13 district court of Travis County.

14 Sec. 260A.016. REPORTS RELATING TO DEATHS OF RESIDENTS OF
15 AN INSTITUTION. (a) In this section, "institution" has the
16 meaning assigned by Section 242.002.

17 (b) An institution shall submit a report to the department
18 concerning deaths of residents of the institution. The report must
19 be submitted not later than the 10th day after the last day of each
20 month in which a resident of the institution dies. The report must
21 also include the death of a resident occurring within 24 hours after
22 the resident is transferred from the institution to a hospital.

23 (c) The institution must make the report on a form
24 prescribed by the department. The report must contain the name and
25 social security number of the deceased.

26 (d) The department shall correlate reports under this
27 section with death certificate information to develop data relating

1 to the:

2 (1) name and age of the deceased;

3 (2) official cause of death listed on the death
4 certificate;

5 (3) date, time, and place of death; and

6 (4) name and address of the institution in which the
7 deceased resided.

8 (e) Except as provided by Subsection (f), a record under
9 this section is confidential and not subject to the provisions of
10 Chapter 552, Government Code.

11 (f) The department shall develop statistical information on
12 official causes of death to determine patterns and trends of
13 incidents of death among residents and in specific institutions.
14 Information developed under this subsection is public.

15 (g) A licensed institution shall make available historical
16 statistics on all required information on request of an applicant
17 or applicant's representative.

18 Sec. 260A.017. DUTIES OF LAW ENFORCEMENT; JOINT
19 INVESTIGATION. (a) The department shall investigate a report of
20 abuse, neglect, exploitation, or other complaint described by
21 Section 260A.007(c)(1) jointly with:

22 (1) the municipal law enforcement agency, if the
23 facility is located within the territorial boundaries of a
24 municipality; or

25 (2) the sheriff's department of the county in which the
26 facility is located, if the facility is not located within the
27 territorial boundaries of a municipality.

1 (b) The law enforcement agency described by Subsection (a)
2 shall acknowledge the report of abuse, neglect, exploitation, or
3 other complaint and begin the joint investigation required by this
4 section within 24 hours after receipt of the report or complaint.
5 The law enforcement agency shall cooperate with the department and
6 report to the department the results of the investigation.

7 (c) The requirement that the law enforcement agency and the
8 department conduct a joint investigation under this section does
9 not require that a representative of each agency be physically
10 present during all phases of the investigation or that each agency
11 participate equally in each activity conducted in the course of the
12 investigation.

13 Sec. 260A.018. CALL CENTER EVALUATION; REPORT. (a) The
14 department, using existing resources, shall test, evaluate, and
15 determine the most effective and efficient staffing pattern for
16 receiving and processing complaints by expanding customer service
17 representatives' hours of availability at the department's
18 telephone hotline call center.

19 (b) The department shall report the findings of the
20 evaluation described by Subsection (a) to the House Committee on
21 Human Services and the Senate Committee on Health and Human
22 Services not later than September 1, 2012.

23 (c) This section expires October 31, 2012.

24 (d) Chapter 2, Code of Criminal Procedure, is amended by
25 adding Article 2.271 to read as follows:

26 Art. 2.271. INVESTIGATION OF CERTAIN REPORTS ALLEGING
27 ABUSE, NEGLECT, OR EXPLOITATION. Notwithstanding Article 2.27, on

1 receipt of a report of abuse, neglect, exploitation, or other
2 complaint of a resident of a nursing home, convalescent home, or
3 other related institution or an assisted living facility, under
4 Section 260A.007(c)(1), Health and Safety Code, the appropriate
5 local law enforcement agency shall investigate the report as
6 required by Section 260A.017, Health and Safety Code.

7 (e) Subchapter A, Chapter 242, Health and Safety Code, is
8 amended by adding Section 242.018 to read as follows:

9 Sec. 242.018. COMPLIANCE WITH CHAPTER 260A. (a) An
10 institution shall comply with Chapter 260A and the rules adopted
11 under that chapter.

12 (b) A person, including an owner or employee of an
13 institution, shall comply with Chapter 260A and the rules adopted
14 under that chapter.

15 (f) Subsection (a), Section 242.042, Health and Safety
16 Code, is amended to read as follows:

17 (a) Each institution shall prominently and conspicuously
18 post for display in a public area of the institution that is readily
19 available to residents, employees, and visitors:

20 (1) the license issued under this chapter;

21 (2) a sign prescribed by the department that specifies
22 complaint procedures established under this chapter or rules
23 adopted under this chapter and that specifies how complaints may be
24 registered with the department;

25 (3) a notice in a form prescribed by the department
26 stating that licensing inspection reports and other related reports
27 which show deficiencies cited by the department are available at

1 the institution for public inspection and providing the
2 department's toll-free telephone number that may be used to obtain
3 information concerning the institution;

4 (4) a concise summary of the most recent inspection
5 report relating to the institution;

6 (5) notice that the department can provide summary
7 reports relating to the quality of care, recent investigations,
8 litigation, and other aspects of the operation of the institution;

9 (6) notice that the Texas Board of Nursing Facility
10 Administrators can provide information about the nursing facility
11 administrator;

12 (7) any notice or written statement required to be
13 posted under Section 242.072(c);

14 (8) notice that informational materials relating to
15 the compliance history of the institution are available for
16 inspection at a location in the institution specified by the sign;
17 [~~and~~]

18 (9) notice that employees, other staff, residents,
19 volunteers, and family members and guardians of residents are
20 protected from discrimination or retaliation as provided by
21 Sections 260A.014 and 260A.015; and

22 (10) a sign required to be posted under Section
23 260A.006(a) [~~242.133 and 242.1335~~].

24 (g) Subsection (b), Section 242.0665, Health and Safety
25 Code, is amended to read as follows:

26 (b) Subsection (a) does not apply:

27 (1) to a violation that the department determines:

1 (A) results in serious harm to or death of a
2 resident;

3 (B) constitutes a serious threat to the health or
4 safety of a resident; or

5 (C) substantially limits the institution's
6 capacity to provide care;

7 (2) to a violation described by Sections
8 242.066(a)(2)-(7);

9 (3) to a violation of Section 260A.014 [~~242.133~~] or
10 260A.015 [~~242.1335~~]; or

11 (4) to a violation of a right of a resident adopted
12 under Subchapter L.

13 (h) Subsections (a) and (b), Section 242.848, Health and
14 Safety Code, are amended to read as follows:

15 (a) For purposes of the duty to report abuse or neglect
16 under Section 260A.002 [~~242.122~~] and the criminal penalty for the
17 failure to report abuse or neglect under Section 260A.012
18 [~~242.131~~], a person who is conducting electronic monitoring on
19 behalf of a resident under this subchapter is considered to have
20 viewed or listened to a tape or recording made by the electronic
21 monitoring device on or before the 14th day after the date the tape
22 or recording is made.

23 (b) If a resident who has capacity to determine that the
24 resident has been abused or neglected and who is conducting
25 electronic monitoring under this subchapter gives a tape or
26 recording made by the electronic monitoring device to a person and
27 directs the person to view or listen to the tape or recording to

1 determine whether abuse or neglect has occurred, the person to whom
2 the resident gives the tape or recording is considered to have
3 viewed or listened to the tape or recording on or before the seventh
4 day after the date the person receives the tape or recording for
5 purposes of the duty to report abuse or neglect under Section
6 260A.002 [~~242.122~~] and of the criminal penalty for the failure to
7 report abuse or neglect under Section 260A.012 [~~242.131~~].

8 (i) Subchapter A, Chapter 247, Health and Safety Code, is
9 amended by adding Section 247.007 to read as follows:

10 Sec. 247.007. COMPLIANCE WITH CHAPTER 260A. (a) An
11 assisted living facility shall comply with Chapter 260A and the
12 rules adopted under that chapter.

13 (b) A person, including an owner or employee of an assisted
14 living facility, shall comply with Chapter 260A and the rules
15 adopted under that chapter.

16 (j) Subsection (a), Section 247.043, Health and Safety
17 Code, is amended to read as follows:

18 (a) The department shall conduct an investigation in
19 accordance with Section 260A.007 after receiving a report [~~a~~
20 ~~preliminary investigation of each allegation~~] of abuse,
21 exploitation, or neglect of a resident of an assisted living
22 facility [~~to determine if there is evidence to corroborate the~~
23 ~~allegation. If the department determines that there is evidence to~~
24 ~~corroborate the allegation, the department shall conduct a thorough~~
25 ~~investigation of the allegation~~].

26 (k) Subsection (b), Section 247.0452, Health and Safety
27 Code, is amended to read as follows:

1 (b) Subsection (a) does not apply:

2 (1) to a violation that the department determines
3 results in serious harm to or death of a resident;

4 (2) to a violation described by Sections
5 247.0451(a)(2)-(7) or a violation of Section 260A.014 or 260A.015;

6 (3) to a second or subsequent violation of:

7 (A) a right of the same resident under Section
8 247.064; or

9 (B) the same right of all residents under Section
10 247.064; or

11 (4) to a violation described by Section 247.066, which
12 contains its own right to correct provisions.

13 (1) Section 48.003, Human Resources Code, is amended to read
14 as follows:

15 Sec. 48.003. INVESTIGATIONS IN NURSING HOMES, ASSISTED
16 LIVING FACILITIES, AND SIMILAR FACILITIES. (a) This chapter does
17 not apply if the alleged or suspected abuse, neglect, or
18 exploitation occurs in a facility licensed under Chapter 242 or
19 247, Health and Safety Code.

20 (b) Alleged or suspected abuse, neglect, or exploitation
21 that occurs in a facility licensed under Chapter 242 or 247, Health
22 and Safety Code, is governed by Chapter 260A [~~Subchapter B, Chapter~~
23 ~~242~~], Health and Safety Code.

24 (m) Subchapter E, Chapter 242, Health and Safety Code, is
25 repealed.

26 (n) The executive commissioner of the Health and Human
27 Services Commission shall adopt the rules required under Subsection

1 (g), Section 242.033, Health and Safety Code, as added by this
2 section, as soon as practicable after the effective date of this
3 Act, but not later than December 1, 2012.

4 (o) The repeal by this Act of Section 242.131, Health and
5 Safety Code, does not apply to an offense committed under that
6 section before the effective date of this Act. An offense committed
7 before the effective date of this Act is governed by that section as
8 it existed on the date the offense was committed, and the former law
9 is continued in effect for that purpose. For purposes of this
10 subsection, an offense was committed before the effective date of
11 this Act if any element of the offense occurred before that date.

12 (p) The repeal by this Act of Sections 242.133 and 242.1335,
13 Health and Safety Code, does not apply to a cause of action that
14 accrues before the effective date of this Act. A cause of action
15 that accrues before the effective date of this Act is governed by
16 Section 242.133 or 242.1335, Health and Safety Code, as applicable,
17 as the section existed at the time the cause of action accrued, and
18 the former law is continued in effect for that purpose.

19 (q) The change in law made by this Act by the repeal of
20 Subchapter E, Chapter 242, Health and Safety Code, does not apply to
21 a disciplinary action under Subchapter C, Chapter 242, Health and
22 Safety Code, for conduct that occurred before the effective date of
23 this Act. Conduct that occurs before the effective date of this Act
24 is governed by the law as it existed on the date the conduct
25 occurred, and the former law is continued in effect for that
26 purpose.

27 (r) The Department of Aging and Disability Services shall

1 implement Chapter 260A, Health and Safety Code, as added by this
2 Act, using only existing resources and personnel.

3 (s) The Department of Aging and Disability Services shall
4 ensure that the services provided on the effective date of this Act
5 are at least as comprehensive as the services provided on the day
6 before the effective date of this Act.

7 SECTION 1.06. (a) Section 161.081, Human Resources Code,
8 as effective September 1, 2011, is amended to read as follows:

9 Sec. 161.081. LONG-TERM CARE MEDICAID WAIVER PROGRAMS:
10 STREAMLINING AND UNIFORMITY. (a) In this section, "Section
11 1915(c) waiver program" has the meaning assigned by Section
12 531.001, Government Code.

13 (b) The department, in consultation with the commission,
14 shall streamline the administration of and delivery of services
15 through Section 1915(c) waiver programs. In implementing this
16 subsection, the department, subject to Subsection (c), may consider
17 implementing the following streamlining initiatives:

18 (1) reducing the number of forms used in administering
19 the programs;

20 (2) revising program provider manuals and training
21 curricula;

22 (3) consolidating service authorization systems;

23 (4) eliminating any physician signature requirements
24 the department considers unnecessary;

25 (5) standardizing individual service plan processes
26 across the programs; ~~and~~

27 (6) if feasible:

1 (A) concurrently conducting program
2 certification and billing audit and review processes and other
3 related audit and review processes;

4 (B) streamlining other billing and auditing
5 requirements;

6 (C) eliminating duplicative responsibilities
7 with respect to the coordination and oversight of individual care
8 plans for persons receiving waiver services; and

9 (D) streamlining cost reports and other cost
10 reporting processes; and

11 (7) any other initiatives that will increase
12 efficiencies in the programs.

13 (c) The department shall ensure that actions taken under
14 Subsection (b) [~~this section~~] do not conflict with any requirements
15 of the commission under Section 531.0218, Government Code.

16 (d) The department and the commission shall jointly explore
17 the development of uniform licensing and contracting standards that
18 would:

19 (1) apply to all contracts for the delivery of Section
20 1915(c) waiver program services;

21 (2) promote competition among providers of those
22 program services; and

23 (3) integrate with other department and commission
24 efforts to streamline and unify the administration and delivery of
25 the program services, including those required by this section or
26 Section 531.0218, Government Code.

27 (b) Subchapter D, Chapter 161, Human Resources Code, is

1 amended by adding Section 161.082 to read as follows:

2 Sec. 161.082. LONG-TERM CARE MEDICAID WAIVER PROGRAMS:
3 UTILIZATION REVIEW. (a) In this section, "Section 1915(c) waiver
4 program" has the meaning assigned by Section 531.001, Government
5 Code.

6 (b) The department shall perform a utilization review of
7 services in all Section 1915(c) waiver programs. The utilization
8 review must include, at a minimum, reviewing program recipients'
9 levels of care and any plans of care for those recipients that
10 exceed service level thresholds established in the applicable
11 waiver program guidelines.

12 SECTION 1.07. Subchapter D, Chapter 161, Human Resources
13 Code, is amended by adding Section 161.086 to read as follows:

14 Sec. 161.086. ELECTRONIC VISIT VERIFICATION SYSTEM. If it
15 is cost-effective, the department shall implement an electronic
16 visit verification system under appropriate programs administered
17 by the department under the Medicaid program that allows providers
18 to electronically verify and document basic information relating to
19 the delivery of services, including:

- 20 (1) the provider's name;
21 (2) the recipient's name;
22 (3) the date and time the provider begins and ends the
23 delivery of services; and
24 (4) the location of service delivery.

25 SECTION 1.08. (a) Subdivision (1), Section 247.002, Health
26 and Safety Code, is amended to read as follows:

- 27 (1) "Assisted living facility" means an establishment

1 that:

2 (A) furnishes, in one or more facilities, food
3 and shelter to four or more persons who are unrelated to the
4 proprietor of the establishment;

5 (B) provides:

6 (i) personal care services; or

7 (ii) administration of medication by a
8 person licensed or otherwise authorized in this state to administer
9 the medication; ~~and~~

10 (C) may provide assistance with or supervision of
11 the administration of medication; and

12 (D) may provide skilled nursing services for the
13 following limited purposes:

14 (i) coordination of resident care with
15 outside home and community support services agencies and other
16 health care professionals;

17 (ii) provision or delegation of personal
18 care services and medication administration as described by this
19 subdivision;

20 (iii) assessment of residents to determine
21 the care required; and

22 (iv) for periods of time as established by
23 department rule, delivery of temporary skilled nursing treatment
24 for a minor illness, injury, or emergency.

25 (b) Section 247.004, Health and Safety Code, as effective
26 September 1, 2011, is amended to read as follows:

27 Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

1 (1) a boarding home facility as defined by Section
2 260.001;

3 (2) an establishment conducted by or for the adherents
4 of the Church of Christ, Scientist, for the purpose of providing
5 facilities for the care or treatment of the sick who depend
6 exclusively on prayer or spiritual means for healing without the
7 use of any drug or material remedy if the establishment complies
8 with local safety, sanitary, and quarantine ordinances and
9 regulations;

10 (3) a facility conducted by or for the adherents of a
11 qualified religious society classified as a tax-exempt
12 organization under an Internal Revenue Service group exemption
13 ruling for the purpose of providing personal care services without
14 charge solely for the society's professed members or ministers in
15 retirement, if the facility complies with local safety, sanitation,
16 and quarantine ordinances and regulations; or

17 (4) a facility that provides personal care services
18 only to persons enrolled in a program that:

19 (A) is funded in whole or in part by the
20 department and that is monitored by the department or its
21 designated local mental retardation authority in accordance with
22 standards set by the department; or

23 (B) is funded in whole or in part by the
24 Department of State Health Services and that is monitored by that
25 department, or by its designated local mental health authority in
26 accordance with standards set by the department.

27 (c) Subsection (b), Section 247.067, Health and Safety

1 Code, is amended to read as follows:

2 (b) Unless otherwise prohibited by law, a [A] health care
3 professional may be employed by an assisted living facility to
4 provide at the facility to the facility's residents services that
5 are authorized by this chapter and that are within the
6 professional's scope of practice [~~to a resident of an assisted~~
7 ~~living facility at the facility~~]. This subsection does not
8 authorize a facility to provide ongoing services comparable to the
9 services available in an institution licensed under Chapter 242. A
10 health care professional providing services under this subsection
11 shall maintain medical records of those services in accordance with
12 the licensing, certification, or other regulatory standards
13 applicable to the health care professional under law.

14 SECTION 1.09. (a) Subchapter B, Chapter 531, Government
15 Code, is amended by adding Sections 531.086 and 531.0861 to read as
16 follows:

17 Sec. 531.086. STUDY REGARDING PHYSICIAN INCENTIVE PROGRAMS
18 TO REDUCE HOSPITAL EMERGENCY ROOM USE FOR NON-EMERGENT CONDITIONS.

19 (a) The commission shall conduct a study to evaluate physician
20 incentive programs that attempt to reduce hospital emergency room
21 use for non-emergent conditions by recipients under the medical
22 assistance program. Each physician incentive program evaluated in
23 the study must:

24 (1) be administered by a health maintenance
25 organization participating in the STAR or STAR + PLUS Medicaid
26 managed care program; and

27 (2) provide incentives to primary care providers who

1 attempt to reduce emergency room use for non-emergent conditions by
2 recipients.

3 (b) The study conducted under Subsection (a) must evaluate:

4 (1) the cost-effectiveness of each component included
5 in a physician incentive program; and

6 (2) any change in statute required to implement each
7 component within the Medicaid fee-for-service payment model.

8 (c) Not later than August 31, 2013, the executive
9 commissioner shall submit to the governor and the Legislative
10 Budget Board a report summarizing the findings of the study
11 required by this section.

12 (d) This section expires September 1, 2014.

13 Sec. 531.0861. PHYSICIAN INCENTIVE PROGRAM TO REDUCE
14 HOSPITAL EMERGENCY ROOM USE FOR NON-EMERGENT CONDITIONS. (a) If
15 cost-effective, the executive commissioner by rule shall establish
16 a physician incentive program designed to reduce the use of
17 hospital emergency room services for non-emergent conditions by
18 recipients under the medical assistance program.

19 (b) In establishing the physician incentive program under
20 Subsection (a), the executive commissioner may include only the
21 program components identified as cost-effective in the study
22 conducted under Section 531.086.

23 (c) If the physician incentive program includes the payment
24 of an enhanced reimbursement rate for routine after-hours
25 appointments, the executive commissioner shall implement controls
26 to ensure that the after-hours services billed are actually being
27 provided outside of normal business hours.

1 (b) Section 32.0641, Human Resources Code, is amended to
2 read as follows:

3 Sec. 32.0641. RECIPIENT ACCOUNTABILITY PROVISIONS;
4 COST-SHARING REQUIREMENT TO IMPROVE APPROPRIATE UTILIZATION OF
5 [COST SHARING FOR CERTAIN HIGH-COST MEDICAL] SERVICES. (a) To [~~If~~
6 ~~the department determines that it is feasible and cost-effective,~~
7 ~~and to~~] the extent permitted under and in a manner that is
8 consistent with Title XIX, Social Security Act (42 U.S.C. Section
9 1396 et seq.) and any other applicable law or regulation or under a
10 federal waiver or other authorization, the executive commissioner
11 of the Health and Human Services Commission shall adopt, after
12 consulting with the Medicaid and CHIP Quality-Based Payment
13 Advisory Committee established under Section 536.002, Government
14 Code, cost-sharing provisions that encourage personal
15 accountability and appropriate utilization of health care
16 services, including a cost-sharing provision applicable to
17 [require] a recipient who chooses to receive a nonemergency [~~a~~
18 ~~high-cost~~] medical service [~~provided~~] through a hospital emergency
19 room [~~to pay a copayment, premium payment, or other cost-sharing~~
20 ~~payment for the high-cost medical service if:~~

21 [~~(1) the hospital from which the recipient seeks~~
22 ~~service:~~

23 [~~(A) performs an appropriate medical screening~~
24 ~~and determines that the recipient does not have a condition~~
25 ~~requiring emergency medical services,~~

26 [~~(B) informs the recipient:~~

27 [~~(i) that the recipient does not have a~~

1 ~~condition requiring emergency medical services;~~

2 ~~[(ii) that, if the hospital provides the~~
3 ~~nonemergency service, the hospital may require payment of a~~
4 ~~copayment, premium payment, or other cost-sharing payment by the~~
5 ~~recipient in advance; and~~

6 ~~[(iii) of the name and address of a~~
7 ~~nonemergency Medicaid provider who can provide the appropriate~~
8 ~~medical service without imposing a cost-sharing payment; and~~

9 ~~[(C) offers to provide the recipient with a~~
10 ~~referral to the nonemergency provider to facilitate scheduling of~~
11 ~~the service; and~~

12 ~~[(2) after receiving the information and assistance~~
13 ~~described by Subdivision (1) from the hospital, the recipient~~
14 ~~chooses to obtain emergency medical services despite having access~~
15 ~~to medically acceptable, lower-cost medical services].~~

16 (b) The department may not seek a federal waiver or other
17 authorization under this section [~~Subsection (a)~~] that would:

18 (1) prevent a Medicaid recipient who has a condition
19 requiring emergency medical services from receiving care through a
20 hospital emergency room; or

21 (2) waive any provision under Section 1867, Social
22 Security Act (42 U.S.C. Section 1395dd).

23 ~~[(c) If the executive commissioner of the Health and Human~~
24 ~~Services Commission adopts a copayment or other cost-sharing~~
25 ~~payment under Subsection (a), the commission may not reduce~~
26 ~~hospital payments to reflect the potential receipt of a copayment~~
27 ~~or other payment from a recipient receiving medical services~~

1 ~~provided through a hospital emergency room.]~~

2 (c) If H.B. No. 2245, Acts of the 82nd Legislature, Regular
3 Session, 2011, becomes law, Sections 531.086 and 531.0861,
4 Government Code, as added by that Act, are repealed.

5 SECTION 1.10. Subchapter B, Chapter 531, Government Code,
6 is amended by adding Section 531.024131 to read as follows:

7 Sec. 531.024131. EXPANSION OF BILLING COORDINATION AND
8 INFORMATION COLLECTION ACTIVITIES. (a) If cost-effective, the
9 commission may:

10 (1) contract to expand all or part of the billing
11 coordination system established under Section 531.02413 to process
12 claims for services provided through other benefits programs
13 administered by the commission or a health and human services
14 agency;

15 (2) expand any other billing coordination tools and
16 resources used to process claims for health care services provided
17 through the Medicaid program to process claims for services
18 provided through other benefits programs administered by the
19 commission or a health and human services agency; and

20 (3) expand the scope of persons about whom information
21 is collected under Section 32.042, Human Resources Code, to include
22 recipients of services provided through other benefits programs
23 administered by the commission or a health and human services
24 agency.

25 (b) Notwithstanding any other state law, each health and
26 human services agency shall provide the commission with any
27 information necessary to allow the commission or the commission's

1 designee to perform the billing coordination and information
2 collection activities authorized by this section.

3 SECTION 1.11. (a) Subsections (b), (c), and (d), Section
4 531.502, Government Code, are amended to read as follows:

5 (b) The executive commissioner may include the following
6 federal money in the waiver:

7 (1) ~~[all]~~ money provided under the disproportionate
8 share hospitals or ~~[and]~~ upper payment limit supplemental payment
9 program, or both [programs];

10 (2) money provided by the federal government in lieu
11 of some or all of the payments under one or both of those programs;

12 (3) any combination of funds authorized to be pooled
13 by Subdivisions (1) and (2); and

14 (4) any other money available for that purpose,
15 including:

16 (A) federal money and money identified under
17 Subsection (c);

18 (B) gifts, grants, or donations for that purpose;

19 (C) local funds received by this state through
20 intergovernmental transfers; and

21 (D) if approved in the waiver, federal money
22 obtained through the use of certified public expenditures.

23 (c) The commission shall seek to optimize federal funding
24 by:

25 (1) identifying health care related state and local
26 funds and program expenditures that, before September 1, 2011
27 ~~[2007]~~, are not being matched with federal money; and

1 (2) exploring the feasibility of:

2 (A) certifying or otherwise using those funds and
3 expenditures as state expenditures for which this state may receive
4 federal matching money; and

5 (B) depositing federal matching money received
6 as provided by Paragraph (A) with other federal money deposited as
7 provided by Section 531.504, or substituting that federal matching
8 money for federal money that otherwise would be received under the
9 disproportionate share hospitals and upper payment limit
10 supplemental payment programs as a match for local funds received
11 by this state through intergovernmental transfers.

12 (d) The terms of a waiver approved under this section must:

13 (1) include safeguards to ensure that the total amount
14 of federal money provided under the disproportionate share
15 hospitals or ~~and~~ upper payment limit supplemental payment program
16 ~~[programs]~~ that is deposited as provided by Section 531.504 is, for
17 a particular state fiscal year, at least equal to the greater of the
18 annualized amount provided to this state under those supplemental
19 payment programs during state fiscal year 2011 ~~[2007]~~, excluding
20 amounts provided during that state fiscal year that are retroactive
21 payments, or the state fiscal years during which the waiver is in
22 effect; and

23 (2) allow for the development by this state of a
24 methodology for allocating money in the fund to:

25 (A) be used to supplement Medicaid hospital
26 reimbursements under a waiver that includes terms that are
27 consistent with, or that produce revenues consistent with,

1 disproportionate share hospital and upper payment limit principles
2 ~~[offset, in part, the uncompensated health care costs incurred by~~
3 ~~hospitals];~~

4 (B) reduce the number of persons in this state
5 who do not have health benefits coverage; and

6 (C) maintain and enhance the community public
7 health infrastructure provided by hospitals.

8 (b) Section 531.504, Government Code, is amended to read as
9 follows:

10 Sec. 531.504. DEPOSITS TO FUND. (a) The comptroller shall
11 deposit in the fund:

12 (1) ~~[all]~~ federal money provided to this state under
13 the disproportionate share hospitals supplemental payment program
14 or ~~[and]~~ the hospital upper payment limit supplemental payment
15 program, or both, other than money provided under those programs to
16 state-owned and operated hospitals, and all other non-supplemental
17 payment program federal money provided to this state that is
18 included in the waiver authorized by Section 531.502; and

19 (2) state money appropriated to the fund.

20 (b) The commission and comptroller may accept gifts,
21 grants, and donations from any source, and receive
22 intergovernmental transfers, for purposes consistent with this
23 subchapter and the terms of the waiver. The comptroller shall
24 deposit a gift, grant, or donation made for those purposes in the
25 fund. Any intergovernmental transfer received, including
26 associated federal matching funds, shall be used, if feasible, for
27 the purposes intended by the transferring entity and in accordance

1 with the terms of the waiver.

2 (c) Section 531.508, Government Code, is amended by adding
3 Subsection (d) to read as follows:

4 (d) Money from the fund may not be used to finance the
5 construction, improvement, or renovation of a building or land
6 unless the construction, improvement, or renovation is approved by
7 the commission, according to rules adopted by the executive
8 commissioner for that purpose.

9 (d) Subsection (g), Section 531.502, Government Code, is
10 repealed.

11 SECTION 1.12. (a) Subtitle I, Title 4, Government Code, is
12 amended by adding Chapter 536, and Section 531.913, Government
13 Code, is transferred to Subchapter D, Chapter 536, Government Code,
14 redesignated as Section 536.151, Government Code, and amended to
15 read as follows:

16 CHAPTER 536. MEDICAID AND CHILD HEALTH PLAN PROGRAMS:

17 QUALITY-BASED OUTCOMES AND PAYMENTS

18 SUBCHAPTER A. GENERAL PROVISIONS

19 Sec. 536.001. DEFINITIONS. In this chapter:

20 (1) "Advisory committee" means the Medicaid and CHIP
21 Quality-Based Payment Advisory Committee established under Section
22 536.002.

23 (2) "Alternative payment system" includes:

24 (A) a global payment system;

25 (B) an episode-based bundled payment system; and

26 (C) a blended payment system.

27 (3) "Blended payment system" means a system for

1 compensating a physician or other health care provider that
2 includes at least one or more features of a global payment system
3 and an episode-based bundled payment system, but that may also
4 include a system under which a portion of the compensation paid to a
5 physician or other health care provider is based on a
6 fee-for-service payment arrangement.

7 (4) "Child health plan program," "commission,"
8 "executive commissioner," and "health and human services agencies"
9 have the meanings assigned by Section 531.001.

10 (5) "Episode-based bundled payment system" means a
11 system for compensating a physician or other health care provider
12 for arranging for or providing health care services to child health
13 plan program enrollees or Medicaid recipients that is based on a
14 flat payment for all services provided in connection with a single
15 episode of medical care.

16 (6) "Exclusive provider benefit plan" means a managed
17 care plan subject to 28 T.A.C. Part 1, Chapter 3, Subchapter KK.

18 (7) "Freestanding emergency medical care facility"
19 means a facility licensed under Chapter 254, Health and Safety
20 Code.

21 (8) "Global payment system" means a system for
22 compensating a physician or other health care provider for
23 arranging for or providing a defined set of covered health care
24 services to child health plan program enrollees or Medicaid
25 recipients for a specified period that is based on a predetermined
26 payment per enrollee or recipient, as applicable, for the specified
27 period, without regard to the quantity of services actually

1 provided.

2 (9) "Health care provider" means any person,
3 partnership, professional association, corporation, facility, or
4 institution licensed, certified, registered, or chartered by this
5 state to provide health care. The term includes an employee,
6 independent contractor, or agent of a health care provider acting
7 in the course and scope of the employment or contractual
8 relationship.

9 (10) "Hospital" means a public or private institution
10 licensed under Chapter 241 or 577, Health and Safety Code,
11 including a general or special hospital as defined by Section
12 241.003, Health and Safety Code.

13 (11) "Managed care organization" means a person that
14 is authorized or otherwise permitted by law to arrange for or
15 provide a managed care plan. The term includes health maintenance
16 organizations and exclusive provider organizations.

17 (12) "Managed care plan" means a plan, including an
18 exclusive provider benefit plan, under which a person undertakes to
19 provide, arrange for, pay for, or reimburse any part of the cost of
20 any health care services. A part of the plan must consist of
21 arranging for or providing health care services as distinguished
22 from indemnification against the cost of those services on a
23 prepaid basis through insurance or otherwise. The term does not
24 include a plan that indemnifies a person for the cost of health care
25 services through insurance.

26 (13) "Medicaid program" means the medical assistance
27 program established under Chapter 32, Human Resources Code.

1 (14) "Physician" means a person licensed to practice
2 medicine in this state under Subtitle B, Title 3, Occupations Code.

3 (15) "Potentially preventable admission" means an
4 admission of a person to a hospital or long-term care facility that
5 may have reasonably been prevented with adequate access to
6 ambulatory care or health care coordination.

7 (16) "Potentially preventable ancillary service"
8 means a health care service provided or ordered by a physician or
9 other health care provider to supplement or support the evaluation
10 or treatment of a patient, including a diagnostic test, laboratory
11 test, therapy service, or radiology service, that may not be
12 reasonably necessary for the provision of quality health care or
13 treatment.

14 (17) "Potentially preventable complication" means a
15 harmful event or negative outcome with respect to a person,
16 including an infection or surgical complication, that:

17 (A) occurs after the person's admission to a
18 hospital or long-term care facility; and

19 (B) may have resulted from the care, lack of
20 care, or treatment provided during the hospital or long-term care
21 facility stay rather than from a natural progression of an
22 underlying disease.

23 (18) "Potentially preventable event" means a
24 potentially preventable admission, a potentially preventable
25 ancillary service, a potentially preventable complication, a
26 potentially preventable emergency room visit, a potentially
27 preventable readmission, or a combination of those events.

1 (19) "Potentially preventable emergency room visit"
2 means treatment of a person in a hospital emergency room or
3 freestanding emergency medical care facility for a condition that
4 may not require emergency medical attention because the condition
5 could be, or could have been, treated or prevented by a physician or
6 other health care provider in a nonemergency setting.

7 (20) "Potentially preventable readmission" means a
8 return hospitalization of a person within a period specified by the
9 commission that may have resulted from deficiencies in the care or
10 treatment provided to the person during a previous hospital stay or
11 from deficiencies in post-hospital discharge follow-up. The term
12 does not include a hospital readmission necessitated by the
13 occurrence of unrelated events after the discharge. The term
14 includes the readmission of a person to a hospital for:

15 (A) the same condition or procedure for which the
16 person was previously admitted;

17 (B) an infection or other complication resulting
18 from care previously provided;

19 (C) a condition or procedure that indicates that
20 a surgical intervention performed during a previous admission was
21 unsuccessful in achieving the anticipated outcome; or

22 (D) another condition or procedure of a similar
23 nature, as determined by the executive commissioner after
24 consulting with the advisory committee.

25 (21) "Quality-based payment system" means a system for
26 compensating a physician or other health care provider, including
27 an alternative payment system, that provides incentives to the

1 physician or other health care provider for providing high-quality,
2 cost-effective care and bases some portion of the payment made to
3 the physician or other health care provider on quality of care
4 outcomes, which may include the extent to which the physician or
5 other health care provider reduces potentially preventable events.

6 Sec. 536.002. MEDICAID AND CHIP QUALITY-BASED PAYMENT
7 ADVISORY COMMITTEE. (a) The Medicaid and CHIP Quality-Based
8 Payment Advisory Committee is established to advise the commission
9 on establishing, for purposes of the child health plan and Medicaid
10 programs administered by the commission or a health and human
11 services agency:

12 (1) reimbursement systems used to compensate
13 physicians or other health care providers under those programs that
14 reward the provision of high-quality, cost-effective health care
15 and quality performance and quality of care outcomes with respect
16 to health care services;

17 (2) standards and benchmarks for quality performance,
18 quality of care outcomes, efficiency, and accountability by managed
19 care organizations and physicians and other health care providers;

20 (3) programs and reimbursement policies that
21 encourage high-quality, cost-effective health care delivery models
22 that increase appropriate provider collaboration, promote wellness
23 and prevention, and improve health outcomes; and

24 (4) outcome and process measures under Section
25 536.003.

26 (b) The executive commissioner shall appoint the members of
27 the advisory committee. The committee must consist of physicians

1 and other health care providers, representatives of health care
2 facilities, representatives of managed care organizations, and
3 other stakeholders interested in health care services provided in
4 this state, including:

5 (1) at least one member who is a physician with
6 clinical practice experience in obstetrics and gynecology;

7 (2) at least one member who is a physician with
8 clinical practice experience in pediatrics;

9 (3) at least one member who is a physician with
10 clinical practice experience in internal medicine or family
11 medicine;

12 (4) at least one member who is a physician with
13 clinical practice experience in geriatric medicine;

14 (5) at least one member who is or who represents a
15 health care provider that primarily provides long-term care
16 services;

17 (6) at least one member who is a consumer
18 representative; and

19 (7) at least one member who is a member of the Advisory
20 Panel on Health Care-Associated Infections and Preventable Adverse
21 Events who meets the qualifications prescribed by Section
22 98.052(a)(4), Health and Safety Code.

23 (c) The executive commissioner shall appoint the presiding
24 officer of the advisory committee.

25 Sec. 536.003. DEVELOPMENT OF QUALITY-BASED OUTCOME AND
26 PROCESS MEASURES. (a) The commission, in consultation with the
27 advisory committee, shall develop quality-based outcome and

1 process measures that promote the provision of efficient, quality
2 health care and that can be used in the child health plan and
3 Medicaid programs to implement quality-based payments for acute and
4 long-term care services across all delivery models and payment
5 systems, including fee-for-service and managed care payment
6 systems. The commission, in developing outcome measures under this
7 section, must consider measures addressing potentially preventable
8 events.

9 (b) To the extent feasible, the commission shall develop
10 outcome and process measures:

11 (1) consistently across all child health plan and
12 Medicaid program delivery models and payment systems;

13 (2) in a manner that takes into account appropriate
14 patient risk factors, including the burden of chronic illness on a
15 patient and the severity of a patient's illness;

16 (3) that will have the greatest effect on improving
17 quality of care and the efficient use of services; and

18 (4) that are similar to outcome and process measures
19 used in the private sector, as appropriate.

20 (c) The commission shall, to the extent feasible, align
21 outcome and process measures developed under this section with
22 measures required or recommended under reporting guidelines
23 established by the federal Centers for Medicare and Medicaid
24 Services, the Agency for Healthcare Research and Quality, or
25 another federal agency.

26 (d) The executive commissioner by rule may require managed
27 care organizations and physicians and other health care providers

1 participating in the child health plan and Medicaid programs to
2 report to the commission in a format specified by the executive
3 commissioner information necessary to develop outcome and process
4 measures under this section.

5 (e) If the commission increases physician and other health
6 care provider reimbursement rates under the child health plan or
7 Medicaid program as a result of an increase in the amounts
8 appropriated for the programs for a state fiscal biennium as
9 compared to the preceding state fiscal biennium, the commission
10 shall, to the extent permitted under federal law and to the extent
11 otherwise possible considering other relevant factors, correlate
12 the increased reimbursement rates with the quality-based outcome
13 and process measures developed under this section.

14 Sec. 536.004. DEVELOPMENT OF QUALITY-BASED PAYMENT
15 SYSTEMS. (a) Using quality-based outcome and process measures
16 developed under Section 536.003 and subject to this section, the
17 commission, after consulting with the advisory committee, shall
18 develop quality-based payment systems for compensating a physician
19 or other health care provider participating in the child health
20 plan or Medicaid program that:

21 (1) align payment incentives with high-quality,
22 cost-effective health care;

23 (2) reward the use of evidence-based best practices;

24 (3) promote the coordination of health care;

25 (4) encourage appropriate physician and other health
26 care provider collaboration;

27 (5) promote effective health care delivery models; and

1 (6) take into account the specific needs of the child
2 health plan program enrollee and Medicaid recipient populations.

3 (b) The commission shall develop quality-based payment
4 systems in the manner specified by this chapter. To the extent
5 necessary, the commission shall coordinate the timeline for the
6 development and implementation of a payment system with the
7 implementation of other initiatives such as the Medicaid
8 Information Technology Architecture (MITA) initiative of the
9 Center for Medicaid and State Operations, the ICD-10 code sets
10 initiative, or the ongoing Enterprise Data Warehouse (EDW) planning
11 process in order to maximize the receipt of federal funds or reduce
12 any administrative burden.

13 (c) In developing quality-based payment systems under this
14 chapter, the commission shall examine and consider implementing:

15 (1) an alternative payment system;

16 (2) any existing performance-based payment system
17 used under the Medicare program that meets the requirements of this
18 chapter, modified as necessary to account for programmatic
19 differences, if implementing the system would:

20 (A) reduce unnecessary administrative burdens;

21 and

22 (B) align quality-based payment incentives for
23 physicians and other health care providers with the Medicare
24 program; and

25 (3) alternative payment methodologies within the
26 system that are used in the Medicare program, modified as necessary
27 to account for programmatic differences, and that will achieve cost

1 savings and improve quality of care in the child health plan and
2 Medicaid programs.

3 (d) In developing quality-based payment systems under this
4 chapter, the commission shall ensure that a managed care
5 organization or physician or other health care provider will not be
6 rewarded by the system for withholding or delaying the provision of
7 medically necessary care.

8 (e) The commission may modify a quality-based payment
9 system developed under this chapter to account for programmatic
10 differences between the child health plan and Medicaid programs and
11 delivery systems under those programs.

12 Sec. 536.005. CONVERSION OF PAYMENT METHODOLOGY. (a) To
13 the extent possible, the commission shall convert hospital
14 reimbursement systems under the child health plan and Medicaid
15 programs to a diagnosis-related groups (DRG) methodology that will
16 allow the commission to more accurately classify specific patient
17 populations and account for severity of patient illness and
18 mortality risk.

19 (b) Subsection (a) does not authorize the commission to
20 direct a managed care organization to compensate physicians and
21 other health care providers providing services under the
22 organization's managed care plan based on a diagnosis-related
23 groups (DRG) methodology.

24 Sec. 536.006. TRANSPARENCY. The commission and the
25 advisory committee shall:

26 (1) ensure transparency in the development and
27 establishment of:

1 (A) quality-based payment and reimbursement
2 systems under Section 536.004 and Subchapters B, C, and D,
3 including the development of outcome and process measures under
4 Section 536.003; and

5 (B) quality-based payment initiatives under
6 Subchapter E, including the development of quality of care and
7 cost-efficiency benchmarks under Section 536.204(a) and efficiency
8 performance standards under Section 536.204(b);

9 (2) develop guidelines establishing procedures for
10 providing notice and information to, and receiving input from,
11 managed care organizations, health care providers, including
12 physicians and experts in the various medical specialty fields, and
13 other stakeholders, as appropriate, for purposes of developing and
14 establishing the quality-based payment and reimbursement systems
15 and initiatives described under Subdivision (1); and

16 (3) in developing and establishing the quality-based
17 payment and reimbursement systems and initiatives described under
18 Subdivision (1), consider that as the performance of a managed care
19 organization or physician or other health care provider improves
20 with respect to an outcome or process measure, quality of care and
21 cost-efficiency benchmark, or efficiency performance standard, as
22 applicable, there will be a diminishing rate of improved
23 performance over time.

24 Sec. 536.007. PERIODIC EVALUATION. (a) At least once each
25 two-year period, the commission shall evaluate the outcomes and
26 cost-effectiveness of any quality-based payment system or other
27 payment initiative implemented under this chapter.

1 (b) The commission shall:

2 (1) present the results of its evaluation under
3 Subsection (a) to the advisory committee for the committee's input
4 and recommendations; and

5 (2) provide a process by which managed care
6 organizations and physicians and other health care providers may
7 comment and provide input into the committee's recommendations
8 under Subdivision (1).

9 Sec. 536.008. ANNUAL REPORT. (a) The commission shall
10 submit an annual report to the legislature regarding:

11 (1) the quality-based outcome and process measures
12 developed under Section 536.003; and

13 (2) the progress of the implementation of
14 quality-based payment systems and other payment initiatives
15 implemented under this chapter.

16 (b) The commission shall report outcome and process
17 measures under Subsection (a)(1) by health care service region and
18 service delivery model.

19 [Sections 536.009-536.050 reserved for expansion]

20 SUBCHAPTER B. QUALITY-BASED PAYMENTS RELATING TO MANAGED CARE

21 ORGANIZATIONS

22 Sec. 536.051. DEVELOPMENT OF QUALITY-BASED PREMIUM
23 PAYMENTS; PERFORMANCE REPORTING. (a) Subject to Section
24 1903(m)(2)(A), Social Security Act (42 U.S.C. Section
25 1396b(m)(2)(A)), and other applicable federal law, the commission
26 shall base a percentage of the premiums paid to a managed care
27 organization participating in the child health plan or Medicaid

1 program on the organization's performance with respect to outcome
2 and process measures developed under Section 536.003, including
3 outcome measures addressing potentially preventable events.

4 (b) The commission shall make available information
5 relating to the performance of a managed care organization with
6 respect to outcome and process measures under this subchapter to
7 child health plan program enrollees and Medicaid recipients before
8 those enrollees and recipients choose their managed care plans.

9 Sec. 536.052. PAYMENT AND CONTRACT AWARD INCENTIVES FOR
10 MANAGED CARE ORGANIZATIONS. (a) The commission may allow a
11 managed care organization participating in the child health plan or
12 Medicaid program increased flexibility to implement quality
13 initiatives in a managed care plan offered by the organization,
14 including flexibility with respect to financial arrangements, in
15 order to:

16 (1) achieve high-quality, cost-effective health care;
17 (2) increase the use of high-quality, cost-effective
18 delivery models; and

19 (3) reduce potentially preventable events.

20 (b) The commission, after consulting with the advisory
21 committee, shall develop quality of care and cost-efficiency
22 benchmarks, including benchmarks based on a managed care
23 organization's performance with respect to reducing potentially
24 preventable events and containing the growth rate of health care
25 costs.

26 (c) The commission may include in a contract between a
27 managed care organization and the commission financial incentives

1 that are based on the organization's successful implementation of
2 quality initiatives under Subsection (a) or success in achieving
3 quality of care and cost-efficiency benchmarks under Subsection
4 (b).

5 (d) In awarding contracts to managed care organizations
6 under the child health plan and Medicaid programs, the commission
7 shall, in addition to considerations under Section 533.003 of this
8 code and Section 62.155, Health and Safety Code, give preference to
9 an organization that offers a managed care plan that successfully
10 implements quality initiatives under Subsection (a) as determined
11 by the commission based on data or other evidence provided by the
12 organization or meets quality of care and cost-efficiency
13 benchmarks under Subsection (b).

14 (e) The commission may implement financial incentives under
15 this section only if implementing the incentives would be
16 cost-effective.

17 [Sections 536.053-536.100 reserved for expansion]

18 SUBCHAPTER C. QUALITY-BASED HEALTH HOME PAYMENT SYSTEMS

19 Sec. 536.101. DEFINITIONS. In this subchapter:

20 (1) "Health home" means a primary care provider
21 practice or, if appropriate, a specialty care provider practice,
22 incorporating several features, including comprehensive care
23 coordination, family-centered care, and data management, that are
24 focused on improving outcome-based quality of care and increasing
25 patient and provider satisfaction under the child health plan and
26 Medicaid programs.

27 (2) "Participating enrollee" means a child health plan

1 program enrollee or Medicaid recipient who has a health home.

2 Sec. 536.102. QUALITY-BASED HEALTH HOME PAYMENTS.

3 (a) Subject to this subchapter, the commission, after consulting
4 with the advisory committee, may develop and implement
5 quality-based payment systems for health homes designed to improve
6 quality of care and reduce the provision of unnecessary medical
7 services. A quality-based payment system developed under this
8 section must:

9 (1) base payments made to a participating enrollee's
10 health home on quality and efficiency measures that may include
11 measurable wellness and prevention criteria and use of
12 evidence-based best practices, sharing a portion of any realized
13 cost savings achieved by the health home, and ensuring quality of
14 care outcomes, including a reduction in potentially preventable
15 events; and

16 (2) allow for the examination of measurable wellness
17 and prevention criteria, use of evidence-based best practices, and
18 quality of care outcomes based on the type of primary or specialty
19 care provider practice.

20 (b) The commission may develop a quality-based payment
21 system for health homes under this subchapter only if implementing
22 the system would be feasible and cost-effective.

23 Sec. 536.103. PROVIDER ELIGIBILITY. To be eligible to
24 receive reimbursement under a quality-based payment system under
25 this subchapter, a health home provider must:

26 (1) provide participating enrollees, directly or
27 indirectly, with access to health care services outside of regular

1 business hours;

2 (2) educate participating enrollees about the
3 availability of health care services outside of regular business
4 hours; and

5 (3) provide evidence satisfactory to the commission
6 that the provider meets the requirement of Subdivision (1).

7 [Sections 536.104-536.150 reserved for expansion]

8 SUBCHAPTER D. QUALITY-BASED HOSPITAL REIMBURSEMENT SYSTEM

9 Sec. 536.151 [531.913]. COLLECTION AND REPORTING OF
10 CERTAIN [HOSPITAL HEALTH] INFORMATION [EXCHANGE]. (a) [In this
11 section, "potentially preventable readmission" means a return
12 hospitalization of a person within a period specified by the
13 commission that results from deficiencies in the care or treatment
14 provided to the person during a previous hospital stay or from
15 deficiencies in post-hospital discharge follow-up. The term does
16 not include a hospital readmission necessitated by the occurrence
17 of unrelated events after the discharge. The term includes the
18 readmission of a person to a hospital for:

19 [(1) the same condition or procedure for which the
20 person was previously admitted,

21 [(2) an infection or other complication resulting from
22 care previously provided,

23 [(3) a condition or procedure that indicates that a
24 surgical intervention performed during a previous admission was
25 unsuccessful in achieving the anticipated outcome, or

26 [(4) another condition or procedure of a similar
27 nature, as determined by the executive commissioner.

1 ~~[(b)]~~ The executive commissioner shall adopt rules for
2 identifying potentially preventable readmissions of child health
3 plan program enrollees and Medicaid recipients and potentially
4 preventable complications experienced by child health plan program
5 enrollees and Medicaid recipients. The ~~[and the]~~ commission shall
6 collect ~~[exchange]~~ data from ~~[with]~~ hospitals on
7 present-on-admission indicators for purposes of this section.

8 (b) ~~[(c)]~~ The commission shall establish a ~~[health~~
9 ~~information exchange]~~ program to provide a ~~[exchange]~~ confidential
10 report to ~~[information with]~~ each hospital in this state that
11 participates in the child health plan or Medicaid program regarding
12 the hospital's performance with respect to potentially preventable
13 readmissions and potentially preventable complications. To the
14 extent possible, a report provided under this section should
15 include potentially preventable readmissions and potentially
16 preventable complications information across all child health plan
17 and Medicaid program payment systems. A hospital shall distribute
18 the information contained in the report ~~[received from the~~
19 ~~commission]~~ to physicians and other health care providers providing
20 services at the hospital.

21 (c) A report provided to a hospital under this section is
22 confidential and is not subject to Chapter 552.

23 Sec. 536.152. REIMBURSEMENT ADJUSTMENTS. (a) Subject to
24 Subsection (b), using the data collected under Section 536.151 and
25 the diagnosis-related groups (DRG) methodology implemented under
26 Section 536.005, the commission, after consulting with the advisory
27 committee, shall to the extent feasible adjust child health plan

1 and Medicaid reimbursements to hospitals, including payments made
2 under the disproportionate share hospitals and upper payment limit
3 supplemental payment programs, in a manner that may reward or
4 penalize a hospital based on the hospital's performance with
5 respect to exceeding, or failing to achieve, outcome and process
6 measures developed under Section 536.003 that address the rates of
7 potentially preventable readmissions and potentially preventable
8 complications.

9 (b) The commission must provide the report required under
10 Section 536.151(b) to a hospital at least one year before the
11 commission adjusts child health plan and Medicaid reimbursements to
12 the hospital under this section.

13 [Sections 536.153-536.200 reserved for expansion]

14 SUBCHAPTER E. QUALITY-BASED PAYMENT INITIATIVES

15 Sec. 536.201. DEFINITION. In this subchapter, "payment
16 initiative" means a quality-based payment initiative established
17 under this subchapter.

18 Sec. 536.202. PAYMENT INITIATIVES; DETERMINATION OF
19 BENEFIT TO STATE. (a) The commission shall, after consulting with
20 the advisory committee, establish payment initiatives to test the
21 effectiveness of quality-based payment systems, alternative
22 payment methodologies, and high-quality, cost-effective health
23 care delivery models that provide incentives to physicians and
24 other health care providers to develop health care interventions
25 for child health plan program enrollees or Medicaid recipients, or
26 both, that will:

27 (1) improve the quality of health care provided to the

1 enrollees or recipients;

2 (2) reduce potentially preventable events;

3 (3) promote prevention and wellness;

4 (4) increase the use of evidence-based best practices;

5 (5) increase appropriate physician and other health
6 care provider collaboration; and

7 (6) contain costs.

8 (b) The commission shall:

9 (1) establish a process by which managed care
10 organizations and physicians and other health care providers may
11 submit proposals for payment initiatives described by Subsection
12 (a); and

13 (2) determine whether it is feasible and
14 cost-effective to implement one or more of the proposed payment
15 initiatives.

16 Sec. 536.203. PURPOSE AND IMPLEMENTATION OF PAYMENT
17 INITIATIVES. (a) If the commission determines under Section
18 536.202 that implementation of one or more payment initiatives is
19 feasible and cost-effective for this state, the commission shall
20 establish one or more payment initiatives as provided by this
21 subchapter.

22 (b) The commission shall administer any payment initiative
23 established under this subchapter. The executive commissioner may
24 adopt rules, plans, and procedures and enter into contracts and
25 other agreements as the executive commissioner considers
26 appropriate and necessary to administer this subchapter.

27 (c) The commission may limit a payment initiative to:

1 (1) one or more regions in this state;

2 (2) one or more organized networks of physicians and
3 other health care providers; or

4 (3) specified types of services provided under the
5 child health plan or Medicaid program, or specified types of
6 enrollees or recipients under those programs.

7 (d) A payment initiative implemented under this subchapter
8 must be operated for at least one calendar year.

9 Sec. 536.204. STANDARDS; PROTOCOLS. (a) The executive
10 commissioner shall:

11 (1) consult with the advisory committee to develop
12 quality of care and cost-efficiency benchmarks and measurable goals
13 that a payment initiative must meet to ensure high-quality and
14 cost-effective health care services and healthy outcomes; and

15 (2) approve benchmarks and goals developed as provided
16 by Subdivision (1).

17 (b) In addition to the benchmarks and goals under Subsection
18 (a), the executive commissioner may approve efficiency performance
19 standards that may include the sharing of realized cost savings
20 with physicians and other health care providers who provide health
21 care services that exceed the efficiency performance standards.
22 The efficiency performance standards may not create any financial
23 incentive for or involve making a payment to a physician or other
24 health care provider that directly or indirectly induces the
25 limitation of medically necessary services.

26 Sec. 536.205. PAYMENT RATES UNDER PAYMENT INITIATIVES. The
27 executive commissioner may contract with appropriate entities,

1 including qualified actuaries, to assist in determining
2 appropriate payment rates for a payment initiative implemented
3 under this subchapter.

4 (b) The Health and Human Services Commission shall convert
5 the hospital reimbursement systems used under the child health plan
6 program under Chapter 62, Health and Safety Code, and medical
7 assistance program under Chapter 32, Human Resources Code, to the
8 diagnosis-related groups (DRG) methodology to the extent possible
9 as required by Section 536.005, Government Code, as added by this
10 section, as soon as practicable after the effective date of this
11 Act, but not later than:

12 (1) September 1, 2013, for reimbursements paid to
13 children's hospitals; and

14 (2) September 1, 2012, for reimbursements paid to
15 other hospitals under those programs.

16 (c) Not later than September 1, 2012, the Health and Human
17 Services Commission shall begin providing performance reports to
18 hospitals regarding the hospitals' performances with respect to
19 potentially preventable complications as required by Section
20 536.151, Government Code, as designated and amended by this
21 section.

22 (d) Subject to Subsection (b), Section 536.004, Government
23 Code, as added by this section, the Health and Human Services
24 Commission shall begin making adjustments to child health plan and
25 Medicaid reimbursements to hospitals as required by Section
26 536.152, Government Code, as added by this section:

27 (1) not later than September 1, 2012, based on the

1 hospitals' performances with respect to reducing potentially
2 preventable readmissions; and

3 (2) not later than September 1, 2013, based on the
4 hospitals' performances with respect to reducing potentially
5 preventable complications.

6 SECTION 1.13. (a) The heading to Section 531.912,
7 Government Code, is amended to read as follows:

8 Sec. 531.912. COMMON PERFORMANCE MEASUREMENTS AND
9 PAY-FOR-PERFORMANCE INCENTIVES FOR [~~QUALITY OF CARE HEALTH~~
10 ~~INFORMATION EXCHANGE WITH~~] CERTAIN NURSING FACILITIES.

11 (b) Subsections (b), (c), and (f), Section 531.912,
12 Government Code, are amended to read as follows:

13 (b) If feasible, the executive commissioner by rule may
14 [~~shall~~] establish an incentive payment program for [~~a quality of~~
15 ~~care health information exchange with~~] nursing facilities that
16 choose to participate. The [~~in a~~] program must be designed to
17 improve the quality of care and services provided to medical
18 assistance recipients. Subject to Subsection (f), the program may
19 provide incentive payments in accordance with this section to
20 encourage facilities to participate in the program.

21 (c) In establishing an incentive payment [~~a quality of care~~
22 ~~health information exchange~~] program under this section, the
23 executive commissioner shall, subject to Subsection (d), adopt
24 common [~~exchange information with participating nursing facilities~~
25 ~~regarding~~] performance measures to be used in evaluating nursing
26 facilities that are related to structure, process, and outcomes
27 that positively correlate to nursing facility quality and

1 improvement. The common performance measures:

2 (1) must be:

3 (A) recognized by the executive commissioner as
4 valid indicators of the overall quality of care received by medical
5 assistance recipients; and

6 (B) designed to encourage and reward
7 evidence-based practices among nursing facilities; and

8 (2) may include measures of:

9 (A) quality of care, as determined by clinical
10 performance ratings published by the federal Centers for Medicare
11 and Medicaid Services, the Agency for Healthcare Research and
12 Quality, or another federal agency [~~life~~];

13 (B) direct-care staff retention and turnover;

14 (C) recipient satisfaction, including the
15 satisfaction of recipients who are short-term and long-term
16 residents of facilities, and family satisfaction, as determined by
17 the Nursing Home Consumer Assessment of Health Providers and
18 Systems survey relied upon by the federal Centers for Medicare and
19 Medicaid Services;

20 (D) employee satisfaction and engagement;

21 (E) the incidence of preventable acute care
22 emergency room services use;

23 (F) regulatory compliance;

24 (G) level of person-centered care; and

25 (H) direct-care staff training, including a
26 facility's [~~level of occupancy or of facility~~] utilization of
27 independent distance learning programs for the continuous training

1 of direct-care staff.

2 (f) The commission may make incentive payments under the
3 program only if money is [~~specifically~~] appropriated for that
4 purpose.

5 (c) The Department of Aging and Disability Services shall
6 conduct a study to evaluate the feasibility of expanding any
7 incentive payment program established for nursing facilities under
8 Section 531.912, Government Code, as amended by this section, by
9 providing incentive payments for the following types of providers
10 of long-term care services, as defined by Section 22.0011, Human
11 Resources Code, under the medical assistance program:

12 (1) intermediate care facilities for persons with
13 mental retardation licensed under Chapter 252, Health and Safety
14 Code; and

15 (2) providers of home and community-based services, as
16 described by 42 U.S.C. Section 1396n(c), who are licensed or
17 otherwise authorized to provide those services in this state.

18 (d) Not later than September 1, 2012, the Department of
19 Aging and Disability Services shall submit to the legislature a
20 written report containing the findings of the study conducted under
21 Subsection (c) of this section and the department's
22 recommendations.

23 SECTION 1.14. Section 780.004, Health and Safety Code, is
24 amended by amending Subsection (a) and adding Subsection (j) to
25 read as follows:

26 (a) The commissioner:

27 (1) [~~7~~] with advice and counsel from the chairpersons

1 of the trauma service area regional advisory councils, shall use
2 money appropriated from the account established under this chapter
3 to fund designated trauma facilities, county and regional emergency
4 medical services, and trauma care systems in accordance with this
5 section; and

6 (2) after consulting with the executive commissioner
7 of the Health and Human Services Commission, may transfer to an
8 account in the general revenue fund money appropriated from the
9 account established under this chapter to maximize the receipt of
10 federal funds under the medical assistance program established
11 under Chapter 32, Human Resources Code, and to fund provider
12 reimbursement payments as provided by Subsection (j).

13 (j) Money in the account described by Subsection (a)(2) may
14 be appropriated only to the Health and Human Services Commission to
15 fund provider reimbursement payments under the medical assistance
16 program established under Chapter 32, Human Resources Code,
17 including reimbursement enhancements to the statewide dollar
18 amount (SDA) rate used to reimburse designated trauma hospitals
19 under the program.

20 SECTION 1.15. Subchapter B, Chapter 531, Government Code,
21 is amended by adding Sections 531.0696 and 531.0697 to read as
22 follows:

23 Sec. 531.0696. CONSIDERATIONS IN AWARDING CERTAIN
24 CONTRACTS. The commission may not contract with a managed care
25 organization, including a health maintenance organization, or a
26 pharmacy benefit manager if, in the preceding three years, the
27 organization or pharmacy benefit manager, in connection with a bid,

1 proposal, or contract with the commission, was subject to a final
2 judgment by a court of competent jurisdiction resulting in a
3 conviction for a criminal offense under state or federal law:

4 (1) related to the delivery of an item or service;

5 (2) related to neglect or abuse of patients in
6 connection with the delivery of an item or service;

7 (3) consisting of a felony related to fraud, theft,
8 embezzlement, breach of fiduciary responsibility, or other
9 financial misconduct; or

10 (4) resulting in a penalty or fine in the amount of
11 \$500,000 or more in a state or federal administrative proceeding.

12 Sec. 531.0697. PRIOR APPROVAL AND PROVIDER ACCESS TO
13 CERTAIN COMMUNICATIONS WITH CERTAIN RECIPIENTS. (a) This section
14 applies to:

15 (1) the vendor drug program for the Medicaid and child
16 health plan programs;

17 (2) the kidney health care program;

18 (3) the children with special health care needs
19 program; and

20 (4) any other state program administered by the
21 commission that provides prescription drug benefits.

22 (b) A managed care organization, including a health
23 maintenance organization, or a pharmacy benefit manager, that
24 administers claims for prescription drug benefits under a program
25 to which this section applies shall, at least 10 days before the
26 date the organization or pharmacy benefit manager intends to
27 deliver a communication to recipients collectively under a program:

1 (1) submit a copy of the communication to the
2 commission for approval; and

3 (2) if applicable, allow the pharmacy providers of
4 recipients who are to receive the communication access to the
5 communication.

6 SECTION 1.16. (a) Subchapter A, Chapter 61, Health and
7 Safety Code, is amended by adding Section 61.012 to read as follows:

8 Sec. 61.012. REIMBURSEMENT FOR SERVICES. (a) In this
9 section, "sponsored alien" means a person who has been lawfully
10 admitted to the United States for permanent residence under the
11 Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and
12 who, as a condition of admission, was sponsored by a person who
13 executed an affidavit of support on behalf of the person.

14 (b) A public hospital or hospital district that provides
15 health care services to a sponsored alien under this chapter may
16 recover from a person who executed an affidavit of support on behalf
17 of the alien the costs of the health care services provided to the
18 alien.

19 (c) A public hospital or hospital district described by
20 Subsection (b) must notify a sponsored alien and a person who
21 executed an affidavit of support on behalf of the alien, at the time
22 the alien applies for health care services, that a person who
23 executed an affidavit of support on behalf of a sponsored alien is
24 liable for the cost of health care services provided to the alien.

25 (b) Section 61.012, Health and Safety Code, as added by this
26 section, applies only to health care services provided by a public
27 hospital or hospital district on or after the effective date of this

1 Act.

2 SECTION 1.17. Subchapter B, Chapter 531, Government Code,
3 is amended by adding Sections 531.024181 and 531.024182 to read as
4 follows:

5 Sec. 531.024181. VERIFICATION OF IMMIGRATION STATUS OF
6 APPLICANTS FOR CERTAIN BENEFITS WHO ARE QUALIFIED ALIENS.

7 (a) This section applies only with respect to the following
8 benefits programs:

9 (1) the child health plan program under Chapter 62,
10 Health and Safety Code;

11 (2) the financial assistance program under Chapter 31,
12 Human Resources Code;

13 (3) the medical assistance program under Chapter 32,
14 Human Resources Code; and

15 (4) the nutritional assistance program under Chapter
16 33, Human Resources Code.

17 (b) If, at the time of application for benefits under a
18 program to which this section applies, a person states that the
19 person is a qualified alien, as that term is defined by 8 U.S.C.
20 Section 1641(b), the commission shall, to the extent allowed by
21 federal law, verify information regarding the immigration status of
22 the person using an automated system or systems where available.

23 (c) The executive commissioner shall adopt rules necessary
24 to implement this section.

25 (d) Nothing in this section adds to or changes the
26 eligibility requirements for any of the benefits programs to which
27 this section applies.

1 Sec. 531.024182. VERIFICATION OF SPONSORSHIP INFORMATION
2 FOR CERTAIN BENEFITS RECIPIENTS; REIMBURSEMENT. (a) In this
3 section, "sponsored alien" means a person who has been lawfully
4 admitted to the United States for permanent residence under the
5 Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and
6 who, as a condition of admission, was sponsored by a person who
7 executed an affidavit of support on behalf of the person.

8 (b) If, at the time of application for benefits, a person
9 stated that the person is a sponsored alien, the commission may, to
10 the extent allowed by federal law, verify information relating to
11 the sponsorship, using an automated system or systems where
12 available, after the person is determined eligible for and begins
13 receiving benefits under any of the following benefits programs:

14 (1) the child health plan program under Chapter 62,
15 Health and Safety Code;

16 (2) the financial assistance program under Chapter 31,
17 Human Resources Code;

18 (3) the medical assistance program under Chapter 32,
19 Human Resources Code; or

20 (4) the nutritional assistance program under Chapter
21 33, Human Resources Code.

22 (c) If the commission verifies that a person who receives
23 benefits under a program listed in Subsection (b) is a sponsored
24 alien, the commission may seek reimbursement from the person's
25 sponsor for benefits provided to the person under those programs to
26 the extent allowed by federal law, provided the commission
27 determines that seeking reimbursement is cost-effective.

1 (d) If, at the time a person applies for benefits under a
2 program listed in Subsection (b), the person states that the person
3 is a sponsored alien, the commission shall make a reasonable effort
4 to notify the person that the commission may seek reimbursement
5 from the person's sponsor for any benefits the person receives
6 under those programs.

7 (e) The executive commissioner shall adopt rules necessary
8 to implement this section, including rules that specify the most
9 cost-effective procedures by which the commission may seek
10 reimbursement under Subsection (c).

11 (f) Nothing in this section adds to or changes the
12 eligibility requirements for any of the benefits programs listed in
13 Subsection (b).

14 SECTION 1.18. Subchapter B, Chapter 32, Human Resources
15 Code, is amended by adding Section 32.0314 to read as follows:

16 Sec. 32.0314. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT
17 AND SUPPLIES. The executive commissioner of the Health and Human
18 Services Commission shall adopt rules requiring the electronic
19 submission of any claim for reimbursement for durable medical
20 equipment and supplies under the medical assistance program.

21 SECTION 1.19. (a) Subchapter A, Chapter 531, Government
22 Code, is amended by adding Section 531.0025 to read as follows:

23 Sec. 531.0025. RESTRICTIONS ON AWARDS TO FAMILY PLANNING
24 SERVICE PROVIDERS. (a) Notwithstanding any other law, money
25 appropriated to the Department of State Health Services for the
26 purpose of providing family planning services must be awarded:

27 (1) to eligible entities in the following order of

1 descending priority:

2 (A) public entities that provide family planning
3 services, including state, county, and local community health
4 clinics and federally qualified health centers;

5 (B) nonpublic entities that provide
6 comprehensive primary and preventive care services in addition to
7 family planning services; and

8 (C) nonpublic entities that provide family
9 planning services but do not provide comprehensive primary and
10 preventive care services; or

11 (2) as otherwise directed by the legislature in the
12 General Appropriations Act.

13 (b) Notwithstanding Subsection (a), the Department of State
14 Health Services shall, in compliance with federal law, ensure
15 distribution of funds for family planning services in a manner that
16 does not severely limit or eliminate access to those services in any
17 region of the state.

18 (b) Section 32.024, Human Resources Code, is amended by
19 adding Subsection (c-1) to read as follows:

20 (c-1) The department shall ensure that money spent for
21 purposes of the demonstration project for women's health care
22 services under former Section 32.0248, Human Resources Code, or a
23 similar successor program is not used to perform or promote
24 elective abortions, or to contract with entities that perform or
25 promote elective abortions or affiliate with entities that perform
26 or promote elective abortions.

27 SECTION 1.20. Subchapter B, Chapter 32, Human Resources

1 Code, is amended by adding Section 32.074 to read as follows:

2 Sec. 32.074. ACCESS TO PERSONAL EMERGENCY RESPONSE SYSTEM.

3 (a) In this section, "personal emergency response system" has the
4 meaning assigned by Section 781.001, Health and Safety Code.

5 (b) The department shall ensure that each Medicaid
6 recipient enrolled in a home and community-based services waiver
7 program that includes a personal emergency response system as a
8 service has access to a personal emergency response system, if
9 necessary, without regard to the recipient's access to a landline
10 telephone.

11 SECTION 1.21. Chapter 33, Human Resources Code, is amended
12 by adding Section 33.029 to read as follows:

13 Sec. 33.029. CERTAIN ELIGIBILITY RESTRICTIONS.

14 Notwithstanding any other provision of this chapter, an applicant
15 for or recipient of benefits under the supplemental nutrition
16 assistance program is not entitled to and may not receive or
17 continue to receive any benefit under the program if the applicant
18 or recipient is not legally present in the United States.

19 SECTION 1.22. If before implementing any provision of this
20 article a state agency determines that a waiver or authorization
21 from a federal agency is necessary for implementation of that
22 provision, the agency affected by the provision shall request the
23 waiver or authorization and may delay implementing that provision
24 until the waiver or authorization is granted.

25 ARTICLE 2. LEGISLATIVE FINDINGS AND INTENT; COMPLIANCE WITH
26 ANTITRUST LAWS

27 SECTION 2.01. (a) The legislature finds that it would

1 benefit the State of Texas to:

2 (1) explore innovative health care delivery and
3 payment models to improve the quality and efficiency of health care
4 in this state;

5 (2) improve health care transparency;

6 (3) give health care providers the flexibility to
7 collaborate and innovate to improve the quality and efficiency of
8 health care; and

9 (4) create incentives to improve the quality and
10 efficiency of health care.

11 (b) The legislature finds that the use of certified health
12 care collaboratives will increase pro-competitive effects as the
13 ability to compete on the basis of quality of care and the
14 furtherance of the quality of care through a health care
15 collaborative will overcome any anticompetitive effects of joining
16 competitors to create the health care collaboratives and the
17 payment mechanisms that will be used to encourage the furtherance
18 of quality of care. Consequently, the legislature finds it
19 appropriate and necessary to authorize health care collaboratives
20 to promote the efficiency and quality of health care.

21 (c) The legislature intends to exempt from antitrust laws
22 and provide immunity from federal antitrust laws through the state
23 action doctrine a health care collaborative that holds a
24 certificate of authority under Chapter 848, Insurance Code, as
25 added by Article 4 of this Act, and that collaborative's
26 negotiations of contracts with payors. The legislature does not
27 intend or authorize any person or entity to engage in activities or

1 to conspire to engage in activities that would constitute per se
2 violations of federal antitrust laws.

3 (d) The legislature intends to permit the use of alternative
4 payment mechanisms, including bundled or global payments and
5 quality-based payments, among physicians and other health care
6 providers participating in a health care collaborative that holds a
7 certificate of authority under Chapter 848, Insurance Code, as
8 added by Article 4 of this Act. The legislature intends to
9 authorize a health care collaborative to contract for and accept
10 payments from governmental and private payors based on alternative
11 payment mechanisms, and intends that the receipt and distribution
12 of payments to participating physicians and health care providers
13 is not a violation of any existing state law.

14 ARTICLE 3. TEXAS INSTITUTE OF HEALTH CARE QUALITY AND EFFICIENCY
15 SECTION 3.01. Title 12, Health and Safety Code, is amended
16 by adding Chapter 1002 to read as follows:

17 CHAPTER 1002. TEXAS INSTITUTE OF HEALTH CARE QUALITY AND
18 EFFICIENCY

19 SUBCHAPTER A. GENERAL PROVISIONS

20 Sec. 1002.001. DEFINITIONS. In this chapter:

21 (1) "Board" means the board of directors of the Texas
22 Institute of Health Care Quality and Efficiency established under
23 this chapter.

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

26 (3) "Department" means the Department of State Health
27 Services.

1 (4) "Executive commissioner" means the executive
2 commissioner of the Health and Human Services Commission.

3 (5) "Health care collaborative" has the meaning
4 assigned by Section 848.001, Insurance Code.

5 (6) "Health care facility" means:

6 (A) a hospital licensed under Chapter 241;

7 (B) an institution licensed under Chapter 242;

8 (C) an ambulatory surgical center licensed under
9 Chapter 243;

10 (D) a birthing center licensed under Chapter 244;

11 (E) an end stage renal disease facility licensed
12 under Chapter 251; or

13 (F) a freestanding emergency medical care
14 facility licensed under Chapter 254.

15 (7) "Institute" means the Texas Institute of Health
16 Care Quality and Efficiency established under this chapter.

17 (8) "Potentially preventable admission" means an
18 admission of a person to a hospital or long-term care facility that
19 may have reasonably been prevented with adequate access to
20 ambulatory care or health care coordination.

21 (9) "Potentially preventable ancillary service" means
22 a health care service provided or ordered by a physician or other
23 health care provider to supplement or support the evaluation or
24 treatment of a patient, including a diagnostic test, laboratory
25 test, therapy service, or radiology service, that may not be
26 reasonably necessary for the provision of quality health care or
27 treatment.

1 (10) "Potentially preventable complication" means a
2 harmful event or negative outcome with respect to a person,
3 including an infection or surgical complication, that:

4 (A) occurs after the person's admission to a
5 hospital or long-term care facility; and

6 (B) may have resulted from the care, lack of
7 care, or treatment provided during the hospital or long-term care
8 facility stay rather than from a natural progression of an
9 underlying disease.

10 (11) "Potentially preventable event" means a
11 potentially preventable admission, a potentially preventable
12 ancillary service, a potentially preventable complication, a
13 potentially preventable emergency room visit, a potentially
14 preventable readmission, or a combination of those events.

15 (12) "Potentially preventable emergency room visit"
16 means treatment of a person in a hospital emergency room or
17 freestanding emergency medical care facility for a condition that
18 may not require emergency medical attention because the condition
19 could be, or could have been, treated or prevented by a physician or
20 other health care provider in a nonemergency setting.

21 (13) "Potentially preventable readmission" means a
22 return hospitalization of a person within a period specified by the
23 commission that may have resulted from deficiencies in the care or
24 treatment provided to the person during a previous hospital stay or
25 from deficiencies in post-hospital discharge follow-up. The term
26 does not include a hospital readmission necessitated by the
27 occurrence of unrelated events after the discharge. The term

1 includes the readmission of a person to a hospital for:

2 (A) the same condition or procedure for which the
3 person was previously admitted;

4 (B) an infection or other complication resulting
5 from care previously provided; or

6 (C) a condition or procedure that indicates that
7 a surgical intervention performed during a previous admission was
8 unsuccessful in achieving the anticipated outcome.

9 Sec. 1002.002. ESTABLISHMENT; PURPOSE. The Texas Institute
10 of Health Care Quality and Efficiency is established to improve
11 health care quality, accountability, education, and cost
12 containment in this state by encouraging health care provider
13 collaboration, effective health care delivery models, and
14 coordination of health care services.

15 [Sections 1002.003-1002.050 reserved for expansion]

16 SUBCHAPTER B. ADMINISTRATION

17 Sec. 1002.051. APPLICATION OF SUNSET ACT. The institute is
18 subject to Chapter 325, Government Code (Texas Sunset Act). Unless
19 continued in existence as provided by that chapter, the institute
20 is abolished and this chapter expires September 1, 2017.

21 Sec. 1002.052. COMPOSITION OF BOARD OF DIRECTORS. (a) The
22 institute is governed by a board of 15 directors appointed by the
23 governor.

24 (b) The following ex officio, nonvoting members also serve
25 on the board:

26 (1) the commissioner of the department;

27 (2) the executive commissioner;

- 1 (3) the commissioner of insurance;
2 (4) the executive director of the Employees Retirement
3 System of Texas;
4 (5) the executive director of the Teacher Retirement
5 System of Texas;
6 (6) the state Medicaid director of the Health and
7 Human Services Commission;
8 (7) the executive director of the Texas Medical Board;
9 (8) the commissioner of the Department of Aging and
10 Disability Services;
11 (9) the executive director of the Texas Workforce
12 Commission;
13 (10) the commissioner of the Texas Higher Education
14 Coordinating Board; and
15 (11) a representative from each state agency or system
16 of higher education that purchases or provides health care
17 services, as determined by the governor.

18 (c) The governor shall appoint as board members health care
19 providers, payors, consumers, and health care quality experts or
20 persons who possess expertise in any other area the governor finds
21 necessary for the successful operation of the institute.

22 (d) A person may not serve as a voting member of the board if
23 the person serves on or advises another board or advisory board of a
24 state agency.

25 Sec. 1002.053. TERMS OF OFFICE. (a) Appointed members of
26 the board serve staggered terms of four years, with the terms of as
27 close to one-half of the members as possible expiring January 31 of

1 each odd-numbered year.

2 (b) Board members may serve consecutive terms.

3 Sec. 1002.054. ADMINISTRATIVE SUPPORT. (a) The institute
4 is administratively attached to the commission.

5 (b) The commission shall coordinate administrative
6 responsibilities with the institute to streamline and integrate the
7 institute's administrative operations and avoid unnecessary
8 duplication of effort and costs.

9 (c) The institute may collaborate with, and coordinate its
10 administrative functions, including functions related to research
11 and reporting activities with, other public or private entities,
12 including academic institutions and nonprofit organizations, that
13 perform research on health care issues or other topics consistent
14 with the purpose of the institute.

15 Sec. 1002.055. EXPENSES. (a) Members of the board serve
16 without compensation but, subject to the availability of
17 appropriated funds, may receive reimbursement for actual and
18 necessary expenses incurred in attending meetings of the board.

19 (b) Information relating to the billing and payment of
20 expenses under this section is subject to Chapter 552, Government
21 Code.

22 Sec. 1002.056. OFFICER; CONFLICT OF INTEREST. (a) The
23 governor shall designate a member of the board as presiding officer
24 to serve in that capacity at the pleasure of the governor.

25 (b) Any board member or a member of a committee formed by the
26 board with direct interest, personally or through an employer, in a
27 matter before the board shall abstain from deliberations and

1 actions on the matter in which the conflict of interest arises and
2 shall further abstain on any vote on the matter, and may not
3 otherwise participate in a decision on the matter.

4 (c) Each board member shall:

5 (1) file a conflict of interest statement and a
6 statement of ownership interests with the board to ensure
7 disclosure of all existing and potential personal interests related
8 to board business; and

9 (2) update the statements described by Subdivision (1)
10 at least annually.

11 (d) A statement filed under Subsection (c) is subject to
12 Chapter 552, Government Code.

13 Sec. 1002.057. PROHIBITION ON CERTAIN CONTRACTS AND
14 EMPLOYMENT. (a) The board may not compensate, employ, or contract
15 with any individual who serves as a member of the board of, or on an
16 advisory board or advisory committee for, any other governmental
17 body, including any agency, council, or committee, in this state.

18 (b) The board may not compensate, employ, or contract with
19 any person that provides financial support to the board, including
20 a person who provides a gift, grant, or donation to the board.

21 Sec. 1002.058. MEETINGS. (a) The board may meet as often
22 as necessary, but shall meet at least once each calendar quarter.

23 (b) The board shall develop and implement policies that
24 provide the public with a reasonable opportunity to appear before
25 the board and to speak on any issue under the authority of the
26 institute.

27 Sec. 1002.059. BOARD MEMBER IMMUNITY. (a) A board member

1 may not be held civilly liable for an act performed, or omission
2 made, in good faith in the performance of the member's powers and
3 duties under this chapter.

4 (b) A cause of action does not arise against a member of the
5 board for an act or omission described by Subsection (a).

6 Sec. 1002.060. PRIVACY OF INFORMATION. (a) Protected
7 health information and individually identifiable health
8 information collected, assembled, or maintained by the institute is
9 confidential and is not subject to disclosure under Chapter 552,
10 Government Code.

11 (b) The institute shall comply with all state and federal
12 laws and rules relating to the protection, confidentiality, and
13 transmission of health information, including the Health Insurance
14 Portability and Accountability Act of 1996 (Pub. L. No. 104-191)
15 and rules adopted under that Act, 42 U.S.C. Section 290dd-2, and 42
16 C.F.R. Part 2.

17 (c) The commission, department, or institute or an officer
18 or employee of the commission, department, or institute, including
19 a board member, may not disclose any information that is
20 confidential under this section.

21 (d) Information, documents, and records that are
22 confidential as provided by this section are not subject to
23 subpoena or discovery and may not be introduced into evidence in any
24 civil or criminal proceeding.

25 (e) An officer or employee of the commission, department, or
26 institute, including a board member, may not be examined in a civil,
27 criminal, special, administrative, or other proceeding as to

1 information that is confidential under this section.

2 Sec. 1002.061. FUNDING. (a) The institute may be funded
3 through the General Appropriations Act and may request, accept, and
4 use gifts, grants, and donations as necessary to implement its
5 functions.

6 (b) The institute may participate in other
7 revenue-generating activity that is consistent with the
8 institute's purposes.

9 (c) Except as otherwise provided by law, each state agency
10 represented on the board as a nonvoting member shall provide funds
11 to support the institute and implement this chapter. The
12 commission shall establish a funding formula to determine the level
13 of support each state agency is required to provide.

14 (d) This section does not permit the sale of information
15 that is confidential under Section 1002.060.

16 [Sections 1002.062-1002.100 reserved for expansion]

17 SUBCHAPTER C. POWERS AND DUTIES

18 Sec. 1002.101. GENERAL POWERS AND DUTIES. The institute
19 shall make recommendations to the legislature on:

20 (1) improving quality and efficiency of health care
21 delivery by:

22 (A) providing a forum for regulators, payors, and
23 providers to discuss and make recommendations for initiatives that
24 promote the use of best practices, increase health care provider
25 collaboration, improve health care outcomes, and contain health
26 care costs;

27 (B) researching, developing, supporting, and

1 promoting strategies to improve the quality and efficiency of
2 health care in this state;

3 (C) determining the outcome measures that are the
4 most effective measures of quality and efficiency:

5 (i) using nationally accredited measures;

6 or

7 (ii) if no nationally accredited measures
8 exist, using measures based on expert consensus;

9 (D) reducing the incidence of potentially
10 preventable events; and

11 (E) creating a state plan that takes into
12 consideration the regional differences of the state to encourage
13 the improvement of the quality and efficiency of health care
14 services;

15 (2) improving reporting, consolidation, and
16 transparency of health care information; and

17 (3) implementing and supporting innovative health
18 care collaborative payment and delivery systems under Chapter 848,
19 Insurance Code.

20 Sec. 1002.102. GOALS FOR QUALITY AND EFFICIENCY OF HEALTH
21 CARE; STATEWIDE PLAN. (a) The institute shall study and develop
22 recommendations to improve the quality and efficiency of health
23 care delivery in this state, including:

24 (1) quality-based payment systems that align payment
25 incentives with high-quality, cost-effective health care;

26 (2) alternative health care delivery systems that
27 promote health care coordination and provider collaboration;

1 (3) quality of care and efficiency outcome
2 measurements that are effective measures of prevention, wellness,
3 coordination, provider collaboration, and cost-effective health
4 care; and

5 (4) meaningful use of electronic health records by
6 providers and electronic exchange of health information among
7 providers.

8 (b) The institute shall study and develop recommendations
9 for measuring quality of care and efficiency across:

10 (1) all state employee and state retiree benefit
11 plans;

12 (2) employee and retiree benefit plans provided
13 through the Teacher Retirement System of Texas;

14 (3) the state medical assistance program under Chapter
15 32, Human Resources Code; and

16 (4) the child health plan under Chapter 62.

17 (c) In developing recommendations under Subsection (b), the
18 institute shall use nationally accredited measures or, if no
19 nationally accredited measures exist, measures based on expert
20 consensus.

21 (d) The institute may study and develop recommendations for
22 measuring the quality of care and efficiency in state or federally
23 funded health care delivery systems other than those described by
24 Subsection (b).

25 (e) In developing recommendations under Subsections (a) and
26 (b), the institute may not base its recommendations solely on
27 actuarial data.

1 (f) Using the studies described by Subsections (a) and (b),
2 the institute shall develop recommendations for a statewide plan
3 for quality and efficiency of the delivery of health care.

4 [Sections 1002.103-1002.150 reserved for expansion]

5 SUBCHAPTER D. HEALTH CARE COLLABORATIVE GUIDELINES AND SUPPORT

6 Sec. 1002.151. INSTITUTE STUDIES AND RECOMMENDATIONS
7 REGARDING HEALTH CARE PAYMENT AND DELIVERY SYSTEMS. (a) The
8 institute shall study and make recommendations for alternative
9 health care payment and delivery systems.

10 (b) The institute shall recommend methods to evaluate a
11 health care collaborative's effectiveness, including methods to
12 evaluate:

13 (1) the efficiency and effectiveness of
14 cost-containment methods used by the collaborative;

15 (2) alternative health care payment and delivery
16 systems used by the collaborative;

17 (3) the quality of care;

18 (4) health care provider collaboration and
19 coordination;

20 (5) the protection of patients;

21 (6) patient satisfaction; and

22 (7) the meaningful use of electronic health records by
23 providers and electronic exchange of health information among
24 providers.

25 [Sections 1002.152-1002.200 reserved for expansion]

26 SUBCHAPTER E. IMPROVED TRANSPARENCY

27 Sec. 1002.201. HEALTH CARE ACCOUNTABILITY; IMPROVED

1 TRANSPARENCY. (a) With the assistance of the department, the
2 institute shall complete an assessment of all health-related data
3 collected by the state, what information is available to the
4 public, and how the public and health care providers currently
5 benefit and could potentially benefit from this information,
6 including health care cost and quality information.

7 (b) The institute shall develop a plan:

8 (1) for consolidating reports of health-related data
9 from various sources to reduce administrative costs to the state
10 and reduce the administrative burden to health care providers and
11 payors;

12 (2) for improving health care transparency to the
13 public and health care providers by making information available in
14 the most effective format; and

15 (3) providing recommendations to the legislature on
16 enhancing existing health-related information available to health
17 care providers and the public, including provider reporting of
18 additional information not currently required to be reported under
19 existing law, to improve quality of care.

20 Sec. 1002.202. ALL PAYOR CLAIMS DATABASE. (a) The
21 institute shall study the feasibility and desirability of
22 establishing a centralized database for health care claims
23 information across all payors.

24 (b) The study described by Subsection (a) shall:

25 (1) use the assessment described by Section 1002.201
26 to develop recommendations relating to the adequacy of existing
27 data sources for carrying out the state's purposes under this

1 chapter and Chapter 848, Insurance Code;
2 (2) determine whether the establishment of an all
3 payor claims database would reduce the need for some data
4 submissions provided by payors;
5 (3) identify the best available sources of data
6 necessary for the state's purposes under this chapter and Chapter
7 848, Insurance Code, that are not collected by the state under
8 existing law;
9 (4) describe how an all payor claims database may
10 facilitate carrying out the state's purposes under this chapter and
11 Chapter 848, Insurance Code;
12 (5) identify national standards for claims data
13 collection and use, including standardized data sets, standardized
14 methodology, and standard outcome measures of health care quality
15 and efficiency; and
16 (6) estimate the costs of implementing an all payor
17 claims database, including:
18 (A) the costs to the state for collecting and
19 processing data;
20 (B) the cost to the payors for supplying the
21 data; and
22 (C) the available funding mechanisms that might
23 support an all payor claims database.
24 (c) The institute shall consult with the department and the
25 Texas Department of Insurance to develop recommendations to submit
26 to the legislature on the establishment of the centralized claims
27 database described by Subsection (a).

1 SECTION 3.02. Chapter 109, Health and Safety Code, is
2 repealed.

3 SECTION 3.03. On the effective date of this Act:

4 (1) the Texas Health Care Policy Council established
5 under Chapter 109, Health and Safety Code, is abolished; and

6 (2) any unexpended and unobligated balance of money
7 appropriated by the legislature to the Texas Health Care Policy
8 Council established under Chapter 109, Health and Safety Code, as
9 it existed immediately before the effective date of this Act, is
10 transferred to the Texas Institute of Health Care Quality and
11 Efficiency created by Chapter 1002, Health and Safety Code, as
12 added by this Act.

13 SECTION 3.04. (a) The governor shall appoint voting
14 members of the board of directors of the Texas Institute of Health
15 Care Quality and Efficiency under Section 1002.052, Health and
16 Safety Code, as added by this Act, as soon as practicable after the
17 effective date of this Act.

18 (b) In making the initial appointments under this section,
19 the governor shall designate seven members to terms expiring
20 January 31, 2013, and eight members to terms expiring January 31,
21 2015.

22 SECTION 3.05. (a) Not later than December 1, 2012, the
23 Texas Institute of Health Care Quality and Efficiency shall submit
24 a report regarding recommendations for improved health care
25 reporting to the governor, the lieutenant governor, the speaker of
26 the house of representatives, and the chairs of the appropriate
27 standing committees of the legislature outlining:

1 (1) the initial assessment conducted under Subsection
2 (a), Section 1002.201, Health and Safety Code, as added by this Act;

3 (2) the plans initially developed under Subsection
4 (b), Section 1002.201, Health and Safety Code, as added by this Act;

5 (3) the changes in existing law that would be
6 necessary to implement the assessment and plans described by
7 Subdivisions (1) and (2) of this subsection; and

8 (4) the cost implications to state agencies, small
9 businesses, micro businesses, payors, and health care providers to
10 implement the assessment and plans described by Subdivisions (1)
11 and (2) of this subsection.

12 (b) Not later than December 1, 2012, the Texas Institute of
13 Health Care Quality and Efficiency shall submit a report regarding
14 recommendations for an all payor claims database to the governor,
15 the lieutenant governor, the speaker of the house of
16 representatives, and the chairs of the appropriate standing
17 committees of the legislature outlining:

18 (1) the feasibility and desirability of establishing a
19 centralized database for health care claims;

20 (2) the recommendations developed under Subsection
21 (c), Section 1002.202, Health and Safety Code, as added by this Act;

22 (3) the changes in existing law that would be
23 necessary to implement the recommendations described by
24 Subdivision (2) of this subsection; and

25 (4) the cost implications to state agencies, small
26 businesses, micro businesses, payors, and health care providers to
27 implement the recommendations described by Subdivision (2) of this

1 subsection.

2 SECTION 3.06. (a) The Texas Institute of Health Care
3 Quality and Efficiency under Chapter 1002, Health and Safety Code,
4 as added by this Act, with the assistance of and in coordination
5 with the Texas Department of Insurance, shall conduct a study:

6 (1) evaluating how the legislature may promote a
7 consumer-driven health care system, including by increasing the
8 adoption of high-deductible insurance products with health savings
9 accounts by consumers and employers to lower health care costs and
10 increase personal responsibility for health care; and

11 (2) examining the issue of differing amounts of
12 payment in full accepted by a provider for the same or similar
13 health care services or supplies, including bundled health care
14 services and supplies, and addressing:

15 (A) the extent of the differences in the amounts
16 accepted as payment in full for a service or supply;

17 (B) the reasons that amounts accepted as payment
18 in full differ for the same or similar services or supplies;

19 (C) the availability of information to the
20 consumer regarding the amount accepted as payment in full for a
21 service or supply;

22 (D) the effects on consumers of differing amounts
23 accepted as payment in full; and

24 (E) potential methods for improving consumers'
25 access to information in relation to the amounts accepted as
26 payment in full for health care services or supplies, including the
27 feasibility and desirability of requiring providers to:

1 (i) publicly post the amount that is
2 accepted as payment in full for a service or supply; and

3 (ii) adhere to the posted amount.

4 (b) The Texas Institute of Health Care Quality and
5 Efficiency shall submit a report to the legislature outlining the
6 results of the study conducted under this section and any
7 recommendations for potential legislation not later than January 1,
8 2013.

9 (c) This section expires September 1, 2013.

10 ARTICLE 4. HEALTH CARE COLLABORATIVES

11 SECTION 4.01. Subtitle C, Title 6, Insurance Code, is
12 amended by adding Chapter 848 to read as follows:

13 CHAPTER 848. HEALTH CARE COLLABORATIVES

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Sec. 848.001. DEFINITIONS. In this chapter:

16 (1) "Affiliate" means a person who controls, is
17 controlled by, or is under common control with one or more other
18 persons.

19 (2) "Health care collaborative" means an entity:

20 (A) that undertakes to arrange for medical and
21 health care services for insurers, health maintenance
22 organizations, and other payors in exchange for payments in cash or
23 in kind;

24 (B) that accepts and distributes payments for
25 medical and health care services;

26 (C) that consists of:

27 (i) physicians;

1 (ii) physicians and other health care
2 providers;

3 (iii) physicians and insurers or health
4 maintenance organizations; or

5 (iv) physicians, other health care
6 providers, and insurers or health maintenance organizations; and

7 (D) that is certified by the commissioner under
8 this chapter to lawfully accept and distribute payments to
9 physicians and other health care providers using the reimbursement
10 methodologies authorized by this chapter.

11 (3) "Health care services" means services provided by
12 a physician or health care provider to prevent, alleviate, cure, or
13 heal human illness or injury. The term includes:

14 (A) pharmaceutical services;

15 (B) medical, chiropractic, or dental care; and

16 (C) hospitalization.

17 (4) "Health care provider" means any person,
18 partnership, professional association, corporation, facility, or
19 institution licensed, certified, registered, or chartered by this
20 state to provide health care services. The term includes a hospital
21 but does not include a physician.

22 (5) "Health maintenance organization" means an
23 organization operating under Chapter 843.

24 (6) "Hospital" means a general or special hospital,
25 including a public or private institution licensed under Chapter
26 241 or 577, Health and Safety Code.

27 (7) "Institute" means the Texas Institute of Health

1 Care Quality and Efficiency established under Chapter 1002, Health
2 and Safety Code.

3 (8) "Physician" means:

4 (A) an individual licensed to practice medicine
5 in this state;

6 (B) a professional association organized under
7 the Texas Professional Association Act (Article 1528f, Vernon's
8 Texas Civil Statutes) or the Texas Professional Association Law by
9 an individual or group of individuals licensed to practice medicine
10 in this state;

11 (C) a partnership or limited liability
12 partnership formed by a group of individuals licensed to practice
13 medicine in this state;

14 (D) a nonprofit health corporation certified
15 under Section 162.001, Occupations Code;

16 (E) a company formed by a group of individuals
17 licensed to practice medicine in this state under the Texas Limited
18 Liability Company Act (Article 1528n, Vernon's Texas Civil
19 Statutes) or the Texas Professional Limited Liability Company Law;
20 or

21 (F) an organization wholly owned and controlled
22 by individuals licensed to practice medicine in this state.

23 (9) "Potentially preventable event" has the meaning
24 assigned by Section 1002.001, Health and Safety Code.

25 Sec. 848.002. EXCEPTION: DELEGATED ENTITIES. (a) This
26 section applies only to an entity, other than a health maintenance
27 organization, that:

1 (1) by itself or through a subcontract with another
2 entity, undertakes to arrange for or provide medical care or health
3 care services to enrollees in exchange for predetermined payments
4 on a prospective basis; and

5 (2) accepts responsibility for performing functions
6 that are required by:

7 (A) Chapter 222, 251, 258, or 1272, as
8 applicable, to a health maintenance organization; or

9 (B) Chapter 843, Chapter 1271, Section 1367.053,
10 Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507, as
11 applicable, solely on behalf of health maintenance organizations.

12 (b) An entity described by Subsection (a) is subject to
13 Chapter 1272 and is not required to obtain a certificate of
14 authority or determination of approval under this chapter.

15 Sec. 848.003. USE OF INSURANCE-RELATED TERMS BY HEALTH CARE
16 COLLABORATIVE. A health care collaborative that is not an insurer
17 or health maintenance organization may not use in its name,
18 contracts, or literature:

19 (1) the following words or initials:

20 (A) "insurance";

21 (B) "casualty";

22 (C) "surety";

23 (D) "mutual";

24 (E) "health maintenance organization"; or

25 (F) "HMO"; or

26 (2) any other words or initials that are:

27 (A) descriptive of the insurance, casualty,

1 surety, or health maintenance organization business; or

2 (B) deceptively similar to the name or
3 description of an insurer, surety corporation, or health
4 maintenance organization engaging in business in this state.

5 Sec. 848.004. APPLICABILITY OF INSURANCE LAWS. (a) An
6 organization may not arrange for or provide health care services to
7 enrollees on a prepaid or indemnity basis through health insurance
8 or a health benefit plan, including a health care plan, as defined
9 by Section 843.002, unless the organization as an insurer or health
10 maintenance organization holds the appropriate certificate of
11 authority issued under another chapter of this code.

12 (b) Except as provided by Subsection (c), the following
13 provisions of this code apply to a health care collaborative in the
14 same manner and to the same extent as they apply to an individual or
15 entity otherwise subject to the provision:

- 16 (1) Section 38.001;
- 17 (2) Subchapter A, Chapter 542;
- 18 (3) Chapter 541;
- 19 (4) Chapter 543;
- 20 (5) Chapter 602;
- 21 (6) Chapter 701;
- 22 (7) Chapter 803; and
- 23 (8) Chapter 804.

24 (c) The remedies available under this chapter in the manner
25 provided by Chapter 541 do not include:

- 26 (1) a private cause of action under Subchapter D,
27 Chapter 541; or

1 (2) a class action under Subchapter F, Chapter 541.

2 Sec. 848.005. CERTAIN INFORMATION CONFIDENTIAL.

3 (a) Except as provided by Subsection (b), an application, filing,
4 or report required under this chapter is public information subject
5 to disclosure under Chapter 552, Government Code.

6 (b) The following information is confidential and is not
7 subject to disclosure under Chapter 552, Government Code:

8 (1) a contract, agreement, or document that
9 establishes another arrangement:

10 (A) between a health care collaborative and a
11 governmental or private entity for all or part of health care
12 services provided or arranged for by the health care collaborative;
13 or

14 (B) between a health care collaborative and
15 participating physicians and health care providers;

16 (2) a written description of a contract, agreement, or
17 other arrangement described by Subdivision (1);

18 (3) information relating to bidding, pricing, or other
19 trade secrets submitted to:

20 (A) the department under Sections 848.057(a)(5)
21 and (6); or

22 (B) the attorney general under Section 848.059;

23 (4) information relating to the diagnosis, treatment,
24 or health of a patient who receives health care services from a
25 health care collaborative under a contract for services; and

26 (5) information relating to quality improvement or
27 peer review activities of a health care collaborative.

1 Sec. 848.006. COVERAGE BY HEALTH CARE COLLABORATIVE NOT
2 REQUIRED. (a) Except as provided by Subsection (b) and subject to
3 Chapter 843 and Section 1301.0625, an individual may not be
4 required to obtain or maintain coverage under:

5 (1) an individual health insurance policy written
6 through a health care collaborative; or

7 (2) any plan or program for health care services
8 provided on an individual basis through a health care
9 collaborative.

10 (b) This chapter does not require an individual to obtain or
11 maintain health insurance coverage.

12 (c) Subsection (a) does not apply to an individual:

13 (1) who is required to obtain or maintain health
14 benefit plan coverage:

15 (A) written by an institution of higher education
16 at which the individual is or will be enrolled as a student; or

17 (B) under an order requiring medical support for
18 a child; or

19 (2) who voluntarily applies for benefits under a state
20 administered program under Title XIX of the Social Security Act (42
21 U.S.C. Section 1396 et seq.), or Title XXI of the Social Security
22 Act (42 U.S.C. Section 1397aa et seq.).

23 (d) Except as provided by Subsection (e), a fine or penalty
24 may not be imposed on an individual if the individual chooses not to
25 obtain or maintain coverage described by Subsection (a).

26 (e) Subsection (d) does not apply to a fine or penalty
27 imposed on an individual described in Subsection (c) for the

1 individual's failure to obtain or maintain health benefit plan
2 coverage.

3 [Sections 848.007-848.050 reserved for expansion]

4 SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

5 Sec. 848.051. OPERATION OF HEALTH CARE COLLABORATIVE. A
6 health care collaborative that is certified by the department under
7 this chapter may provide or arrange to provide health care services
8 under contract with a governmental or private entity.

9 Sec. 848.052. FORMATION AND GOVERNANCE OF HEALTH CARE
10 COLLABORATIVE. (a) A health care collaborative is governed by a
11 board of directors.

12 (b) The person who establishes a health care collaborative
13 shall appoint an initial board of directors. Each member of the
14 initial board serves a term of not more than 18 months. Subsequent
15 members of the board shall be elected to serve two-year terms by
16 physicians and health care providers who participate in the health
17 care collaborative as provided by this section. The board shall
18 elect a chair from among its members.

19 (c) If the participants in a health care collaborative are
20 all physicians, each member of the board of directors must be an
21 individual physician who is a participant in the health care
22 collaborative.

23 (d) If the participants in a health care collaborative are
24 both physicians and other health care providers, the board of
25 directors must consist of:

26 (1) an even number of members who are individual
27 physicians, selected by physicians who participate in the health

1 care collaborative;

2 (2) a number of members equal to the number of members
3 under Subdivision (1) who represent health care providers, one of
4 whom is an individual physician, selected by health care providers
5 who participate in the health care collaborative; and

6 (3) one individual member with business expertise,
7 selected by unanimous vote of the members described by Subdivisions
8 (1) and (2).

9 (d-1) If a health care collaborative includes
10 hospital-based physicians, one member of the board of directors
11 must be a hospital-based physician.

12 (e) The board of directors must include at least three
13 nonvoting ex officio members who represent the community in which
14 the health care collaborative operates.

15 (f) An individual may not serve on the board of directors of
16 a health care collaborative if the individual has an ownership
17 interest in, serves on the board of directors of, or maintains an
18 officer position with:

19 (1) another health care collaborative that provides
20 health care services in the same service area as the health care
21 collaborative; or

22 (2) a physician or health care provider that:

23 (A) does not participate in the health care
24 collaborative; and

25 (B) provides health care services in the same
26 service area as the health care collaborative.

27 (g) In addition to the requirements of Subsection (f), the

1 board of directors of a health care collaborative shall adopt a
2 conflict of interest policy to be followed by members.

3 (h) The board of directors may remove a member for cause. A
4 member may not be removed from the board without cause.

5 (i) The organizational documents of a health care
6 collaborative may not conflict with any provision of this chapter,
7 including this section.

8 Sec. 848.053. COMPENSATION ADVISORY COMMITTEE; SHARING OF
9 CERTAIN DATA. (a) The board of directors of a health care
10 collaborative shall establish a compensation advisory committee to
11 develop and make recommendations to the board regarding charges,
12 fees, payments, distributions, or other compensation assessed for
13 health care services provided by physicians or health care
14 providers who participate in the health care collaborative. The
15 committee must include:

16 (1) two members of the board of directors, of which one
17 member is the hospital-based physician member, if the health care
18 collaborative includes hospital-based physicians; and

19 (2) if the health care collaborative consists of
20 physicians and other health care providers:

21 (A) a physician who is not a participant in the
22 health care collaborative, selected by the physicians who are
23 participants in the collaborative; and

24 (B) a member selected by the other health care
25 providers who participate in the collaborative.

26 (b) A health care collaborative shall establish and enforce
27 policies to prevent the sharing of charge, fee, and payment data

1 among nonparticipating physicians and health care providers.

2 (c) The compensation advisory committee shall make
3 recommendations to the board of directors regarding all charges,
4 fees, payments, distributions, or other compensation assessed for
5 health care services provided by a physician or health care
6 provider who participates in the health care collaborative.

7 (d) Except as provided by Subsections (e) and (f), the board
8 of directors and the compensation advisory committee may not use or
9 consider a government payor's payment rates in setting the charges
10 or fees for health care services provided by a physician or health
11 care provider who participates in the health care collaborative.

12 (e) The board of directors or the compensation advisory
13 committee may use or consider a government payor's payment rates
14 when setting the charges or fees for health care services paid by a
15 government payor.

16 (f) This section does not prohibit a reference to a
17 government payor's payment rates in agreements with health
18 maintenance organizations, insurers, or other payors.

19 (g) After the compensation advisory committee submits a
20 recommendation to the board of directors, the board shall formally
21 approve or refuse the recommendation.

22 (h) For purposes of this section, "government payor"
23 includes:

- 24 (1) Medicare;
25 (2) Medicaid;
26 (3) the state child health plan program; and
27 (4) the TRICARE Military Health System.

1 Sec. 848.054. CERTIFICATE OF AUTHORITY AND DETERMINATION OF
2 APPROVAL REQUIRED. (a) An organization may not organize or
3 operate a health care collaborative in this state unless the
4 organization holds a certificate of authority issued under this
5 chapter.

6 (b) The commissioner shall adopt rules governing the
7 application for a certificate of authority under this subchapter.

8 Sec. 848.055. EXCEPTIONS. (a) An organization is not
9 required to obtain a certificate of authority under this chapter if
10 the organization holds an appropriate certificate of authority
11 issued under another chapter of this code.

12 (b) A person is not required to obtain a certificate of
13 authority under this chapter to the extent that the person is:

14 (1) a physician engaged in the delivery of medical
15 care; or

16 (2) a health care provider engaged in the delivery of
17 health care services other than medical care as part of a health
18 maintenance organization delivery network.

19 (c) A medical school, medical and dental unit, or health
20 science center as described by Section 61.003, 61.501, or 74.601,
21 Education Code, is not required to obtain a certificate of
22 authority under this chapter to the extent that the medical school,
23 medical and dental unit, or health science center contracts to
24 deliver medical care services within a health care collaborative.
25 This chapter is otherwise applicable to a medical school, medical
26 and dental unit, or health science center.

27 (d) An entity licensed under the Health and Safety Code that

1 employs a physician under a specific statutory authority is not
2 required to obtain a certificate of authority under this chapter to
3 the extent that the entity contracts to deliver medical care
4 services and health care services within a health care
5 collaborative. This chapter is otherwise applicable to the entity.

6 Sec. 848.056. APPLICATION FOR CERTIFICATE OF AUTHORITY.

7 (a) An organization may apply to the commissioner for and obtain a
8 certificate of authority to organize and operate a health care
9 collaborative.

10 (b) An application for a certificate of authority must:

- 11 (1) comply with all rules adopted by the commissioner;
12 (2) be verified under oath by the applicant or an
13 officer or other authorized representative of the applicant;
14 (3) be reviewed by the division within the office of
15 attorney general that is primarily responsible for enforcing the
16 antitrust laws of this state and of the United States under Section
17 848.059;
18 (4) demonstrate that the health care collaborative
19 contracts with a sufficient number of primary care physicians in
20 the health care collaborative's service area;
21 (5) state that enrollees may obtain care from any
22 physician or health care provider in the health care collaborative;
23 and
24 (6) identify a service area within which medical
25 services are available and accessible to enrollees.

26 (c) Not later than the 190th day after the date an applicant
27 submits an application to the commissioner under this section, the

1 commissioner shall approve or deny the application.

2 (d) The commissioner by rule may:

3 (1) extend the date by which an application is due
4 under this section; and

5 (2) require the disclosure of any additional
6 information necessary to implement and administer this chapter,
7 including information necessary to antitrust review and oversight.

8 Sec. 848.057. REQUIREMENTS FOR APPROVAL OF APPLICATION.

9 (a) The commissioner shall issue a certificate of authority on
10 payment of the application fee prescribed by Section 848.152 if the
11 commissioner is satisfied that:

12 (1) the applicant meets the requirements of Section
13 848.056;

14 (2) with respect to health care services to be
15 provided, the applicant:

16 (A) has demonstrated the willingness and
17 potential ability to ensure that the health care services will be
18 provided in a manner that:

19 (i) increases collaboration among health
20 care providers and integrates health care services;

21 (ii) promotes improvement in quality-based
22 health care outcomes, patient safety, patient engagement, and
23 coordination of services; and

24 (iii) reduces the occurrence of potentially
25 preventable events;

26 (B) has processes that contain health care costs
27 without jeopardizing the quality of patient care;

1 (C) has processes to develop, compile, evaluate,
2 and report statistics on performance measures relating to the
3 quality and cost of health care services, the pattern of
4 utilization of services, and the availability and accessibility of
5 services; and

6 (D) has processes to address complaints made by
7 patients receiving services provided through the organization;

8 (3) the applicant is in compliance with all rules
9 adopted by the commissioner under Section 848.151;

10 (4) the applicant has working capital and reserves
11 sufficient to operate and maintain the health care collaborative
12 and to arrange for services and expenses incurred by the health care
13 collaborative;

14 (5) the applicant's proposed health care collaborative
15 is not likely to reduce competition in any market for physician,
16 hospital, or ancillary health care services due to:

17 (A) the size of the health care collaborative; or

18 (B) the composition of the collaborative,
19 including the distribution of physicians by specialty within the
20 collaborative in relation to the number of competing health care
21 providers in the health care collaborative's geographic market; and

22 (6) the pro-competitive benefits of the applicant's
23 proposed health care collaborative are likely to substantially
24 outweigh the anticompetitive effects of any increase in market
25 power.

26 (b) A certificate of authority is effective for a period of
27 one year, subject to Section 848.060(d).

1 Sec. 848.058. DENIAL OF CERTIFICATE OF AUTHORITY. (a) The
2 commissioner may not issue a certificate of authority if the
3 commissioner determines that the applicant's proposed plan of
4 operation does not meet the requirements of Section 848.057.

5 (b) If the commissioner denies an application for a
6 certificate of authority under Subsection (a), the commissioner
7 shall notify the applicant that the plan is deficient and specify
8 the deficiencies.

9 Sec. 848.059. CONCURRENCE OF ATTORNEY GENERAL. (a) If the
10 commissioner determines that an application for a certificate of
11 authority filed under Section 848.056 complies with the
12 requirements of Section 848.057, the commissioner shall forward the
13 application, and all data, documents, and analysis considered by
14 the commissioner in making the determination, to the attorney
15 general. The attorney general shall review the application and the
16 data, documents, and analysis and, if the attorney general concurs
17 with the commissioner's determination under Sections 848.057(a)(5)
18 and (6), the attorney general shall notify the commissioner.

19 (b) If the attorney general does not concur with the
20 commissioner's determination under Sections 848.057(a)(5) and (6),
21 the attorney general shall notify the commissioner.

22 (c) A determination under this section shall be made not
23 later than the 60th day after the date the attorney general receives
24 the application and the data, documents, and analysis from the
25 commissioner.

26 (d) If the attorney general lacks sufficient information to
27 make a determination under Sections 848.057(a)(5) and (6), within

1 60 days of the attorney general's receipt of the application and the
2 data, documents, and analysis the attorney general shall inform the
3 commissioner that the attorney general lacks sufficient
4 information as well as what information the attorney general
5 requires. The commissioner shall then either provide the
6 additional information to the attorney general or request the
7 additional information from the applicant. The commissioner shall
8 promptly deliver any such additional information to the attorney
9 general. The attorney general shall then have 30 days from receipt
10 of the additional information to make a determination under
11 Subsection (a) or (b).

12 (e) If the attorney general notifies the commissioner that
13 the attorney general does not concur with the commissioner's
14 determination under Sections 848.057(a)(5) and (6), then,
15 notwithstanding any other provision of this subchapter, the
16 commissioner shall deny the application.

17 (f) In reviewing the commissioner's determination, the
18 attorney general shall consider the findings, conclusions, or
19 analyses contained in any other governmental entity's evaluation of
20 the health care collaborative.

21 (g) The attorney general at any time may request from the
22 commissioner additional time to consider an application under this
23 section. The commissioner shall grant the request and notify the
24 applicant of the request. A request by the attorney general or an
25 order by the commissioner granting a request under this section is
26 not subject to administrative or judicial review.

27 Sec. 848.060. RENEWAL OF CERTIFICATE OF AUTHORITY AND

1 DETERMINATION OF APPROVAL. (a) Not later than the 180th day
2 before the one-year anniversary of the date on which a health care
3 collaborative's certificate of authority was issued or most
4 recently renewed, the health care collaborative shall file with the
5 commissioner an application to renew the certificate.

6 (b) An application for renewal must:

7 (1) be verified by at least two principal officers of
8 the health care collaborative; and

9 (2) include:

10 (A) a financial statement of the health care
11 collaborative, including a balance sheet and receipts and
12 disbursements for the preceding calendar year, certified by an
13 independent certified public accountant;

14 (B) a description of the service area of the
15 health care collaborative;

16 (C) a description of the number and types of
17 physicians and health care providers participating in the health
18 care collaborative;

19 (D) an evaluation of the quality and cost of
20 health care services provided by the health care collaborative;

21 (E) an evaluation of the health care
22 collaborative's processes to promote evidence-based medicine,
23 patient engagement, and coordination of health care services
24 provided by the health care collaborative;

25 (F) the number, nature, and disposition of any
26 complaints filed with the health care collaborative under Section
27 848.107; and

1 (G) any other information required by the
2 commissioner.

3 (c) If a completed application for renewal is filed under
4 this section:

5 (1) the commissioner shall conduct a review under
6 Section 848.057 as if the application for renewal were a new
7 application, and, on approval by the commissioner, the attorney
8 general shall review the application under Section 848.059 as if
9 the application for renewal were a new application; and

10 (2) the commissioner shall renew or deny the renewal
11 of a certificate of authority at least 20 days before the one-year
12 anniversary of the date on which a health care collaborative's
13 certificate of authority was issued.

14 (d) If the commissioner does not act on a renewal
15 application before the one-year anniversary of the date on which a
16 health care collaborative's certificate of authority was issued or
17 renewed, the health care collaborative's certificate of authority
18 expires on the 90th day after the date of the one-year anniversary
19 unless the renewal of the certificate of authority or determination
20 of approval, as applicable, is approved before that date.

21 (e) A health care collaborative shall report to the
22 department a material change in the size or composition of the
23 collaborative. On receipt of a report under this subsection, the
24 department may require the collaborative to file an application for
25 renewal before the date required by Subsection (a).

26 [Sections 848.061-848.100 reserved for expansion]

1 SUBCHAPTER C. GENERAL POWERS AND DUTIES OF HEALTH CARE

2 COLLABORATIVE

3 Sec. 848.101. PROVIDING OR ARRANGING FOR SERVICES. (a) A
4 health care collaborative may provide or arrange for health care
5 services through contracts with physicians and health care
6 providers or with entities contracting on behalf of participating
7 physicians and health care providers.

8 (b) A health care collaborative may not prohibit a physician
9 or other health care provider, as a condition of participating in
10 the health care collaborative, from participating in another health
11 care collaborative.

12 (c) A health care collaborative may not use a covenant not
13 to compete to prohibit a physician from providing medical services
14 or participating in another health care collaborative in the same
15 service area.

16 (d) Except as provided by Subsection (f), on written consent
17 of a patient who was treated by a physician participating in a
18 health care collaborative, the health care collaborative shall
19 provide the physician with the medical records of the patient,
20 regardless of whether the physician is participating in the health
21 care collaborative at the time the request for the records is made.

22 (e) Records provided under Subsection (d) shall be made
23 available to the physician in the format in which the records are
24 maintained by the health care collaborative. The health care
25 collaborative may charge the physician a fee for copies of the
26 records, as established by the Texas Medical Board.

27 (f) If a physician requests a patient's records from a

1 health care collaborative under Subsection (d) for the purpose of
2 providing emergency treatment to the patient:

3 (1) the health care collaborative may not charge a fee
4 to the physician under Subsection (e); and

5 (2) the health care collaborative shall provide the
6 records to the physician regardless of whether the patient has
7 provided written consent.

8 Sec. 848.102. INSURANCE, REINSURANCE, INDEMNITY, AND
9 REIMBURSEMENT. A health care collaborative may contract with an
10 insurer authorized to engage in business in this state to provide
11 insurance, reinsurance, indemnification, or reimbursement against
12 the cost of health care and medical care services provided by the
13 health care collaborative. This section does not affect the
14 requirement that the health care collaborative maintain sufficient
15 working capital and reserves.

16 Sec. 848.103. PAYMENT BY GOVERNMENTAL OR PRIVATE ENTITY.

17 (a) A health care collaborative may:

18 (1) contract for and accept payments from a
19 governmental or private entity for all or part of the cost of
20 services provided or arranged for by the health care collaborative;
21 and

22 (2) distribute payments to participating physicians
23 and health care providers.

24 (b) Notwithstanding any other law, a health care
25 collaborative that is in compliance with this code, including
26 Chapters 841, 842, and 843, as applicable, may contract for,
27 accept, and distribute payments from governmental or private payors

1 based on fee-for-service or alternative payment mechanisms,
2 including:

3 (1) episode-based or condition-based bundled
4 payments;

5 (2) capitation or global payments; or

6 (3) pay-for-performance or quality-based payments.

7 (c) Except as provided by Subsection (d), a health care
8 collaborative may not contract for and accept payment from a
9 governmental or private entity on a prepaid, capitation, or
10 indemnity basis unless the health care collaborative is licensed as
11 a health maintenance organization or insurer. The department shall
12 review a health care collaborative's proposed payment methodology
13 in contracts with governmental or private entities to ensure
14 compliance with this section.

15 (d) A health care collaborative may contract for and accept
16 compensation on a prepaid or capitation basis from a health
17 maintenance organization or insurer.

18 Sec. 848.104. CONTRACTS FOR ADMINISTRATIVE OR MANAGEMENT
19 SERVICES. A health care collaborative may contract with any
20 person, including an affiliated entity, to perform administrative,
21 management, or any other required business functions on behalf of
22 the health care collaborative.

23 Sec. 848.105. CORPORATION, PARTNERSHIP, OR ASSOCIATION
24 POWERS. A health care collaborative has all powers of a
25 partnership, association, corporation, or limited liability
26 company, including a professional association or corporation, as
27 appropriate under the organizational documents of the health care

1 collaborative, that are not in conflict with this chapter or other
2 applicable law.

3 Sec. 848.106. QUALITY AND COST OF HEALTH CARE SERVICES.

4 (a) A health care collaborative shall establish policies to
5 improve the quality and control the cost of health care services
6 provided by participating physicians and health care providers that
7 are consistent with prevailing professionally recognized standards
8 of medical practice. The policies must include standards and
9 procedures relating to:

10 (1) the selection and credentialing of participating
11 physicians and health care providers;

12 (2) the development, implementation, monitoring, and
13 evaluation of evidence-based best practices and other processes to
14 improve the quality and control the cost of health care services
15 provided by participating physicians and health care providers,
16 including practices or processes to reduce the occurrence of
17 potentially preventable events;

18 (3) the development, implementation, monitoring, and
19 evaluation of processes to improve patient engagement and
20 coordination of health care services provided by participating
21 physicians and health care providers; and

22 (4) complaints initiated by participating physicians,
23 health care providers, and patients under Section 848.107.

24 (b) The governing body of a health care collaborative shall
25 establish a procedure for the periodic review of quality
26 improvement and cost control measures.

27 Sec. 848.107. COMPLAINT SYSTEMS. (a) A health care

1 collaborative shall implement and maintain complaint systems that
2 provide reasonable procedures to resolve an oral or written
3 complaint initiated by:

4 (1) a patient who received health care services
5 provided by a participating physician or health care provider; or

6 (2) a participating physician or health care provider.

7 (b) The complaint system for complaints initiated by
8 patients must include a process for the notice and appeal of a
9 complaint.

10 (c) A health care collaborative may not take a retaliatory
11 or adverse action against a physician or health care provider who
12 files a complaint with a regulatory authority regarding an action
13 of the health care collaborative.

14 Sec. 848.108. DELEGATION AGREEMENTS. (a) Except as
15 provided by Subsection (b), a health care collaborative that enters
16 into a delegation agreement described by Section 1272.001 is
17 subject to the requirements of Chapter 1272 in the same manner as a
18 health maintenance organization.

19 (b) Section 1272.301 does not apply to a delegation
20 agreement entered into by a health care collaborative.

21 (c) A health care collaborative may enter into a delegation
22 agreement with an entity licensed under Chapter 841, 842, or 883 if
23 the delegation agreement assigns to the entity responsibility for:

24 (1) a function regulated by:

25 (A) Chapter 222;

26 (B) Chapter 841;

27 (C) Chapter 842;

1 (D) Chapter 883;

2 (E) Chapter 1272;

3 (F) Chapter 1301;

4 (G) Chapter 4201;

5 (H) Section 1367.053; or

6 (I) Subchapter A, Chapter 1507; or

7 (2) another function specified by commissioner rule.

8 (d) A health care collaborative that enters into a
9 delegation agreement under this section shall maintain reserves and
10 capital in addition to the amounts required under Chapter 1272, in
11 an amount and form determined by rule of the commissioner to be
12 necessary for the liabilities and risks assumed by the health care
13 collaborative.

14 (e) A health care collaborative that enters into a
15 delegation agreement under this section is subject to Chapters 404,
16 441, and 443 and is considered to be an insurer for purposes of
17 those chapters.

18 Sec. 848.109. VALIDITY OF OPERATIONS AND TRADE PRACTICES OF
19 HEALTH CARE COLLABORATIVES. The operations and trade practices of
20 a health care collaborative that are consistent with the provisions
21 of this chapter, the rules adopted under this chapter, and
22 applicable federal antitrust laws are presumed to be consistent
23 with Chapter 15, Business & Commerce Code, or any other applicable
24 provision of law.

25 Sec. 848.110. RIGHTS OF PHYSICIANS; LIMITATIONS ON
26 PARTICIPATION. (a) Before a complaint against a physician under
27 Section 848.107 is resolved, or before a physician's association

1 with a health care collaborative is terminated, the physician is
2 entitled to an opportunity to dispute the complaint or termination
3 through a process that includes:

4 (1) written notice of the complaint or basis of the
5 termination;

6 (2) an opportunity for a hearing not earlier than the
7 30th day after receiving notice under Subdivision (1);

8 (3) the right to provide information at the hearing,
9 including testimony and a written statement; and

10 (4) a written decision that includes the specific
11 facts and reasons for the decision.

12 (b) A health care collaborative may limit a physician or
13 group of physicians from participating in the health care
14 collaborative if the limitation is based on an established
15 development plan approved by the board of directors. Each
16 applicant physician or group shall be provided with a copy of the
17 development plan.

18 [Sections 848.111-848.150 reserved for expansion]

19 SUBCHAPTER D. REGULATION OF HEALTH CARE COLLABORATIVES

20 Sec. 848.151. RULES. The commissioner and the attorney
21 general may adopt reasonable rules as necessary and proper to
22 implement the requirements of this chapter.

23 Sec. 848.152. FEES AND ASSESSMENTS. (a) The commissioner
24 shall, within the limits prescribed by this section, prescribe the
25 fees to be charged and the assessments to be imposed under this
26 section.

27 (b) Amounts collected under this section shall be deposited

1 to the credit of the Texas Department of Insurance operating
2 account.

3 (c) A health care collaborative shall pay to the department:

4 (1) an application fee in an amount determined by
5 commissioner rule; and

6 (2) an annual assessment in an amount determined by
7 commissioner rule.

8 (d) The commissioner shall set fees and assessments under
9 this section in an amount sufficient to pay the reasonable expenses
10 of the department and attorney general in administering this
11 chapter, including the direct and indirect expenses incurred by the
12 department and attorney general in examining and reviewing health
13 care collaboratives. Fees and assessments imposed under this
14 section shall be allocated among health care collaboratives on a
15 pro rata basis to the extent that the allocation is feasible.

16 Sec. 848.153. EXAMINATIONS. (a) The commissioner may
17 examine the financial affairs and operations of any health care
18 collaborative or applicant for a certificate of authority under
19 this chapter.

20 (b) A health care collaborative shall make its books and
21 records relating to its financial affairs and operations available
22 for an examination by the commissioner or attorney general.

23 (c) On request of the commissioner or attorney general, a
24 health care collaborative shall provide to the commissioner or
25 attorney general, as applicable:

26 (1) a copy of any contract, agreement, or other
27 arrangement between the health care collaborative and a physician

1 or health care provider; and

2 (2) a general description of the fee arrangements
3 between the health care collaborative and the physician or health
4 care provider.

5 (d) Documentation provided to the commissioner or attorney
6 general under this section is confidential and is not subject to
7 disclosure under Chapter 552, Government Code.

8 (e) The commissioner or attorney general may disclose the
9 results of an examination conducted under this section or
10 documentation provided under this section to a governmental agency
11 that contracts with a health care collaborative for the purpose of
12 determining financial stability, readiness, or other contractual
13 compliance needs.

14 [Sections 848.154-848.200 reserved for expansion]

15 SUBCHAPTER E. ENFORCEMENT

16 Sec. 848.201. ENFORCEMENT ACTIONS. (a) After notice and
17 opportunity for a hearing, the commissioner may:

18 (1) suspend or revoke a certificate of authority
19 issued to a health care collaborative under this chapter;

20 (2) impose sanctions under Chapter 82;

21 (3) issue a cease and desist order under Chapter 83; or

22 (4) impose administrative penalties under Chapter 84.

23 (b) The commissioner may take an enforcement action listed
24 in Subsection (a) against a health care collaborative if the
25 commissioner finds that the health care collaborative:

26 (1) is operating in a manner that is:

27 (A) significantly contrary to its basic

1 organizational documents; or

2 (B) contrary to the manner described in and
3 reasonably inferred from other information submitted under Section
4 848.057;

5 (2) does not meet the requirements of Section 848.057;

6 (3) cannot fulfill its obligation to provide health
7 care services as required under its contracts with governmental or
8 private entities;

9 (4) does not meet the requirements of Chapter 1272, if
10 applicable;

11 (5) has not implemented the complaint system required
12 by Section 848.107 in a manner to resolve reasonably valid
13 complaints;

14 (6) has advertised or merchandised its services in an
15 untrue, misrepresentative, misleading, deceptive, or unfair manner
16 or a person on behalf of the health care collaborative has
17 advertised or merchandised the health care collaborative's
18 services in an untrue, misrepresentative, misleading, deceptive,
19 or untrue manner;

20 (7) has not complied substantially with this chapter
21 or a rule adopted under this chapter;

22 (8) has not taken corrective action the commissioner
23 considers necessary to correct a failure to comply with this
24 chapter, any applicable provision of this code, or any applicable
25 rule or order of the commissioner not later than the 30th day after
26 the date of notice of the failure or within any longer period
27 specified in the notice and determined by the commissioner to be

1 reasonable; or

2 (9) has or is utilizing market power in an
3 anticompetitive manner, in accordance with established antitrust
4 principles of market power analysis.

5 Sec. 848.202. OPERATIONS DURING SUSPENSION OR AFTER
6 REVOCAION OF CERTIFICATE OF AUTHORITY. (a) During the period a
7 certificate of authority of a health care collaborative is
8 suspended, the health care collaborative may not:

9 (1) enter into a new contract with a governmental or
10 private entity; or

11 (2) advertise or solicit in any way.

12 (b) After a certificate of authority of a health care
13 collaborative is revoked, the health care collaborative:

14 (1) shall proceed, immediately following the
15 effective date of the order of revocation, to conclude its affairs;

16 (2) may not conduct further business except as
17 essential to the orderly conclusion of its affairs; and

18 (3) may not advertise or solicit in any way.

19 (c) Notwithstanding Subsection (b), the commissioner may,
20 by written order, permit the further operation of the health care
21 collaborative to the extent that the commissioner finds necessary
22 to serve the best interest of governmental or private entities that
23 have entered into contracts with the health care collaborative.

24 Sec. 848.203. INJUNCTIONS. If the commissioner believes
25 that a health care collaborative or another person is violating or
26 has violated this chapter or a rule adopted under this chapter, the
27 attorney general at the request of the commissioner may bring an

1 action in a Travis County district court to enjoin the violation and
2 obtain other relief the court considers appropriate.

3 Sec. 848.204. NOTICE. The commissioner shall:

4 (1) report any action taken under this subchapter to:

5 (A) the relevant state licensing or certifying
6 agency or board; and

7 (B) the United States Department of Health and
8 Human Services National Practitioner Data Bank; and

9 (2) post notice of the action on the department's
10 Internet website.

11 Sec. 848.205. INDEPENDENT AUTHORITY OF ATTORNEY GENERAL.

12 (a) The attorney general may:

13 (1) investigate a health care collaborative with
14 respect to anticompetitive behavior that is contrary to the goals
15 and requirements of this chapter; and

16 (2) request that the commissioner:

17 (A) impose a penalty or sanction;

18 (B) issue a cease and desist order; or

19 (C) suspend or revoke the health care
20 collaborative's certificate of authority.

21 (b) This section does not limit any other authority or power
22 of the attorney general.

23 SECTION 4.02. Paragraph (A), Subdivision (12), Subsection
24 (a), Section 74.001, Civil Practice and Remedies Code, is amended
25 to read as follows:

26 (A) "Health care provider" means any person,
27 partnership, professional association, corporation, facility, or

1 institution duly licensed, certified, registered, or chartered by
2 the State of Texas to provide health care, including:

- 3 (i) a registered nurse;
- 4 (ii) a dentist;
- 5 (iii) a podiatrist;
- 6 (iv) a pharmacist;
- 7 (v) a chiropractor;
- 8 (vi) an optometrist; ~~[or]~~
- 9 (vii) a health care institution; or
- 10 (viii) a health care collaborative
11 certified under Chapter 848, Insurance Code.

12 SECTION 4.03. Subchapter B, Chapter 1301, Insurance Code,
13 is amended by adding Section 1301.0625 to read as follows:

14 Sec. 1301.0625. HEALTH CARE COLLABORATIVES. (a) Subject
15 to the requirements of this chapter, a health care collaborative
16 may be designated as a preferred provider under a preferred
17 provider benefit plan and may offer enhanced benefits for care
18 provided by the health care collaborative.

19 (b) A preferred provider contract between an insurer and a
20 health care collaborative may use a payment methodology other than
21 a fee-for-service or discounted fee methodology. A reimbursement
22 methodology used in a contract under this subsection is not subject
23 to Chapter 843.

24 (c) A contract authorized by Subsection (b) must specify
25 that the health care collaborative and the physicians or providers
26 providing health care services on behalf of the collaborative will
27 hold an insured harmless for payment of the cost of covered health

1 care services if the insurer or the health care collaborative do not
2 pay the physician or health care provider for the services.

3 (d) An insurer issuing an exclusive provider benefit plan
4 authorized by another law of this state may limit access to only
5 preferred providers participating in a health care collaborative if
6 the limitation is consistent with all requirements applicable to
7 exclusive provider benefit plans.

8 SECTION 4.04. Subtitle F, Title 4, Health and Safety Code,
9 is amended by adding Chapter 316 to read as follows:

10 CHAPTER 316. ESTABLISHMENT OF HEALTH CARE COLLABORATIVES

11 Sec. 316.001. AUTHORITY TO ESTABLISH HEALTH CARE
12 COLLABORATIVE. A public hospital created under Subtitle C or D or a
13 hospital district created under general or special law may form and
14 sponsor a nonprofit health care collaborative that is certified
15 under Chapter 848, Insurance Code.

16 SECTION 4.05. Section 102.005, Occupations Code, is amended
17 to read as follows:

18 Sec. 102.005. APPLICABILITY TO CERTAIN ENTITIES. Section
19 102.001 does not apply to:

20 (1) a licensed insurer;

21 (2) a governmental entity, including:

22 (A) an intergovernmental risk pool established
23 under Chapter 172, Local Government Code; and

24 (B) a system as defined by Section 1601.003,
25 Insurance Code;

26 (3) a group hospital service corporation; ~~or~~

27 (4) a health maintenance organization that

1 reimburses, provides, offers to provide, or administers hospital,
2 medical, dental, or other health-related benefits under a health
3 benefits plan for which it is the payor; or

4 (5) a health care collaborative certified under
5 Chapter 848, Insurance Code.

6 SECTION 4.06. Subdivision (5), Subsection (a), Section
7 151.002, Occupations Code, is amended to read as follows:

8 (5) "Health care entity" means:

9 (A) a hospital licensed under Chapter 241 or 577,
10 Health and Safety Code;

11 (B) an entity, including a health maintenance
12 organization, group medical practice, nursing home, health science
13 center, university medical school, hospital district, hospital
14 authority, or other health care facility, that:

15 (i) provides or pays for medical care or
16 health care services; and

17 (ii) follows a formal peer review process
18 to further quality medical care or health care;

19 (C) a professional society or association of
20 physicians, or a committee of such a society or association, that
21 follows a formal peer review process to further quality medical
22 care or health care; ~~or~~

23 (D) an organization established by a
24 professional society or association of physicians, hospitals, or
25 both, that:

26 (i) collects and verifies the authenticity
27 of documents and other information concerning the qualifications,

1 competence, or performance of licensed health care professionals;
2 and

3 (ii) acts as a health care facility's agent
4 under the Health Care Quality Improvement Act of 1986 (42 U.S.C.
5 Section 11101 et seq.); or

6 (E) a health care collaborative certified under
7 Chapter 848, Insurance Code.

8 SECTION 4.07. Not later than September 1, 2012, the
9 commissioner of insurance and the attorney general shall adopt
10 rules as necessary to implement this article.

11 SECTION 4.08. As soon as practicable after the effective
12 date of this Act, the commissioner of insurance shall designate or
13 employ staff with antitrust expertise sufficient to carry out the
14 duties required by this Act.

15 ARTICLE 5. PATIENT IDENTIFICATION

16 SECTION 5.01. Subchapter A, Chapter 311, Health and Safety
17 Code, is amended by adding Section 311.004 to read as follows:

18 Sec. 311.004. STANDARDIZED PATIENT RISK IDENTIFICATION
19 SYSTEM. (a) In this section:

20 (1) "Department" means the Department of State Health
21 Services.

22 (2) "Hospital" means a general or special hospital as
23 defined by Section 241.003. The term includes a hospital
24 maintained or operated by this state.

25 (b) The department shall coordinate with hospitals to
26 develop a statewide standardized patient risk identification
27 system under which a patient with a specific medical risk may be

1 readily identified through the use of a system that communicates to
2 hospital personnel the existence of that risk. The executive
3 commissioner of the Health and Human Services Commission shall
4 appoint an ad hoc committee of hospital representatives to assist
5 the department in developing the statewide system.

6 (c) The department shall require each hospital to implement
7 and enforce the statewide standardized patient risk identification
8 system developed under Subsection (b) unless the department
9 authorizes an exemption for the reason stated in Subsection (d).

10 (d) The department may exempt from the statewide
11 standardized patient risk identification system a hospital that
12 seeks to adopt another patient risk identification methodology
13 supported by evidence-based protocols for the practice of medicine.

14 (e) The department shall modify the statewide standardized
15 patient risk identification system in accordance with
16 evidence-based medicine as necessary.

17 (f) The executive commissioner of the Health and Human
18 Services Commission may adopt rules to implement this section.

19 ARTICLE 6. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS

20 SECTION 6.01. Section 98.001, Health and Safety Code, as
21 added by Chapter 359 (S.B. 288), Acts of the 80th Legislature,
22 Regular Session, 2007, is amended by adding Subdivisions (8-a) and
23 (10-a) to read as follows:

24 (8-a) "Health care professional" means an individual
25 licensed, certified, or otherwise authorized to administer health
26 care, for profit or otherwise, in the ordinary course of business or
27 professional practice. The term does not include a health care

1 facility.

2 (10-a) "Potentially preventable complication" and
3 "potentially preventable readmission" have the meanings assigned
4 by Section 1002.001, Health and Safety Code.

5 SECTION 6.02. Subsection (c), Section 98.102, Health and
6 Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th
7 Legislature, Regular Session, 2007, is amended to read as follows:

8 (c) The data reported by health care facilities to the
9 department must contain sufficient patient identifying information
10 to:

11 (1) avoid duplicate submission of records;

12 (2) allow the department to verify the accuracy and
13 completeness of the data reported; and

14 (3) for data reported under Section 98.103 [~~ex~~
15 ~~98.104~~], allow the department to risk adjust the facilities'
16 infection rates.

17 SECTION 6.03. Section 98.103, Health and Safety Code, as
18 added by Chapter 359 (S.B. 288), Acts of the 80th Legislature,
19 Regular Session, 2007, is amended by amending Subsection (b) and
20 adding Subsection (d-1) to read as follows:

21 (b) A pediatric and adolescent hospital shall report the
22 incidence of surgical site infections, including the causative
23 pathogen if the infection is laboratory-confirmed, occurring in the
24 following procedures to the department:

25 (1) cardiac procedures, excluding thoracic cardiac
26 procedures;

27 (2) ventricular [~~ventriculoperitoneal~~] shunt

1 procedures; and

2 (3) spinal surgery with instrumentation.

3 (d-1) The executive commissioner by rule may designate the
4 federal Centers for Disease Control and Prevention's National
5 Healthcare Safety Network, or its successor, to receive reports of
6 health care-associated infections from health care facilities on
7 behalf of the department. A health care facility must file a report
8 required in accordance with a designation made under this
9 subsection in accordance with the National Healthcare Safety
10 Network's definitions, methods, requirements, and procedures. A
11 health care facility shall authorize the department to have access
12 to facility-specific data contained in a report filed with the
13 National Healthcare Safety Network in accordance with a designation
14 made under this subsection.

15 SECTION 6.04. Section 98.1045, Health and Safety Code, as
16 added by Chapter 359 (S.B. 288), Acts of the 80th Legislature,
17 Regular Session, 2007, is amended by adding Subsection (c) to read
18 as follows:

19 (c) The executive commissioner by rule may designate an
20 agency of the United States Department of Health and Human Services
21 to receive reports of preventable adverse events by health care
22 facilities on behalf of the department. A health care facility
23 shall authorize the department to have access to facility-specific
24 data contained in a report made in accordance with a designation
25 made under this subsection.

26 SECTION 6.05. Subchapter C, Chapter 98, Health and Safety
27 Code, as added by Chapter 359 (S.B. 288), Acts of the 80th

1 Legislature, Regular Session, 2007, is amended by adding Sections
2 98.1046 and 98.1047 to read as follows:

3 Sec. 98.1046. PUBLIC REPORTING OF CERTAIN POTENTIALLY
4 PREVENTABLE EVENTS FOR HOSPITALS. (a) In consultation with the
5 Texas Institute of Health Care Quality and Efficiency under Chapter
6 1002, the department, using data submitted under Chapter 108, shall
7 publicly report for hospitals in this state risk-adjusted outcome
8 rates for those potentially preventable complications and
9 potentially preventable readmissions that the department, in
10 consultation with the institute, has determined to be the most
11 effective measures of quality and efficiency.

12 (b) The department shall make the reports compiled under
13 Subsection (a) available to the public on the department's Internet
14 website.

15 (c) The department may not disclose the identity of a
16 patient or health care professional in the reports authorized in
17 this section.

18 Sec. 98.1047. STUDIES ON LONG-TERM CARE FACILITY REPORTING
19 OF ADVERSE HEALTH CONDITIONS. (a) In consultation with the Texas
20 Institute of Health Care Quality and Efficiency under Chapter 1002,
21 the department shall study which adverse health conditions commonly
22 occur in long-term care facilities and, of those health conditions,
23 which are potentially preventable.

24 (b) The department shall develop recommendations for
25 reporting adverse health conditions identified under Subsection
26 (a).

27 SECTION 6.06. Section 98.105, Health and Safety Code, as

1 added by Chapter 359 (S.B. 288), Acts of the 80th Legislature,
2 Regular Session, 2007, is amended to read as follows:

3 Sec. 98.105. REPORTING SYSTEM MODIFICATIONS. Based on the
4 recommendations of the advisory panel, the executive commissioner
5 by rule may modify in accordance with this chapter the list of
6 procedures that are reportable under Section 98.103 [~~or 98.104~~].
7 The modifications must be based on changes in reporting guidelines
8 and in definitions established by the federal Centers for Disease
9 Control and Prevention.

10 SECTION 6.07. Subsections (a), (b), and (d), Section
11 98.106, Health and Safety Code, as added by Chapter 359 (S.B. 288),
12 Acts of the 80th Legislature, Regular Session, 2007, are amended to
13 read as follows:

14 (a) The department shall compile and make available to the
15 public a summary, by health care facility, of:

16 (1) the infections reported by facilities under
17 Section [~~Sections~~] 98.103 [~~and 98.104~~]; and

18 (2) the preventable adverse events reported by
19 facilities under Section 98.1045.

20 (b) Information included in the departmental summary with
21 respect to infections reported by facilities under Section
22 [~~Sections~~] 98.103 [~~and 98.104~~] must be risk adjusted and include a
23 comparison of the risk-adjusted infection rates for each health
24 care facility in this state that is required to submit a report
25 under Section [~~Sections~~] 98.103 [~~and 98.104~~].

26 (d) The department shall publish the departmental summary
27 at least annually and may publish the summary more frequently as the

1 department considers appropriate. Data made available to the
2 public must include aggregate data covering a period of at least a
3 full calendar quarter.

4 SECTION 6.08. Subchapter C, Chapter 98, Health and Safety
5 Code, as added by Chapter 359 (S.B. 288), Acts of the 80th
6 Legislature, Regular Session, 2007, is amended by adding Section
7 98.1065 to read as follows:

8 Sec. 98.1065. STUDY OF INCENTIVES AND RECOGNITION FOR
9 HEALTH CARE QUALITY. The department, in consultation with the
10 Texas Institute of Health Care Quality and Efficiency under Chapter
11 1002, shall conduct a study on developing a recognition program to
12 recognize exemplary health care facilities for superior quality of
13 health care and make recommendations based on that study.

14 SECTION 6.09. Section 98.108, Health and Safety Code, as
15 added by Chapter 359 (S.B. 288), Acts of the 80th Legislature,
16 Regular Session, 2007, is amended to read as follows:

17 Sec. 98.108. FREQUENCY OF REPORTING. (a) In consultation
18 with the advisory panel, the executive commissioner by rule shall
19 establish the frequency of reporting by health care facilities
20 required under Sections 98.103[~~7, 98.104,~~] and 98.1045.

21 (b) Except as provided by Subsection (c), facilities
22 [Facilities] may not be required to report more frequently than
23 quarterly.

24 (c) The executive commissioner may adopt rules requiring
25 reporting more frequently than quarterly if more frequent reporting
26 is necessary to meet the requirements for participation in the
27 federal Centers for Disease Control and Prevention's National

1 Healthcare Safety Network.

2 SECTION 6.10. Subsection (a), Section 98.109, Health and
3 Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th
4 Legislature, Regular Session, 2007, is amended to read as follows:

5 (a) Except as provided by Sections 98.1046, 98.106, and
6 98.110, all information and materials obtained or compiled or
7 reported by the department under this chapter or compiled or
8 reported by a health care facility under this chapter, and all
9 related information and materials, are confidential and:

10 (1) are not subject to disclosure under Chapter 552,
11 Government Code, or discovery, subpoena, or other means of legal
12 compulsion for release to any person; and

13 (2) may not be admitted as evidence or otherwise
14 disclosed in any civil, criminal, or administrative proceeding.

15 SECTION 6.11. Section 98.110, Health and Safety Code, as
16 added by Chapter 359 (S.B. 288), Acts of the 80th Legislature,
17 Regular Session, 2007, is amended to read as follows:

18 Sec. 98.110. DISCLOSURE AMONG CERTAIN AGENCIES.

19 (a) Notwithstanding any other law, the department may disclose
20 information reported by health care facilities under Section
21 98.103[~~7~~, ~~98.104~~] or 98.1045 to other programs within the
22 department, to the Health and Human Services Commission, [~~and~~] to
23 other health and human services agencies, as defined by Section
24 531.001, Government Code, and to the federal Centers for Disease
25 Control and Prevention, or any other agency of the United States
26 Department of Health and Human Services, for public health research
27 or analysis purposes only, provided that the research or analysis

1 relates to health care-associated infections or preventable
2 adverse events. The privilege and confidentiality provisions
3 contained in this chapter apply to such disclosures.

4 (b) If the executive commissioner designates an agency of
5 the United States Department of Health and Human Services to
6 receive reports of health care-associated infections or
7 preventable adverse events, that agency may use the information
8 submitted for purposes allowed by federal law.

9 SECTION 6.12. Section 98.104, Health and Safety Code, as
10 added by Chapter 359 (S.B. 288), Acts of the 80th Legislature,
11 Regular Session, 2007, is repealed.

12 SECTION 6.13. Not later than December 1, 2012, the
13 Department of State Health Services shall submit a report regarding
14 recommendations for improved health care reporting to the governor,
15 the lieutenant governor, the speaker of the house of
16 representatives, and the chairs of the appropriate standing
17 committees of the legislature outlining:

18 (1) the initial assessment in the study conducted
19 under Section 98.1065, Health and Safety Code, as added by this Act;

20 (2) based on the study described by Subdivision (1) of
21 this subsection, the feasibility and desirability of establishing a
22 recognition program to recognize exemplary health care facilities
23 for superior quality of health care;

24 (3) the recommendations developed under Section
25 98.1065, Health and Safety Code, as added by this Act; and

26 (4) the changes in existing law that would be
27 necessary to implement the recommendations described by

1 Subdivision (3) of this subsection.

2 ARTICLE 7. INFORMATION MAINTAINED BY DEPARTMENT OF STATE HEALTH
3 SERVICES

4 SECTION 7.01. Section 108.002, Health and Safety Code, is
5 amended by adding Subdivisions (4-a) and (8-a) and amending
6 Subdivision (7) to read as follows:

7 (4-a) "Commission" means the Health and Human Services
8 Commission.

9 (7) "Department" means the [~~Texas~~] Department of State
10 Health Services.

11 (8-a) "Executive commissioner" means the executive
12 commissioner of the Health and Human Services Commission.

13 SECTION 7.02. Chapter 108, Health and Safety Code, is
14 amended by adding Section 108.0026 to read as follows:

15 Sec. 108.0026. TRANSFER OF DUTIES; REFERENCE TO COUNCIL.

16 (a) The powers and duties of the Texas Health Care Information
17 Council under this chapter were transferred to the Department of
18 State Health Services in accordance with Section 1.19, Chapter 198
19 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.

20 (b) In this chapter or other law, a reference to the Texas
21 Health Care Information Council means the Department of State
22 Health Services.

23 SECTION 7.03. Subsection (h), Section 108.009, Health and
24 Safety Code, is amended to read as follows:

25 (h) The department [~~council~~] shall coordinate data
26 collection with the data submission formats used by hospitals and
27 other providers. The department [~~council~~] shall accept data in the

1 format developed by the American National Standards Institute
2 [~~National Uniform Billing Committee (Uniform Hospital Billing Form~~
3 ~~UB 92) and HCFA-1500~~] or its successor [~~their successors~~] or other
4 nationally [~~universally~~] accepted standardized forms that
5 hospitals and other providers use for other complementary purposes.

6 SECTION 7.04. Section 108.013, Health and Safety Code, is
7 amended by amending Subsections (a) through (d), (g), (i), and (j)
8 and adding Subsections (k) through (n) to read as follows:

9 (a) The data received by the department under this chapter
10 [~~council~~] shall be used by the department and commission [~~council~~]
11 for the benefit of the public. Subject to specific limitations
12 established by this chapter and executive commissioner [~~council~~]
13 rule, the department [~~council~~] shall make determinations on
14 requests for information in favor of access.

15 (b) The executive commissioner [~~council~~] by rule shall
16 designate the characters to be used as uniform patient identifiers.
17 The basis for assignment of the characters and the manner in which
18 the characters are assigned are confidential.

19 (c) Unless specifically authorized by this chapter, the
20 department [~~council~~] may not release and a person or entity may not
21 gain access to any data obtained under this chapter:

22 (1) that could reasonably be expected to reveal the
23 identity of a patient;

24 (2) that could reasonably be expected to reveal the
25 identity of a physician;

26 (3) disclosing provider discounts or differentials
27 between payments and billed charges;

1 (4) relating to actual payments to an identified
2 provider made by a payer; or

3 (5) submitted to the department [~~council~~] in a uniform
4 submission format that is not included in the public use data set
5 established under Sections 108.006(f) and (g), except in accordance
6 with Section 108.0135.

7 (d) Except as provided by this section, all [~~All~~] data
8 collected and used by the department [~~and the council~~] under this
9 chapter is subject to the confidentiality provisions and criminal
10 penalties of:

11 (1) Section 311.037;

12 (2) Section 81.103; and

13 (3) Section 159.002, Occupations Code.

14 (g) Unless specifically authorized by this chapter, the
15 department [~~The council~~] may not release data elements in a manner
16 that will reveal the identity of a patient. The department
17 [~~council~~] may not release data elements in a manner that will reveal
18 the identity of a physician.

19 (i) Notwithstanding any other law and except as provided by
20 this section, the [~~council and the~~] department may not provide
21 information made confidential by this section to any other agency
22 of this state.

23 (j) The executive commissioner [~~council~~] shall by rule[~~r~~
24 ~~with the assistance of the advisory committee under Section~~
25 ~~108.003(g)(5),~~] develop and implement a mechanism to comply with
26 Subsections (c)(1) and (2).

27 (k) The department may disclose data collected under this

1 chapter that is not included in public use data to any department or
2 commission program if the disclosure is reviewed and approved by
3 the institutional review board under Section 108.0135.

4 (1) Confidential data collected under this chapter that is
5 disclosed to a department or commission program remains subject to
6 the confidentiality provisions of this chapter and other applicable
7 law. The department shall identify the confidential data that is
8 disclosed to a program under Subsection (k). The program shall
9 maintain the confidentiality of the disclosed confidential data.

10 (m) The following provisions do not apply to the disclosure
11 of data to a department or commission program:

- 12 (1) Section 81.103;
- 13 (2) Sections 108.010(g) and (h);
- 14 (3) Sections 108.011(e) and (f);
- 15 (4) Section 311.037; and
- 16 (5) Section 159.002, Occupations Code.

17 (n) Nothing in this section authorizes the disclosure of
18 physician identifying data.

19 SECTION 7.05. Section 108.0135, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 108.0135. INSTITUTIONAL [~~SCIENTIFIC~~] REVIEW BOARD
22 [~~PANEL~~]. (a) The department [~~council~~] shall establish an
23 institutional [~~a scientific~~] review board [~~panel~~] to review and
24 approve requests for access to data not contained in [~~information~~
25 ~~other than~~] public use data. The members of the institutional
26 review board must [~~panel shall~~] have experience and expertise in
27 ethics, patient confidentiality, and health care data.

1 (b) To assist the institutional review board [~~panel~~] in
2 determining whether to approve a request for information, the
3 executive commissioner [~~council~~] shall adopt rules similar to the
4 federal Centers for Medicare and Medicaid Services' [~~Health Care~~
5 ~~Financing Administration's~~] guidelines on releasing data.

6 (c) A request for information other than public use data
7 must be made on the form prescribed [~~created~~] by the department
8 [~~council~~].

9 (d) Any approval to release information under this section
10 must require that the confidentiality provisions of this chapter be
11 maintained and that any subsequent use of the information conform
12 to the confidentiality provisions of this chapter.

13 SECTION 7.06. Chapter 108, Health and Safety Code, is
14 amended by adding Section 108.0131 to read as follows:

15 Sec. 108.0131. LIST OF PURCHASERS OR RECIPIENTS OF DATA.
16 The department shall post on the department's Internet website a
17 list of each entity that purchases or receives data collected under
18 this chapter.

19 SECTION 7.07. (a) If S.B. No. 156, Acts of the 82nd
20 Legislature, Regular Session, 2011, does not become law, effective
21 September 1, 2014, Subdivisions (5) and (18), Section 108.002,
22 Section 108.0025, and Subsection (c), Section 108.009, Health and
23 Safety Code, are repealed.

24 (b) If S.B. No. 156, Acts of the 82nd Legislature, Regular
25 Session, 2011, becomes law, effective September 1, 2014,
26 Subdivision (18), Section 108.002, Section 108.0025, and
27 Subsection (c), Section 108.009, Health and Safety Code, are

1 repealed.

2 ARTICLE 8. ADOPTION OF VACCINE PREVENTABLE DISEASES POLICY BY
3 HEALTH CARE FACILITIES

4 SECTION 8.01. The heading to Subtitle A, Title 4, Health and
5 Safety Code, is amended to read as follows:

6 SUBTITLE A. FINANCING, CONSTRUCTING, REGULATING, AND INSPECTING
7 HEALTH FACILITIES

8 SECTION 8.02. Subtitle A, Title 4, Health and Safety Code,
9 is amended by adding Chapter 224 to read as follows:

10 CHAPTER 224. POLICY ON VACCINE PREVENTABLE DISEASES

11 Sec. 224.001. DEFINITIONS. In this chapter:

12 (1) "Covered individual" means:

13 (A) an employee of the health care facility;

14 (B) an individual providing direct patient care
15 under a contract with a health care facility; or

16 (C) an individual to whom a health care facility
17 has granted privileges to provide direct patient care.

18 (2) "Health care facility" means:

19 (A) a facility licensed under Subtitle B,
20 including a hospital as defined by Section 241.003; or

21 (B) a hospital maintained or operated by this
22 state.

23 (3) "Regulatory authority" means a state agency that
24 regulates a health care facility under this code.

25 (4) "Vaccine preventable diseases" means the diseases
26 included in the most current recommendations of the Advisory
27 Committee on Immunization Practices of the Centers for Disease

1 Control and Prevention.

2 Sec. 224.002. VACCINE PREVENTABLE DISEASES POLICY
3 REQUIRED. (a) Each health care facility shall develop and
4 implement a policy to protect its patients from vaccine preventable
5 diseases.

6 (b) The policy must:

7 (1) require covered individuals to receive vaccines
8 for the vaccine preventable diseases specified by the facility
9 based on the level of risk the individual presents to patients by
10 the individual's routine and direct exposure to patients;

11 (2) specify the vaccines a covered individual is
12 required to receive based on the level of risk the individual
13 presents to patients by the individual's routine and direct
14 exposure to patients;

15 (3) include procedures for verifying whether a covered
16 individual has complied with the policy;

17 (4) include procedures for a covered individual to be
18 exempt from the required vaccines for the medical conditions
19 identified as contraindications or precautions by the Centers for
20 Disease Control and Prevention;

21 (5) for a covered individual who is exempt from the
22 required vaccines, include procedures the individual must follow to
23 protect facility patients from exposure to disease, such as the use
24 of protective medical equipment, such as gloves and masks, based on
25 the level of risk the individual presents to patients by the
26 individual's routine and direct exposure to patients;

27 (6) prohibit discrimination or retaliatory action

1 against a covered individual who is exempt from the required
2 vaccines for the medical conditions identified as
3 contraindications or precautions by the Centers for Disease Control
4 and Prevention, except that required use of protective medical
5 equipment, such as gloves and masks, may not be considered
6 retaliatory action for purposes of this subdivision;

7 (7) require the health care facility to maintain a
8 written or electronic record of each covered individual's
9 compliance with or exemption from the policy; and

10 (8) include disciplinary actions the health care
11 facility is authorized to take against a covered individual who
12 fails to comply with the policy.

13 (c) The policy may include procedures for a covered
14 individual to be exempt from the required vaccines based on reasons
15 of conscience, including a religious belief.

16 Sec. 224.003. DISASTER EXEMPTION. (a) In this section,
17 "public health disaster" has the meaning assigned by Section
18 81.003.

19 (b) During a public health disaster, a health care facility
20 may prohibit a covered individual who is exempt from the vaccines
21 required in the policy developed by the facility under Section
22 224.002 from having contact with facility patients.

23 Sec. 224.004. DISCIPLINARY ACTION. A health care facility
24 that violates this chapter is subject to an administrative or civil
25 penalty in the same manner, and subject to the same procedures, as
26 if the facility had violated a provision of this code that
27 specifically governs the facility.

1 Sec. 224.005. RULES. The appropriate rulemaking authority
2 for each regulatory authority shall adopt rules necessary to
3 implement this chapter.

4 SECTION 8.03. Not later than June 1, 2012, a state agency
5 that regulates a health care facility subject to Chapter 224,
6 Health and Safety Code, as added by this Act, shall adopt the rules
7 necessary to implement that chapter.

8 SECTION 8.04. Notwithstanding Chapter 224, Health and
9 Safety Code, as added by this Act, a health care facility subject to
10 that chapter is not required to have a policy on vaccine preventable
11 diseases in effect until September 1, 2012.

12 ARTICLE 9. TEXAS EMERGENCY AND TRAUMA CARE EDUCATION

13 PARTNERSHIP PROGRAM

14 SECTION 9.01. Chapter 61, Education Code, is amended by
15 adding Subchapter HH to read as follows:

16 SUBCHAPTER HH. TEXAS EMERGENCY AND TRAUMA CARE EDUCATION

17 PARTNERSHIP PROGRAM

18 Sec. 61.9801. DEFINITIONS. In this subchapter:

19 (1) "Emergency and trauma care education partnership"
20 means a partnership that:

21 (A) consists of one or more hospitals in this
22 state and one or more graduate professional nursing or graduate
23 medical education programs in this state; and

24 (B) serves to increase training opportunities in
25 emergency and trauma care for doctors and registered nurses at
26 participating graduate medical education and graduate professional
27 nursing programs.

1 (2) "Participating education program" means a
2 graduate professional nursing program as that term is defined by
3 Section 54.221 or a graduate medical education program leading to
4 board certification by the American Board of Medical Specialties
5 that participates in an emergency and trauma care education
6 partnership.

7 Sec. 61.9802. PROGRAM: ESTABLISHMENT; ADMINISTRATION;
8 PURPOSE. (a) The Texas emergency and trauma care education
9 partnership program is established.

10 (b) The board shall administer the program in accordance
11 with this subchapter and rules adopted under this subchapter.

12 (c) Under the program, to the extent funds are available
13 under Section 61.9805, the board shall make grants to emergency and
14 trauma care education partnerships to assist those partnerships to
15 meet the state's needs for doctors and registered nurses with
16 training in emergency and trauma care by offering one-year or
17 two-year fellowships to students enrolled in graduate professional
18 nursing or graduate medical education programs through
19 collaboration between hospitals and graduate professional nursing
20 or graduate medical education programs and the use of the existing
21 expertise and facilities of those hospitals and programs.

22 Sec. 61.9803. GRANTS: CONDITIONS; LIMITATIONS. (a) The
23 board may make a grant under this subchapter to an emergency and
24 trauma care education partnership only if the board determines
25 that:

26 (1) the partnership will meet applicable standards for
27 instruction and student competency for each program offered by each

1 participating education program;

2 (2) each participating education program will, as a
3 result of the partnership, enroll in the education program a
4 sufficient number of additional students as established by the
5 board;

6 (3) each hospital participating in an emergency and
7 trauma care education partnership will provide to students enrolled
8 in a participating education program clinical placements that:

9 (A) allow the students to take part in providing
10 or to observe, as appropriate, emergency and trauma care services
11 offered by the hospital; and

12 (B) meet the clinical education needs of the
13 students; and

14 (4) the partnership will satisfy any other requirement
15 established by board rule.

16 (b) A grant under this subchapter may be spent only on costs
17 related to the development or operation of an emergency and trauma
18 care education partnership that prepares a student to complete a
19 graduate professional nursing program with a specialty focus on
20 emergency and trauma care or earn board certification by the
21 American Board of Medical Specialties.

22 Sec. 61.9804. PRIORITY FOR FUNDING. In awarding a grant
23 under this subchapter, the board shall give priority to an
24 emergency and trauma care education partnership that submits a
25 proposal that:

26 (1) provides for collaborative educational models
27 between one or more participating hospitals and one or more

1 participating education programs that have signed a memorandum of
2 understanding or other written agreement under which the
3 participants agree to comply with standards established by the
4 board, including any standards the board may establish that:

5 (A) provide for program management that offers a
6 centralized decision-making process allowing for inclusion of each
7 entity participating in the partnership;

8 (B) provide for access to clinical training
9 positions for students in graduate professional nursing and
10 graduate medical education programs that are not participating in
11 the partnership; and

12 (C) specify the details of any requirement
13 relating to a student in a participating education program being
14 employed after graduation in a hospital participating in the
15 partnership, including any details relating to the employment of
16 students who do not complete the program, are not offered a position
17 at the hospital, or choose to pursue other employment;

18 (2) includes a demonstrable education model to:

19 (A) increase the number of students enrolled in,
20 the number of students graduating from, and the number of faculty
21 employed by each participating education program; and

22 (B) improve student or resident retention in each
23 participating education program;

24 (3) indicates the availability of money to match a
25 portion of the grant money, including matching money or in-kind
26 services approved by the board from a hospital, private or
27 nonprofit entity, or institution of higher education;

1 (4) can be replicated by other emergency and trauma
2 care education partnerships or other graduate professional nursing
3 or graduate medical education programs; and

4 (5) includes plans for sustainability of the
5 partnership.

6 Sec. 61.9805. GRANTS, GIFTS, AND DONATIONS. In addition to
7 money appropriated by the legislature, the board may solicit,
8 accept, and spend grants, gifts, and donations from any public or
9 private source for the purposes of this subchapter.

10 Sec. 61.9806. RULES. The board shall adopt rules for the
11 administration of the Texas emergency and trauma care education
12 partnership program. The rules must include:

13 (1) provisions relating to applying for a grant under
14 this subchapter; and

15 (2) standards of accountability consistent with other
16 graduate professional nursing and graduate medical education
17 programs to be met by any emergency and trauma care education
18 partnership awarded a grant under this subchapter.

19 Sec. 61.9807. ADMINISTRATIVE COSTS. A reasonable amount,
20 not to exceed three percent, of any money appropriated for purposes
21 of this subchapter may be used to pay the costs of administering
22 this subchapter.

23 SECTION 9.02. As soon as practicable after the effective
24 date of this article, the Texas Higher Education Coordinating Board
25 shall adopt rules for the implementation and administration of the
26 Texas emergency and trauma care education partnership program
27 established under Subchapter HH, Chapter 61, Education Code, as

1 added by this Act. The board may adopt the initial rules in the
2 manner provided by law for emergency rules.

3 ARTICLE 10. INSURER CONTRACTS REGARDING CERTAIN BENEFIT PLANS

4 SECTION 10.01. Section 1301.006, Insurance Code, is amended
5 to read as follows:

6 Sec. 1301.006. AVAILABILITY OF AND ACCESSIBILITY TO HEALTH
7 CARE SERVICES. (a) An insurer that markets a preferred provider
8 benefit plan shall contract with physicians and health care
9 providers to ensure that all medical and health care services and
10 items contained in the package of benefits for which coverage is
11 provided, including treatment of illnesses and injuries, will be
12 provided under the health insurance policy in a manner ensuring
13 availability of and accessibility to adequate personnel, specialty
14 care, and facilities.

15 (b) A contract between an insurer that markets a plan
16 regulated under this chapter and an institutional provider may not,
17 as a condition of staff membership or privileges, require a
18 physician or other practitioner to enter into a preferred provider
19 contract.

20 ARTICLE 11. COVERED SERVICES OF CERTAIN HEALTH CARE PRACTITIONERS

21 SECTION 11.01. Section 1451.109, Insurance Code, is amended
22 to read as follows:

23 Sec. 1451.109. SELECTION OF CHIROPRACTOR. (a) An insured
24 may select a chiropractor to provide the medical or surgical
25 services or procedures scheduled in the health insurance policy
26 that are within the scope of the chiropractor's license.

27 (b) If physical modalities and procedures are covered

1 services under a health insurance policy and within the scope of the
2 license of a chiropractor and one or more other type of
3 practitioner, a health insurance policy issuer may not:

4 (1) deny payment or reimbursement for physical
5 modalities and procedures provided by a chiropractor if:

6 (A) the chiropractor provides the modalities and
7 procedures in strict compliance with state law; and

8 (B) the health insurance policy issuer allows
9 payment or reimbursement for the same physical modalities and
10 procedures performed by another type of practitioner that an
11 insured may select under this subchapter;

12 (2) make payment or reimbursement for particular
13 covered physical modalities and procedures within the scope of a
14 chiropractor's license contingent on treatment or examination by a
15 practitioner that is not a chiropractor; or

16 (3) establish other limitations on the provision of
17 covered physical modalities and procedures that would prohibit an
18 insured from seeking the covered physical modalities and procedures
19 from a chiropractor to the same extent that the insured may obtain
20 covered physical modalities and procedures from another type of
21 practitioner.

22 (c) Nothing in this section requires a health insurance
23 policy issuer to cover particular services or affects the ability
24 of a health insurance policy issuer to determine whether specific
25 procedures for which payment or reimbursement is requested are
26 medically necessary.

27 (d) This section does not apply to:

1 (1) workers' compensation insurance coverage as
2 defined by Section 401.011, Labor Code;

3 (2) a self-insured employee welfare benefit plan
4 subject to the Employee Retirement Income Security Act of 1974 (29
5 U.S.C. Section 1001 et seq.);

6 (3) the child health plan program under Chapter 62,
7 Health and Safety Code, or the health benefits plan for children
8 under Chapter 63, Health and Safety Code; or

9 (4) a Medicaid managed care program operated under
10 Chapter 533, Government Code, or a Medicaid program operated under
11 Chapter 32, Human Resources Code.

12 SECTION 11.02. The changes in law made by this article to
13 Section 1451.109, Insurance Code, apply only to a health insurance
14 policy that is delivered, issued for delivery, or renewed on or
15 after the effective date of this Act. A policy delivered, issued
16 for delivery, or renewed before the effective date of this Act is
17 governed by the law as it existed immediately before the effective
18 date of this Act, and that law is continued in effect for that
19 purpose.

20 ARTICLE 12. INTERSTATE HEALTH CARE COMPACT

21 SECTION 12.01. Title 15, Insurance Code, is amended by
22 adding Chapter 5002 to read as follows:

23 CHAPTER 5002. INTERSTATE HEALTH CARE COMPACT

24 Sec. 5002.001. EXECUTION OF COMPACT. This state enacts the
25 Interstate Health Care Compact and enters into the compact with all
26 other states legally joining in the compact in substantially the
27 following form:

1 Whereas, the separation of powers, both between the branches of the
2 Federal government and between Federal and State authority, is
3 essential to the preservation of individual liberty;

4 Whereas, the Constitution creates a Federal government of limited
5 and enumerated powers, and reserves to the States or to the people
6 those powers not granted to the Federal government;

7 Whereas, the Federal government has enacted many laws that have
8 preempted State laws with respect to Health Care, and placed
9 increasing strain on State budgets, impairing other
10 responsibilities such as education, infrastructure, and public
11 safety;

12 Whereas, the Member States seek to protect individual liberty and
13 personal control over Health Care decisions, and believe the best
14 method to achieve these ends is by vesting regulatory authority
15 over Health Care in the States;

16 Whereas, by acting in concert, the Member States may express and
17 inspire confidence in the ability of each Member State to govern
18 Health Care effectively; and

19 Whereas, the Member States recognize that consent of Congress may
20 be more easily secured if the Member States collectively seek
21 consent through an interstate compact;

22 NOW THEREFORE, the Member States hereto resolve, and by the
23 adoption into law under their respective State Constitutions of
24 this Health Care Compact, agree, as follows:

1 Sec. 1. Definitions. As used in this Compact, unless the context
2 clearly indicates otherwise:

3 "Commission" means the Interstate Advisory Health Care Commission.

4 "Effective Date" means the date upon which this Compact shall
5 become effective for purposes of the operation of State and Federal
6 law in a Member State, which shall be the later of:

7 a) the date upon which this Compact shall be adopted
8 under the laws of the Member State, and

9 b) the date upon which this Compact receives the
10 consent of Congress pursuant to Article I, Section 10,
11 of the United States Constitution, after at least two
12 Member States adopt this Compact.

13 "Health Care" means care, services, supplies, or plans related to
14 the health of an individual and includes but is not limited to:

15 (a) preventive, diagnostic, therapeutic, rehabilitative,
16 maintenance, or palliative care and counseling, service,
17 assessment, or procedure with respect to the physical or mental
18 condition or functional status of an individual or that affects the
19 structure or function of the body, and

20 (b) sale or dispensing of a drug, device, equipment, or other item
21 in accordance with a prescription, and

22 (c) an individual or group plan that provides, or pays the cost of,

1 care, services, or supplies related to the health of an individual,
2 except any care, services, supplies, or plans provided by the
3 United States Department of Defense and United States Department of
4 Veterans Affairs, or provided to Native Americans.

5 "Member State" means a State that is signatory to this Compact and
6 has adopted it under the laws of that State.

7 "Member State Base Funding Level" means a number equal to the total
8 Federal spending on Health Care in the Member State during Federal
9 fiscal year 2010. On or before the Effective Date, each Member
10 State shall determine the Member State Base Funding Level for its
11 State, and that number shall be binding upon that Member State.

12 "Member State Current Year Funding Level" means the Member State
13 Base Funding Level multiplied by the Member State Current Year
14 Population Adjustment Factor multiplied by the Current Year
15 Inflation Adjustment Factor.

16 "Member State Current Year Population Adjustment Factor" means the
17 average population of the Member State in the current year less the
18 average population of the Member State in Federal fiscal year 2010,
19 divided by the average population of the Member State in Federal
20 fiscal year 2010, plus 1. Average population in a Member State
21 shall be determined by the United States Census Bureau.

22 "Current Year Inflation Adjustment Factor" means the Total Gross
23 Domestic Product Deflator in the current year divided by the Total
24 Gross Domestic Product Deflator in Federal fiscal year 2010. Total

1 Gross Domestic Product Deflator shall be determined by the Bureau
2 of Economic Analysis of the United States Department of Commerce.

3 Sec. 2. Pledge. The Member States shall take joint and separate
4 action to secure the consent of the United States Congress to this
5 Compact in order to return the authority to regulate Health Care to
6 the Member States consistent with the goals and principles
7 articulated in this Compact. The Member States shall improve
8 Health Care policy within their respective jurisdictions and
9 according to the judgment and discretion of each Member State.

10 Sec. 3. Legislative Power. The legislatures of the Member States
11 have the primary responsibility to regulate Health Care in their
12 respective States.

13 Sec. 4. State Control. Each Member State, within its State, may
14 suspend by legislation the operation of all federal laws, rules,
15 regulations, and orders regarding Health Care that are inconsistent
16 with the laws and regulations adopted by the Member State pursuant
17 to this Compact. Federal and State laws, rules, regulations, and
18 orders regarding Health Care will remain in effect unless a Member
19 State expressly suspends them pursuant to its authority under this
20 Compact. For any federal law, rule, regulation, or order that
21 remains in effect in a Member State after the Effective Date, that
22 Member State shall be responsible for the associated funding
23 obligations in its State.

24 Sec. 5. Funding.

1 (a) Each Federal fiscal year, each Member State shall have the
2 right to Federal monies up to an amount equal to its Member State
3 Current Year Funding Level for that Federal fiscal year, funded by
4 Congress as mandatory spending and not subject to annual
5 appropriation, to support the exercise of Member State authority
6 under this Compact. This funding shall not be conditional on any
7 action of or regulation, policy, law, or rule being adopted by the
8 Member State.

9 (b) By the start of each Federal fiscal year, Congress shall
10 establish an initial Member State Current Year Funding Level for
11 each Member State, based upon reasonable estimates. The final
12 Member State Current Year Funding Level shall be calculated, and
13 funding shall be reconciled by the United States Congress based
14 upon information provided by each Member State and audited by the
15 United States Government Accountability Office.

16 Sec. 6. Interstate Advisory Health Care Commission.

17 (a) The Interstate Advisory Health Care Commission is
18 established. The Commission consists of members appointed by each
19 Member State through a process to be determined by each Member
20 State. A Member State may not appoint more than two members to the
21 Commission and may withdraw membership from the Commission at any
22 time. Each Commission member is entitled to one vote. The
23 Commission shall not act unless a majority of the members are
24 present, and no action shall be binding unless approved by a
25 majority of the Commission's total membership.

1 (b) The Commission may elect from among its membership a
2 Chairperson. The Commission may adopt and publish bylaws and
3 policies that are not inconsistent with this Compact. The
4 Commission shall meet at least once a year, and may meet more
5 frequently.

6 (c) The Commission may study issues of Health Care regulation that
7 are of particular concern to the Member States. The Commission may
8 make non-binding recommendations to the Member States. The
9 legislatures of the Member States may consider these
10 recommendations in determining the appropriate Health Care
11 policies in their respective States.

12 (d) The Commission shall collect information and data to assist
13 the Member States in their regulation of Health Care, including
14 assessing the performance of various State Health Care programs and
15 compiling information on the prices of Health Care. The Commission
16 shall make this information and data available to the legislatures
17 of the Member States. Notwithstanding any other provision in this
18 Compact, no Member State shall disclose to the Commission the
19 health information of any individual, nor shall the Commission
20 disclose the health information of any individual.

21 (e) The Commission shall be funded by the Member States as agreed
22 to by the Member States. The Commission shall have the
23 responsibilities and duties as may be conferred upon it by
24 subsequent action of the respective legislatures of the Member
25 States in accordance with the terms of this Compact.

1 (f) The Commission shall not take any action within a Member State
2 that contravenes any State law of that Member State.

3 Sec. 7. Congressional Consent. This Compact shall be effective on
4 its adoption by at least two Member States and consent of the United
5 States Congress. This Compact shall be effective unless the United
6 States Congress, in consenting to this Compact, alters the
7 fundamental purposes of this Compact, which are:

8 (a) To secure the right of the Member States to regulate Health
9 Care in their respective States pursuant to this Compact and to
10 suspend the operation of any conflicting federal laws, rules,
11 regulations, and orders within their States; and

12 (b) To secure Federal funding for Member States that choose to
13 invoke their authority under this Compact, as prescribed by Section
14 5 above.

15 Sec. 8. Amendments. The Member States, by unanimous agreement,
16 may amend this Compact from time to time without the prior consent
17 or approval of Congress and any amendment shall be effective
18 unless, within one year, the Congress disapproves that amendment.
19 Any State may join this Compact after the date on which Congress
20 consents to the Compact by adoption into law under its State
21 Constitution.

22 Sec. 9. Withdrawal; Dissolution. Any Member State may withdraw
23 from this Compact by adopting a law to that effect, but no such
24 withdrawal shall take effect until six months after the Governor of

1 the withdrawing Member State has given notice of the withdrawal to
2 the other Member States. A withdrawing State shall be liable for
3 any obligations that it may have incurred prior to the date on which
4 its withdrawal becomes effective. This Compact shall be dissolved
5 upon the withdrawal of all but one of the Member States.

6 SECTION 12.02. This article takes effect immediately if
7 this Act receives a vote of two-thirds of all the members elected to
8 each house, as provided by Section 39, Article III, Texas
9 Constitution. If this Act does not receive the vote necessary for
10 immediate effect, this article takes effect on the 91st day after
11 the last day of the legislative session.

12 ARTICLE 13. MEDICAID PROGRAM AND ALTERNATE METHODS OF PROVIDING
13 HEALTH SERVICES TO LOW-INCOME PERSONS

14 SECTION 13.01. Subtitle I, Title 4, Government Code, is
15 amended by adding Chapter 537 to read as follows:

16 CHAPTER 537. MEDICAID REFORM WAIVER

17 Sec. 537.001. DEFINITIONS. In this chapter:

18 (1) "Commission" means the Health and Human Services
19 Commission.

20 (2) "Executive commissioner" means the executive
21 commissioner of the Health and Human Services Commission.

22 Sec. 537.002. FEDERAL AUTHORIZATION FOR MEDICAID REFORM.

23 (a) The executive commissioner shall seek a waiver under Section
24 1115 of the federal Social Security Act (42 U.S.C. Section 1315) to
25 the state Medicaid plan.

26 (b) The waiver under this section must be designed to
27 achieve the following objectives regarding the Medicaid program and

1 alternatives to the program:

2 (1) provide flexibility to determine Medicaid
3 eligibility categories and income levels;

4 (2) provide flexibility to design Medicaid benefits
5 that meet the demographic, public health, clinical, and cultural
6 needs of this state or regions within this state;

7 (3) encourage use of the private health benefits
8 coverage market rather than public benefits systems;

9 (4) encourage people who have access to private
10 employer-based health benefits to obtain or maintain those
11 benefits;

12 (5) create a culture of shared financial
13 responsibility, accountability, and participation in the Medicaid
14 program by:

15 (A) establishing and enforcing copayment
16 requirements similar to private sector principles for all
17 eligibility groups;

18 (B) promoting the use of health savings accounts
19 to influence a culture of individual responsibility; and

20 (C) promoting the use of vouchers for
21 consumer-directed services in which consumers manage and pay for
22 health-related services provided to them using program vouchers;

23 (6) consolidate federal funding streams, including
24 funds from the disproportionate share hospitals and upper payment
25 limit supplemental payment programs and other federal Medicaid
26 funds, to ensure the most effective and efficient use of those
27 funding streams;

1 (7) allow flexibility in the use of state funds used to
2 obtain federal matching funds, including allowing the use of
3 intergovernmental transfers, certified public expenditures, costs
4 not otherwise matchable, or other funds and funding mechanisms to
5 obtain federal matching funds;

6 (8) empower individuals who are uninsured to acquire
7 health benefits coverage through the promotion of cost-effective
8 coverage models that provide access to affordable primary,
9 preventive, and other health care on a sliding scale, with fees paid
10 at the point of service; and

11 (9) allow for the redesign of long-term care services
12 and supports to increase access to patient-centered care in the
13 most cost-effective manner.

14 SECTION 13.02. (a) In this section:

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

17 (2) "FMAP" means the federal medical assistance
18 percentage by which state expenditures under the Medicaid program
19 are matched with federal funds.

20 (3) "Illegal immigrant" means an individual who is not
21 a citizen or national of the United States and who is unlawfully
22 present in the United States.

23 (4) "Medicaid program" means the medical assistance
24 program under Chapter 32, Human Resources Code.

25 (b) The commission shall actively pursue a modification to
26 the formula prescribed by federal law for determining this state's
27 FMAP to achieve a formula that would produce an FMAP that accounts

1 for and is periodically adjusted to reflect changes in the
2 following factors in this state:

- 3 (1) the total population;
- 4 (2) the population growth rate; and
- 5 (3) the percentage of the population with household
6 incomes below the federal poverty level.

7 (c) The commission shall pursue the modification as
8 required by Subsection (b) of this section by providing to the Texas
9 delegation to the United States Congress and the federal Centers
10 for Medicare and Medicaid Services and other appropriate federal
11 agencies data regarding the factors listed in that subsection and
12 information indicating the effects of those factors on the Medicaid
13 program that are unique to this state.

14 (d) In addition to the modification to the FMAP described by
15 Subsection (b) of this section, the commission shall make efforts
16 to obtain additional federal Medicaid funding for Medicaid services
17 required to be provided to illegal immigrants in this state. As
18 part of that effort, the commission shall provide to the Texas
19 delegation to the United States Congress and the federal Centers
20 for Medicare and Medicaid Services and other appropriate federal
21 agencies data regarding the costs to this state of providing those
22 services.

23 (e) This section expires September 1, 2013.

24 SECTION 13.03. (a) The Medicaid Reform Waiver Legislative
25 Oversight Committee is created to facilitate the reform waiver
26 efforts with respect to Medicaid.

27 (b) The committee is composed of eight members, as follows:

1 (1) four members of the senate, appointed by the
2 lieutenant governor not later than October 1, 2011; and

3 (2) four members of the house of representatives,
4 appointed by the speaker of the house of representatives not later
5 than October 1, 2011.

6 (c) A member of the committee serves at the pleasure of the
7 appointing official.

8 (d) The governor shall designate a member of the committee
9 as the presiding officer.

10 (e) A member of the committee may not receive compensation
11 for serving on the committee but is entitled to reimbursement for
12 travel expenses incurred by the member while conducting the
13 business of the committee as provided by the General Appropriations
14 Act.

15 (f) The committee shall:

16 (1) facilitate the design and development of the
17 Medicaid reform waiver required by Chapter 537, Government Code, as
18 added by this article;

19 (2) facilitate a smooth transition from existing
20 Medicaid payment systems and benefit designs to a new model of
21 Medicaid enabled by the waiver described by Subdivision (1) of this
22 subsection;

23 (3) meet at the call of the presiding officer; and

24 (4) research, take public testimony, and issue reports
25 requested by the lieutenant governor or speaker of the house of
26 representatives.

27 (g) The committee may request reports and other information

1 from the Health and Human Services Commission.

2 (h) The committee shall use existing staff of the senate,
3 the house of representatives, and the Texas Legislative Council to
4 assist the committee in performing its duties under this section.

5 (i) Chapter 551, Government Code, applies to the committee.

6 (j) The committee shall report to the lieutenant governor
7 and speaker of the house of representatives not later than November
8 15, 2012. The report must include:

9 (1) identification of significant issues that impede
10 the transition to a more effective Medicaid program;

11 (2) the measures of effectiveness associated with
12 changes to the Medicaid program;

13 (3) the impact of Medicaid changes on safety net
14 hospitals and other significant traditional providers; and

15 (4) the impact on the uninsured in Texas.

16 (k) This section expires September 1, 2013, and the
17 committee is abolished on that date.

18 SECTION 13.04. This article takes effect immediately if
19 this Act receives a vote of two-thirds of all the members elected to
20 each house, as provided by Section 39, Article III, Texas
21 Constitution. If this Act does not receive the vote necessary for
22 immediate effect, this article takes effect on the 91st day after
23 the last day of the legislative session.

24 ARTICLE 14. AUTOLOGOUS STEM CELL BANK FOR RECIPIENTS OF BLOOD AND
25 TISSUE COMPONENTS WHO ARE THE LIVE HUMAN DONORS OF THE ADULT STEM
26 CELLS

27 SECTION 14.01. Title 12, Health and Safety Code, is amended

1 by adding Chapter 1003 to read as follows:

2 CHAPTER 1003. AUTOLOGOUS STEM CELL BANK FOR RECIPIENTS OF BLOOD AND
3 TISSUE COMPONENTS WHO ARE THE LIVE HUMAN DONORS OF THE ADULT STEM
4 CELLS

5 Sec. 1003.001. ESTABLISHMENT OF ADULT STEM CELL BANK.

6 (a) If the executive commissioner of the Health and Human Services
7 Commission determines that it will be cost-effective and increase
8 the efficiency or quality of health care, health and human
9 services, and health benefits programs in this state, the executive
10 commissioner by rule shall establish eligibility criteria for the
11 creation and operation of an autologous adult stem cell bank.

12 (b) In adopting the rules under Subsection (a), the
13 executive commissioner shall consider:

14 (1) the ability of the applicant to establish,
15 operate, and maintain an autologous adult stem cell bank and to
16 provide related services; and

17 (2) the demonstrated experience of the applicant in
18 operating similar facilities in this state.

19 (c) This section does not affect the application of or apply
20 to Chapter 162.

21 ARTICLE 15. STATE FUNDING FOR CERTAIN MEDICAL PROCEDURES

22 SECTION 15.01. The heading to Subchapter M, Chapter 285,
23 Health and Safety Code, is amended to read as follows:

24 SUBCHAPTER M. REGULATION [~~PROVISION~~] OF SERVICES

25 SECTION 15.02. Subchapter M, Chapter 285, Health and Safety
26 Code, is amended by adding Section 285.202 to read as follows:

27 Sec. 285.202. USE OF TAX REVENUE FOR ABORTIONS; EXCEPTION

1 FOR MEDICAL EMERGENCY. (a) In this section, "medical emergency"
2 means:

3 (1) a condition exists that, in a physician's good
4 faith clinical judgment, complicates the medical condition of the
5 pregnant woman and necessitates the immediate abortion of her
6 pregnancy to avert her death or to avoid a serious risk of
7 substantial impairment of a major bodily function; or

8 (2) the fetus has a severe fetal abnormality.

9 (a-1) In Subsection (a), a "severe fetal abnormality" means
10 a life threatening physical condition that, in reasonable medical
11 judgment, regardless of the provision of life saving medical
12 treatment, is incompatible with life outside the womb.

13 (a-2) In Subsection (a-1), "reasonable medical judgment"
14 means a medical judgment that would be made by a reasonably prudent
15 physician, knowledgeable about the case and the treatment
16 possibilities with respect to the medical conditions involved.

17 (b) Except in the case of a medical emergency, a hospital
18 district created under general or special law that uses tax revenue
19 of the district to finance the performance of an abortion may not
20 receive state funding.

21 (c) A physician who performs an abortion in a medical
22 emergency at a hospital or other health care facility owned or
23 operated by a hospital district that receives state funds shall:

24 (1) include in the patient's medical records a
25 statement signed by the physician certifying the nature of the
26 medical emergency; and

27 (2) not later than the 30th day after the date the

1 abortion is performed, certify to the Department of State Health
2 Services the specific medical condition that constituted the emergency.

3 (d) The statement required under Subsection (c)(1) shall be
4 placed in the patient's medical records and shall be kept by the
5 hospital or other health care facility where the abortion is
6 performed until:

7 (1) the seventh anniversary of the date the abortion
8 is performed; or

9 (2) if the pregnant woman is a minor, the later of:

10 (A) the seventh anniversary of the date the
11 abortion is performed; or

12 (B) the woman's 21st birthday.

13 ARTICLE 16. IMPLEMENTATION; EFFECTIVE DATE

14 SECTION 16.01. It is the intent of the legislature that the
15 Health and Human Services Commission take any action the commission
16 determines is necessary and appropriate, including expedited and
17 emergency action, to ensure the timely implementation of the
18 relevant provisions of this bill and the corresponding assumptions
19 reflected in H.B. No. 1, 82nd Legislature, Regular Session, 2011
20 (General Appropriations Act), by September 1, 2011, or the
21 effective date of this Act, whichever is later, including the
22 adoption of administrative rules, the preparation and submission of
23 any required waivers or state plan amendments, and the preparation
24 and execution of any necessary contract changes or amendments.

25 SECTION 16.02. Except as otherwise provided by this Act,
26 this Act takes effect on the 91st day after the last day of the
27 legislative session.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 7 passed the Senate on June 3, 2011, by the following vote: Yeas 31, Nays 0; June 13, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; June 15, 2011, House granted request of the Senate; June 27, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 21, Nays 9.

Secretary of the Senate

I hereby certify that S.B. No. 7 passed the House, with amendments, on June 9, 2011, by the following vote: Yeas 89, Nays 41, one present not voting; June 15, 2011, House granted request of the Senate for appointment of Conference Committee; June 27, 2011, House adopted Conference Committee Report by the following vote: Yeas 96, Nays 48, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor