

HEALTH & SAFETY CODE

CHAPTER 12. POWERS AND DUTIES OF TEXAS DEPARTMENT OF HEALTH
SUBCHAPTER A. POWERS AND DUTIES OF BOARD

Sec. 12.0001. POWERS AND DUTIES OF COMMISSIONER OF HEALTH AND HUMAN SERVICES. The commissioner of health and human services has the powers and duties relating to the board and commissioner as provided by Section 531.0055, Government Code. To the extent a power or duty given to the board or commissioner by this title or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.18, eff. Sept. 1, 1999.

Sec. 12.001. GENERAL POWERS AND DUTIES. (a) The board has general supervision and control over all matters relating to the health of the citizens of this state.

(b) The board shall:

(1) adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner and file a copy of those rules with the department; and

(2) examine, investigate, enter, and inspect any public place or public building as the board determines necessary for the discovery and suppression of disease and the enforcement of any health or sanitation law of this state.

(c) The board has all the powers, duties, and functions granted by law to:

(1) the Texas Board of Health;

(2) the state commissioner of health;

(3) the Texas Department of Health;

(4) the Texas Board of Health Resources; and

(5) the Texas Department of Health Resources.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.002. BOARD INVESTIGATIONS. (a) A member of the board may administer oaths, summon witnesses, and compel the attendance of witnesses in any matter proper for board investigation, including the determination of nuisances and the investigation of:

(1) public water supplies;

(2) sanitary conditions;

(3) the existence of infection; or

(4) any matter that requires the board to exercise its discretionary powers and that is within the general scope of its authority under this subchapter.

(b) Each district court shall aid the board in its investigations and in compelling compliance with this subchapter. If a witness summoned by the board is disobedient or disrespectful to the board's lawful authority, the district court of the county in which the witness is summoned to appear shall punish the witness in the manner provided for contempt of court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.003. LEGAL REPRESENTATION. (a) A suit brought by the board must be brought in the name of the state.

(b) The attorney general shall assign a special assistant to attend to the board's legal matters, and on the board's request shall furnish necessary assistance to the board relating to its legal requirements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.004. DEVELOPMENT OF PROPOSED RULES. (a) This section applies to the process by which the department develops proposed rules for the board's consideration before the proposed rules are published in the Texas Register and before the board, commissioner, or department complies with the rulemaking requirements of the administrative procedure law, Chapter 2001, Government Code. This section does not affect the duty of the board, commissioner, or department to comply with the rulemaking requirements of that law.

(b) The board shall require the department to establish a checklist of methods that, to the extent appropriate, the department will follow to obtain early in the rule development process the advice and opinions of the public and of persons who will be most affected by a proposed rule. The checklist must include methods for identifying persons who will be most affected and for soliciting at a minimum the advice and opinions of affected local health departments, of recipients and providers of affected services, and of advocates for affected recipients or providers.

(c) The checklist may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

(d) A rule adopted by the board may not be challenged on the grounds that the board, commissioner, or department did not comply with this section. If the department was unable to solicit a significant amount of advice and opinion from the public or from affected persons early in the rule development process, the department shall state in writing to the board the reasons why the department was unable to do so.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.08, eff. Sept. 1, 1999.

Sec. 12.005. MEDICAL DIRECTOR: MEDICAID MANAGED CARE AND CHIPS PROGRAMS. (a) In addition to any other medical director employed by the department, the board shall require the department to employ a separate medical director whose duties consist of acting as the medical director for the children's health insurance program created under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.) and also as the medical director for the Medicaid managed care program, to the extent that those programs are administered by the department.

(b) The medical director shall be primarily responsible for implementing and maintaining policies and systems for the programs that relate to clinical and professional medical issues, including clinical oversight.

(c) The medical director must be a physician licensed to practice medicine in this state.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.08, eff. Sept. 1, 1999.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

Sec. 12.011. APPROPRIATIONS, GRANTS, AND DONATIONS. (a) To carry out its duties and functions, the department may apply for, contract for, receive, and spend an appropriation or grant from the state, the federal government, or any other public source, subject to any limitation or condition prescribed by legislative appropriation.

(b) The department may accept donations and contributions to be spent in the interest of public health and the enforcement of public health laws.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.0111. LICENSING FEES. (a) This section applies in relation to each licensing program administered by the department or administered by a regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department. In this section and Section 12.0112, "license" includes a permit, certificate, or registration.

(b) Notwithstanding other law, the department shall charge a fee for issuing or renewing a license that is in an amount designed to allow the department to recover from its license holders all of the department's direct and indirect costs in administering and enforcing the applicable licensing program.

(c) Notwithstanding other law, each regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department and that issues licenses shall charge a fee for issuing or renewing a license that is in an amount designed to allow the department and the regulatory board or agency to recover from the license holders all of the direct and indirect costs to the department and to the regulatory board or agency in administering and enforcing the applicable licensing program.

(d) This section does not apply to a person regulated under Chapter 773.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.42(a), eff. Sept. 1, 2003.

Sec. 12.0112. TERM OF LICENSE. (a) Notwithstanding other law and except as provided by Subsection (b), the term of each license issued by the department, or by a regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department, is two years. The department, regulatory board, or agency may provide for staggering the issuance and renewal of licenses.

(b) This section does not apply to a license issued for a youth camp under Chapter 141.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.42(a), eff. Sept. 1, 2003.

Sec. 12.0115. INTEGRATION OF HEALTH CARE DELIVERY PROGRAMS. (a) In this section, "health care delivery programs" includes the department's primary health care services program, its program to improve maternal and infant health, its services for chronically ill and disabled children, any aspects of health care delivery under the state Medicaid program assigned to the department by law or by the Health and Human Services Commission, and the part of any other department program concerned with the department's responsibility for the delivery of health care services.

(b) The department shall integrate the functions of its different health care delivery programs to the maximum extent possible, including integrating the functions of health care delivery programs that are part of the state Medicaid program with functions of health care delivery programs that are not part of the state Medicaid program.

(c) At a minimum, the department's integration of the functions of its different health care delivery programs must include the integration within and across the programs of:

(1) the development of health care policy;

(2) the delivery of health care services, to the extent appropriate for the recipients of the health care services; and

(3) to the extent possible, the administration of contracts with providers of health care services, particularly providers who concurrently provide health care services under more than one contract or program with the department.

(d) One of the primary goals of the department in integrating the delivery of health care services for the benefit of recipients shall be providing for continuity of care for individuals and families, accomplished to the extent possible by providing an individual or family with a medical home that serves as the primary initial health care provider.

(e) One of the primary goals of the department in integrating the administration of its contracts with providers of health care services shall be designing an integrated contract administration system that reduces the administrative and paperwork burden on providers while still providing the department with the information it needs to effectively administer the contracts. The department's integration of contract administration must include:

(1) the integration of the initial procurement process within and across programs, at least in part by efficiently combining requests for bids or proposals within or across programs to the extent it reduces the administrative burden for providers;

(2) the establishment of uniform contract terms, including:

(A) contract terms that require information from providers, or that prescribe performance standards for providers, that could be made uniform within or across programs while remaining effective as contract terms;

(B) the establishment of a procedure under which a contractor or a person responding to a request for bids or proposals may supply the department with requested information whenever possible by referencing current and correct information previously supplied to and on file with the department; and

(C) contract terms regarding incentives for contractors to meet or exceed contract requirements;

(3) the integration of contract monitoring, particularly with regard to monitoring providers that deliver health services for the department under more than one contract or under more than one department program; and

(4) the integration of reimbursement methods:

(A) particularly for a provider that delivers health services for the department under more than one contract or under more than one department program; and

(B) including the application across programs of the most effective and efficient reimbursement technologies or methods that are available to the department under any of its programs.

(f) The department shall examine the extent to which the department could integrate all or part of its health care delivery programs into a single delivery system.

(g) If a federal requirement that the federal government may waive restricts the department's integration efforts under this

section, the department may seek a waiver of the requirement from the federal government. If the waiver affects a program for which another state agency is designated the single state agency for federal purposes, the department shall request the single state agency to seek the waiver.

(h) The department may not integrate health care delivery programs under this section in a way that affects the single state agency status of another state agency for federal purposes without obtaining the approval of the Health and Human Services Commission and any necessary federal approval.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.09, eff. Sept. 1, 1999.

Sec. 12.012. AWARDING CONTRACTS OR GRANTS AND SELECTING SERVICE PROVIDERS. (a) In awarding contracts or grants for services, or in selecting service providers under any program administered by the department, the department shall give preference to providers who can deliver appropriate services of similar quality in the most cost-effective manner.

(b) In awarding the contracts or grants or selecting the providers, the department may not discriminate among licensed health care providers who can provide the services under the authority of their licenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.0121. CONTRACTING FOR PROFESSIONAL SERVICES. (a) In this section, "professional services" means those services performed by an individual who is licensed, certified, registered, or otherwise authorized by the state and who acts within the scope of the individual's license, certification, registration, or other authorization in the practice of a health or allied health profession.

(b) The board by rule shall adopt a list of categories of licensed, certified, registered, or otherwise authorized providers to whom the department may award a grant for professional services under this section or with whom the department may contract or otherwise engage to perform professional services under this section.

(c) The department may award a grant, enter into a contract, or otherwise engage an individual or a group or association of individuals to perform professional services selected on the basis of competitive proposals submitted for the grant, contract, or services to be performed. The department may also make the selection on the basis of:

(1) demonstrated competence and qualifications for the type of professional services to be performed; and

(2) whether the fees for the professional services to be performed are fair, reasonable, and consistent with and not higher than the usual and customary fees for the services to be performed and do not exceed any maximum provided by state law.

(d) The department may award a grant, enter into a contract, or otherwise engage an individual or a group or association of individuals to perform professional services without complying with Subsection (c) if the commissioner by order ratified by the board at its next regular meeting determines that an emergency exists that necessitates the use of different procedures. A grant, contract, or engagement under this subsection is effective only for the period specified by the commissioner's order.

Added by Acts 1991, 72nd Leg., ch. 284, Sec. 1, eff. Sept. 1, 1991.

Sec. 12.0122. SALE OF LABORATORY SERVICES. (a) The department may enter into a contract for the sale and provision of laboratory services in accordance with this section.

(b) The department may enter into a contract with:

(1) a federal, state, or local governmental entity;

or

(2) a freestanding public health clinic owned or controlled by a nonprofit organization.

(c) For purposes of Subsection (b)(1), a contract with a federal governmental entity does not include a contract relating to Medicare managed care services.

(d) The department by rule may establish charges for the sale of laboratory services.

(e) The department may enter into a contract with a party in or outside of this state.

(f) In this section, "laboratory services" means the activities performed by the laboratory established by the department. The term includes the provision of supplies and test

materials and the performance of scientific procedures to analyze or assess specimens from any source, but does not include tissue and cytology specimens, except for pap smears for recipients under federally funded programs or genetic testing.

Added by Acts 1997, 75th Leg., ch. 647, Sec. 1, eff. June 11, 1997. Renumbered from Sec. 12.020 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(62), eff. Sept. 1, 1999.

Sec. 12.0123. EXTERNAL AUDITS OF CERTAIN MEDICAID CONTRACTORS BASED ON RISK.

Text of section as added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.10

(a) In this section, "Medicaid contractor" means an entity that:

(1) is not a health and human services agency as defined by Section 531.001, Government Code; and

(2) under a contract with or otherwise on behalf of the department, performs one or more administrative services in relation to the department's operation of a part of the state Medicaid program, such as claims processing, utilization review, client enrollment, provider enrollment, quality monitoring, or payment of claims.

(b) The department shall contract with an independent auditor to perform independent external financial and performance audits of any Medicaid contractor used by the department in the department's operation of a part of the state Medicaid program. The department regularly shall review its Medicaid contracts and ensure that:

(1) the frequency and extent of audits of a Medicaid contractor under this section are based on the amount of risk to the state involved in the administrative services being performed by the contractor;

(2) audit procedures related to financial audits and performance audits are used consistently in audits under this section; and

(3) to the extent possible, audits under this section are completed in a timely manner.

(c) If another state agency succeeds to the department's operation of a part of the state Medicaid program for which the department used a Medicaid contractor, the successor agency shall comply with this section with regard to the Medicaid contractor, including the requirement to contract with an independent auditor to perform the external financial and performance audits required by this section.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.10, eff. Sept. 1, 1999.

For text of section as added by Acts 1999, 76th Leg., ch. 1447, Sec. 1, eff. June 19, 1999, and by Acts 1999, 76th Leg., ch. 1460, Sec. 9.01, eff. Sept. 1, 1999, see Sec. 12.0123, post.

Sec. 12.0123. EXTERNAL AUDITS OF CERTAIN MEDICAID CONTRACTORS.

Text of section as added by Acts 1999, 76th Leg., ch. 1447, Sec. 1 and by Acts 1999, 76th Leg., ch. 1460, Sec. 9.01

(a) In this section, "Medicaid contractor" means an entity that:

(1) is not a health and human services agency as defined by Section 531.001, Government Code; and

(2) under contract with or otherwise on behalf of the department, performs one or more administrative services in relation to the department's operation of a part of the state Medicaid program, such as claims processing, utilization review, client enrollment, provider enrollment, quality monitoring, or payment of claims.

(b) The department shall contract with an independent auditor to perform annual independent external financial and performance audits of any Medicaid contractor used by the department in the department's operation of a part of the state Medicaid program.

(c) The department shall ensure that audit procedures related to financial audits and performance audits are used consistently in audits under this section.

(d) An audit required by this section must be completed before the end of the fiscal year immediately following the fiscal year for which the audit is performed.

Added by Acts 1999, 76th Leg., ch. 1447, Sec. 1, eff. June 19, 1999; Acts 1999, 76th Leg., ch. 1460, Sec. 9.01, eff. Sept. 1, 1999.

For text of section as added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.10, eff. Sept. 1, 1999, see Sec. 12.0123, ante.

Sec. 12.0124. ELECTRONIC TRANSACTIONS; STATE MEDICAID PROGRAM. The department or the department's successor in function in relation to the department's operation of a part of the state Medicaid program shall implement policies that encourage the use of electronic transactions. The policies shall require payment to Medicaid service providers by electronic funds transfer, including electronic remittance and status reports. The policies shall also include the establishment of incentives to submit claims electronically and of disincentives to submit claims on paper that are reasonably based on the higher administrative costs to process claims submitted on paper.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.10, eff. Sept. 1, 1999.

Sec. 12.0125. DRUG REBATES. (a) The department shall develop a voluntary drug manufacturer rebate program for drugs purchased by or on behalf of a client of the Kidney Health Care Program or the Chronically Ill and Disabled Children's Services Program for which rebates are not available under the Medicaid drug manufacturer rebate program.

(b) The department shall consult with drug manufacturers to develop rebate amounts for the new voluntary rebate program. The average percentage savings from rebates in the new program may not be less than the average percentage savings from rebates in the Medicaid drug manufacturer rebate program.

(c) Amounts received by the department under the drug rebate program established under this section may be appropriated only for the Kidney Health Care Program or the Chronically Ill and Disabled Children's Services Program.

Added by Acts 1999, 76th Leg., ch. 669, Sec. 2, eff. June 18, 1999.

Sec. 12.0127. IMMIGRATION VISA WAIVERS FOR PHYSICIANS. (a) The department, in accordance with 8 U.S.C. Section 1182(e), as amended, under exceptions provided by 8 U.S.C. Section 1184(l), as amended, may request waiver of the foreign country residence requirement for a qualified alien physician who agrees to practice medicine in a medically underserved area or health professional shortage area, as designated by the United States Department of Health and Human Services, that has a current shortage of physicians.

(b) The department may charge a fee to cover the costs incurred by the department in administering the visa waiver program established under this section.

Added by Acts 2003, 78th Leg., ch. 143, Sec. 1, eff. Sept. 1, 2003.

Sec. 12.0128. HEALTH ALERT NETWORK. The department shall include the Texas Association of Local Health Officials, the Texas Association of Community Health Centers, and the Texas Organization of Rural and Community Hospitals in the department's Texas Health Alert Network to the extent federal funds for bioterrorism preparedness are available for that purpose.

Added by Acts 2005, 79th Leg., ch. 1337, Sec. 17, eff. June 18, 2005.

Sec. 12.013. DRIVING AND TRAFFIC POLICIES. (a) The department shall continuously study and investigate the medical aspects of:

- (1) the licensing of drivers;
- (2) the enforcement of traffic safety laws, including differentiation between drivers who are ill or intoxicated; and
- (3) accident investigation, including examination for alcohol or drugs in the bodies of persons killed in traffic accidents.

(b) Based on the studies and investigations, the department periodically shall recommend to the Department of Public Safety appropriate policies, standards, and procedures relating to those medical aspects.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.014. REGISTRY. (a) The department may establish a registry or system of registries for providers of health-related services who are not otherwise licensed, registered, or certified by any state agency, board, or commission.

(b) The board by rule may adopt reasonable registration fees to cover the costs of establishing and maintaining a registry and may adopt other rules as necessary to administer this section.

(c) A person seeking to register with the department must submit a request for registration on a form prescribed by the

department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 5, eff. Sept. 1, 1991.

Sec. 12.0145. INFORMATION ABOUT ENFORCEMENT ACTIONS. (a) The department shall publish and provide information in accordance with this section regarding each final enforcement action taken by the department, commissioner, or board against a person or facility regulated by the department in which any kind of sanction is imposed, including:

(1) the imposition of a reprimand, a period of probation, a monetary penalty, or a condition on a person's continued practice or a facility's continued operation; and

(2) the refusal to renew or the suspension, probation, or revocation of a license or other form of permission to engage in an activity.

(b) Except to the extent that the information is specifically made confidential under other law, the department shall publish and provide the name, including any trade name, of the person or facility against which an enforcement action was taken, the violation that the person or facility was found to have committed, and the sanction imposed. The department shall publish and provide the information in a way that does not serve to identify a complainant.

(c) The department shall publish the information on its generally accessible Internet site. The department also shall provide the information by establishing a system under which members of the public can call toll-free numbers to obtain the information efficiently and with a minimum of delay. The department shall appropriately publicize the toll-free numbers.

(d) The department shall publish and provide the information promptly after the sanction has been imposed or, when applicable, promptly after the period during which the sanction is imposed has begun. The department by rule shall establish the length of time during which the required information will be published and provided under this section based on the department's determination regarding the types of services provided by regulated entities and the length of time for which information about a category of enforcement actions is useful to a member of the public.

(e) The department shall publish and provide the information using clear language that can be readily understood by a person with a high school education.

(f) If another law specifically requires that particular information subject to this section shall be published in another manner, the department shall comply with this section and with the other law.

(g) A determination that the department is not required to publish and provide information under this section does not affect a determination regarding whether the information is subject to required disclosure under the open records law, Chapter 552, Government Code. The department's determination regarding the length of the period during which information should continue to be published and provided under this section does not affect a determination regarding the period for which the information must be preserved under Chapter 441, Government Code, or under another law.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.11, eff. Sept. 1, 1999.

Sec. 12.0146. TRENDS IN ENFORCEMENT. The department shall publish annually an analysis of its enforcement actions taken under state law with regard to each profession, industry, or type of facility regulated by the department. The analysis for each regulatory area must show at a minimum the year-to-year trends in the number and types of enforcement actions taken by the department in its regulation of the profession, industry, or type of facility.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.11, eff. Sept. 1, 1999.

Sec. 12.015. INFORMATION ON COMMUNITY SERVICES. (a) If the department determines that a person is not eligible for a level of care in a nursing home, the department shall inform the person that community services might be available under the community care for the aged and disabled program administered by the Texas Department of Human Services.

(b) The department shall provide to the person a list of services available under the program and a telephone number to call for more information on the services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 6, eff. Sept. 1, 1991.

Sec. 12.016. PUBLIC HEARING PROCEDURES. (a) Any statements, correspondence, or other form of oral or written communication made by a member of the legislature to a department official or employee during a public hearing conducted by the department shall become part of the record of the hearing, regardless of whether the member is a party to the hearing.

(b) When a public hearing conducted by the department is required by law to be conducted at a certain location, the department shall determine the place within that location at which the hearing will be conducted. In making that determination, the department shall consider the cost of available facilities and the adequacy of a facility to accommodate the type of hearing and anticipated attendance.

(c) The department shall conduct at least one session of a public hearing after normal business hours on request by a party to the hearing or any person who desires to attend the hearing.

(d) An applicant for a license, permit, registration, or similar form of permission required by law to be obtained from the department may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to begin. If an amendment of an application would be necessary within that period, the applicant shall resubmit the application to the department and must again comply with notice requirements and any other requirements of law or board rule as though the application were originally submitted to the department on that date.

(e) If an application for a license, permit, registration, or similar form of permission required by law is pending before the department at the time when changes take effect concerning notice requirements imposed by law for that type of application, the applicant must comply with the new notice requirements. Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 9.01, eff. Sept. 1, 1991.

Sec. 12.017. MANAGED CARE ORGANIZATIONS: MEDICAID PROGRAM. (a) Except as provided by Section 533.047, the department shall develop for managed care organizations that serve Medicaid clients performance, operation, quality of care, marketing, and financial standards and standards relating to children's access to good quality health care services. In developing the standards, the department shall include measures to monitor and assess the performance of managed care organizations relating to the health status and outcome of care for Medicaid clients.

(b) In establishing standards under this section, the department shall ensure that:

(1) to the extent possible, each Medicaid client can receive good quality health care services in the client's local community;

(2) plans serving children have adequate capacity to provide pediatric care; and

(3) plans provide timely access and appropriate referrals for specialty care.

Added by Acts 1995, 74th Leg., ch. 574, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(59), eff. Sept. 1, 1997.

Sec. 12.018. UNANNOUNCED INSPECTIONS. The department may make any inspection of a facility or program under the department's jurisdiction without announcing the inspection.

Added by Acts 1995, 74th Leg., ch. 531, Sec. 1, eff. Aug. 28, 1995. Renumbered from V.T.C.A., Health and Safety Code Sec. 12.017 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(50), eff. Sept. 1, 1997.

Sec. 12.019. GENETIC COUNSELING FEES. (a) The department may charge for providing genetic counseling services. The fee may not exceed the actual cost of providing the services.

(b) The department shall use the fees for providing genetic counseling services.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 8.116, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Health and Safety Code Sec. 12.017 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(51), eff. Sept. 1, 1997.

Sec. 12.020. PROTECTION AND USE OF INTELLECTUAL PROPERTY. (a) The department may:

(1) apply for, register, secure, hold, and protect under the laws of the United States, any state, or any nation:

(A) a patent for an invention or discovery of, or improvement to, any process, machine, manufacture, or composition

of matter;

(B) a copyright for an original work of authorship fixed in any tangible medium of expression now known or later developed that can be perceived, reproduced, or otherwise communicated;

(C) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan, or any combination of those items, that has been adopted and used by the department to identify goods or services and distinguish those goods or services from other goods or services; or

(D) other evidence of protection or exclusivity issued in or for intellectual property;

(2) enter into a contract with an individual or company for the sale, lease, marketing, or other distribution of intellectual property of the department;

(3) obtain under a contract entered into under Subdivision (2) a royalty, license right, or other appropriate means of securing appropriate compensation for the development or purchase of intellectual property of the department; and

(4) waive or reduce the amount of a fee, royalty, or other thing of monetary or nonmonetary value to be assessed by the department if the department determines that the waiver will:

(A) further the goals and missions of the department; and

(B) result in a net benefit to the state.

(b) Intellectual property for which the department has applied for or received a patent, copyright, trademark, or other evidence of protection or exclusivity is excepted from required disclosure under Chapter 552, Government Code.

(c) Money paid to the department under this section shall be deposited to the credit of the general revenue fund except as otherwise provided in Section 2054.115, Government Code.

(d) It is not a violation of Chapter 572, Government Code, or another law of this state for an employee of the department who conceives, creates, discovers, invents, or develops intellectual property to own or to be awarded any amount of equity interest or participation in the research, development, licensing, or exploitation of that intellectual property with the approval of the commissioner.

(e) The commissioner shall institute intellectual property policies for the department that establish minimum standards for:

(1) the public disclosure or availability of products, technology, and scientific information, including inventions, discoveries, trade secrets, and computer software;

(2) review by the department of products, technology, and scientific information, including consideration of ownership and appropriate legal protection;

(3) the licensing of products, technology, and scientific information;

(4) the identification of ownership and licensing responsibilities for each class of intellectual property; and

(5) royalty participation by inventors and the department.

Added by Acts 1997, 75th Leg., ch. 143, Sec. 1, eff. May 19, 1997.

SUBCHAPTER C. POWERS AND DUTIES OF COMMISSIONER

Sec. 12.021. ADMINISTRATION AND ENFORCEMENT DUTIES. The commissioner shall administer and enforce the health laws of this state under the board's supervision.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. FEES FOR PUBLIC HEALTH SERVICES

Sec. 12.031. DEFINITION. In this subchapter, "public health services" means:

(1) personal health promotion, maintenance, and treatment services;

(2) infectious disease control and prevention services;

(3) environmental and consumer health protection services;

(4) laboratory services;

(5) health facility architectural plan review;

(6) public health planning, information, and statistical services;

(7) public health education and information services; and

(8) administration services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.032. FEES FOR PUBLIC HEALTH SERVICES. (a) The board by rule may charge fees to a person who receives public health services from the department.

(b) The board by rule may require department contractors to charge fees for public health services provided by department contractors participating in the department's programs. A department contractor shall retain a fee collected under this subsection and shall use the fee in accordance with the contract provisions.

(c) The amount of a fee charged for a public health service may not exceed the cost to the department of providing the service.

(d) The board may establish a fee schedule. In establishing the schedule, the board shall consider a person's ability to pay the entire amount of a fee.

(e) The board may not deny public health services to a person because of the person's inability to pay for the services. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.033. DISTRIBUTION AND ADMINISTRATION OF CERTAIN VACCINES AND SERA. (a) Except as otherwise provided by this section, the board by rule shall charge fees for the distribution and administration of vaccines and sera provided under:

- (1) Section 38.001, Education Code;
- (2) Section 42.043, Human Resources Code;
- (3) Chapter 826 (Rabies Control Act of 1981);
- (4) Chapter 81 (Communicable Disease Prevention and Control Act); and
- (5) Section 161.005.

(b) Except as otherwise provided by this section, the board by rule may require a department contractor to charge fees for public health services provided by a contractor participating in a department program under the laws specified by Subsection (a).

(c) Provided the board finds that the monetary savings of this subsection are greater than any costs associated with administering it, the board by rule shall establish a fee schedule for fees under this section. In establishing the fee schedule, the board shall consider a person's financial ability to pay all or part of the fee, including the availability of health insurance coverage. In the event the fee schedule conflicts with any federal law or regulation, the board shall seek a waiver from the applicable federal law or regulation to permit the fee schedule. In the event the waiver is denied, the fee schedule shall not go into effect.

(d) The commissioner may waive the fee requirement for any type of vaccine or serum if the commissioner determines that:

- (1) a public health emergency exists; and
- (2) the vaccine or serum is needed to meet the emergency.

(e) The department may not deny an immunization to an individual required to be immunized under a law specified by Subsection (a) because of the individual's inability to pay for the immunization. The department shall provide the immunization at a reduced charge or no charge according to the financial ability of the individual or a person with a legal obligation to support the individual to pay for the immunization. The department shall give priority to those persons least able to pay for immunization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 43, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 6.33, eff. Sept. 1, 1997.

Sec. 12.034. COLLECTION PROCEDURES. (a) The board shall establish procedures for the collection of fees for public health services. The procedures shall be used by the department and by those department contractors required by the board to charge fees.

(b) The fees may be collected either before the performance of the services or by billing after the services are performed.

(c) The department shall make a reasonable effort to collect fees billed after services are performed. However, the board by rule may waive the collection procedures if the administrative costs exceed the fees to be collected.

(d) If the board elects to require cash payments by program participants, the money received shall be deposited locally at the end of each day and retained by the department for not more than seven days. At the end of that time, the money shall be deposited in the state treasury.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.035. PUBLIC HEALTH SERVICES FEE FUND. (a) The

department shall deposit all money collected for fees and charges collected under Sections 12.0122(d) and 12.032(a) in the state treasury to the credit of the Texas Department of Health public health services fee fund.

(b) The department shall maintain proper accounting records to allocate the fund among the state and federal programs generating the fees and administrative costs incurred in collecting the fees.

(c) The public health services fee fund is exempt from Section 403.095(b), Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 647, Sec. 2, eff. June 11, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.02(11), eff. Sept. 1, 1999.

Sec. 12.036. SUBROGATION. (a) In furnishing public health services to a person, the department is subrogated to the person's right of recovery from:

- (1) personal insurance;
- (2) another person, for a personal injury caused by the other person's negligence or wrongdoing; or
- (3) any other source.

(b) The department's right of subrogation is limited to the cost of the services provided.

(c) The board or the board's designee may waive the department's right of subrogation in whole or in part if the board or the designee determines that:

- (1) enforcement of the right would tend to defeat the purpose of the department's program; or
- (2) the administrative expense of the enforcement would be greater than the expected recovery.

(d) The board may adopt rules for the enforcement of the department's right of subrogation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.037. MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The department may modify, suspend, or terminate public health services to a person for nonpayment of billed services after notice to the affected person and an opportunity for a fair hearing.

(b) The board by rule shall prescribe the criteria for department action under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.038. RULES. The board may adopt rules necessary to implement this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.039. CONSTRUCTION OF OTHER LAWS. (a) This subchapter does not repeal or modify a statute in effect on August 29, 1983, that fixes the amount, directs the disposition, prohibits the collection, or prescribes the basis for computing any fee or charge.

(b) This section does not restrict the determination or recomputing of a fee or charge in accordance with the prescribed basis for computing the fee or charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. GRANTS OR CONTRACTS FOR PURCHASES OF PUBLIC HEALTH SERVICES, EQUIPMENT, OR SUPPLIES

Sec. 12.051. PROVISION OF FUNDS. The department may provide funds by grant or contract to a qualified person for the purchase of services, equipment, or supplies to be used to promote and maintain the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.052. REQUIREMENTS FOR EXPENDITURE OF CERTAIN FUNDS. (a) The expenditure of funds received by local units of government from the department is governed by Chapter 783, Government Code, and the rules adopted under that law, except as provided by Section 12.055.

(b) The expenditure of funds received by other state agencies from the department is governed by Subtitle D, Title 10, Government Code, and the rules adopted under that law, except as provided by Section 12.055.

(c) The expenditure of funds received by any other qualified person from the department is governed by the grant or contract between the person and the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.15, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1045, Sec. 3, eff. Sept. 1, 1997.

Sec. 12.053. INVENTORY REQUIREMENTS. All equipment and

supplies which are purchased through a program, contract, or grant with the department by or for qualified entities, including but not limited to individuals, corporations, local units of government and other state agencies and that are used to promote and maintain public health are exempt from the statewide personal property accounting system administered by the comptroller of public accounts described in Subchapter L, Chapter 403, Government Code. The qualified entities shall maintain complete equipment and supply records. The department may request the return of any usable equipment or supplies purchased with funds provided by the department upon the termination of the program, contract, or grant. Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 8, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 12.054. DISPOSITION OF CERTAIN DEPARTMENT PROPERTY. (a) This section applies only to property that is surplus or salvage property under Chapter 2175, Government Code, and that is:

(1) exempt under Section 12.053 from the statewide personal property accounting system; or

(2) lawfully in the possession of an emergency medical services provider or governmental entity as those terms are defined by Section 773.003.

(b) The department may negotiate directly with an emergency medical services provider or governmental entity to transfer title to property covered by this section for which the department determines that it holds title. The department and the provider or governmental entity may mutually agree upon the value of the property and shall take any action incident to the transaction that is required by federal law.

(c) The department shall initiate necessary procedures under Chapter 2175, Government Code, to dispose of surplus or salvage property for which the department does not transfer title under this section.

Added by Acts 1993, 73rd Leg., ch. 164, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(10), eff. Sept. 1, 1997.

Sec. 12.055. CERTAIN PROCUREMENTS MADE WITH DEPARTMENT FUNDS. (a) A state agency or local unit of government that expends funds received from the department for the acquisition of goods and services may satisfy the requirements of Section 12.052 or of another state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with those funds in accordance with Section 12.056 or in accordance with:

(1) Section 2155.144, Government Code, if the entity is a state agency subject to that law;

(2) Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or

(3) this section, if the entity is not covered by Subdivision (1) or (2).

(b) A state agency or local unit of government under Subsection (a)(3) shall acquire goods or services by any procurement method approved by the Health and Human Services Commission that provides the best value to the state agency or local unit of government. The state agency or local unit of government shall document that the state agency or local unit of government considered all relevant factors under Subsection (c) in making the acquisition.

(c) Subject to Subsection (d), the state agency or local unit of government may consider all relevant factors in determining the best value, including:

(1) any installation costs;

(2) the delivery terms;

(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the state agency's or local unit of government's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the state agency or local unit of government to comply with laws and rules relating to historically underutilized businesses or relating to the

procurement of goods and services from persons with disabilities;

(7) the total long-term cost to the state agency or local unit of government of acquiring the vendor's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on the state agency's or local unit of government's productivity;

(10) the acquisition price; and

(11) any other factor relevant to determining the best value for the state agency or local unit of government in the context of a particular acquisition.

(d) If a state agency to which this section applies acquires goods or services with a value that exceeds \$100,000, the state agency shall consult with and receive approval from the Health and Human Services Commission before considering factors other than price and meeting specifications.

(e) The state auditor or the department may audit the state agency's or local unit of government's acquisitions of goods and services under this section.

(f) The state agency or local unit of government may adopt rules and procedures for the acquisition of goods and services under this section.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 4, eff. Sept. 1, 1997.

Sec. 12.056. PARTICIPATION IN DEPARTMENT PURCHASING CONTRACTS OR GROUP PURCHASING PROGRAM. The department may allow a state agency, local unit of government, or private entity that expends funds received by the department to purchase goods or services using those funds by participating in:

(1) a contract the department has made to purchase goods or services; or

(2) a group purchasing program established or designated by the department that offers discounts to providers of health services.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 4, eff. Sept. 1, 1997.

SUBCHAPTER F. OFFICE OF TEXAS-MEXICO HEALTH AND ENVIRONMENTAL ISSUES

Sec. 12.071. OFFICE OF TEXAS-MEXICO HEALTH AND ENVIRONMENTAL ISSUES. The department shall establish and maintain an office in the department to coordinate and promote health and environmental issues between this state and Mexico.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 7, eff. Sept. 1, 1991.

Sec. 12.072. BINATIONAL ALCOHOL AND SUBSTANCE ABUSE TASK FORCE.

Text of section effective until January 1, 2009

(a) The binational alcohol and substance abuse task force is created to study:

(1) the effect of substance abuse on residents living near the border, with emphasis on residents who are at least 14 years of age but younger than 26 years of age;

(2) hereditary factors that may contribute to a predisposition to alcohol dependency;

(3) the contributing factors of binge drinking by both minors and persons of legal drinking age and the effects on health and the community of binge drinking; and

(4) the effect on the community of drug traffickers using young residents living near the border to transport illegal drugs into the United States.

(b) The task force consists of:

(1) five members of the house of representatives each of whom represents a district wholly or partly located 25 miles or less from the international border, appointed by the speaker of the house of representatives;

(2) five members of the senate each of whom represents a district wholly or partly located 25 miles or less from the international border, appointed by the lieutenant governor;

(3) three district attorneys or their representatives from different locations along the international border;

(4) the commissioner of the Department of State Health Services or a representative of the commissioner designated by the commissioner;

(5) the public safety director of the Department of Public Safety or a representative of the public safety director designated by the public safety director;

(6) three representatives of the public from different

locations along the international border who have significant experience working in substance abuse and intervention programs in a county on that border;

(7) three representatives employed by a local law enforcement agency that has jurisdiction extending to the international border;

(8) one member from each of the following organizations:

(A) the State Bar of Texas;

(B) the Mexican American Bar Association; and

(C) a nonprofit organization with significant experience in issues prevalent in the border region; and

(9) three licensed physicians from different locations along the international border.

(c) The task force may invite individuals from any state in the United Mexican States that borders Texas, with qualifications similar to those of members of the task force, to participate as members of the task force in task force activities.

(d) The task force may invite federal agencies with jurisdiction over alcohol and illegal drug laws to participate as members of the task force in task force activities.

(e) The task force has a chairperson and vice chairperson as presiding officers. The chairperson and vice chairperson alternate each year between the two membership groups appointed by the lieutenant governor and the speaker. The chairperson and vice chairperson may not be from the same membership group. The lieutenant governor shall designate a presiding officer from the appointed senate membership group and the speaker shall designate the other presiding officer from the appointed house of representatives membership group. The speaker of the house of representatives shall appoint the first chairperson, who will serve until January 1, 2007.

(f) The chairperson and vice chairperson shall nominate the members of the task force in Subsections (b)(3) and (6) through (9). Those members of the task force are appointed if a majority of the other members of the task force approve their appointment.

(g) The task force may seek and accept grants and donations to fulfill its duties.

(h) Not later than November 1 of each even-numbered year, the task force shall submit a report to the governor and the legislature regarding any recommendations or findings related to the duties of the task force.

(i) This section expires and the task force is abolished January 1, 2009.

Added by Acts 2005, 79th Leg., ch. 764, Sec. 1, eff. Sept. 1, 2005.

SUBCHAPTER G. OFFICE OF MINORITY HEALTH

Sec. 12.081. OFFICE OF MINORITY HEALTH. The department shall establish and maintain an office of minority health in the department to:

(1) assume a leadership role in working or contracting with state and federal agencies, universities, private interest groups, communities, foundations, and offices of minority health to develop minority health initiatives, including bilingual communications; and

(2) maximize use of existing resources without duplicating existing efforts.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 17, eff. Sept. 1, 1993.

Sec. 12.082. POWERS OF OFFICE. The office may:

(1) provide a central information and referral source and serve as the primary state resource in coordinating, planning, and advocating access to minority health care services in this state;

(2) coordinate conferences and other training opportunities to increase skills among state agencies and government staff in management and in the appreciation of cultural diversity;

(3) pursue and administer grant funds for innovative projects for communities, groups, and individuals;

(4) provide recommendations and training in improving minority recruitment in state agencies;

(5) publicize minority health issues through the use of the media;

(6) network with existing minority organizations;

(7) solicit, receive, and spend grants, gifts, and donations from public and private sources; and

(8) contract with public and private entities in the performance of its responsibilities.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 17, eff. Sept. 1, 1993.

Sec. 12.083. FUNDING. The department may distribute to the office unobligated and unexpended appropriations to be used to carry out its powers.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 17, eff. Sept. 1, 1993.

Sec. 12.084. REPORT TO LEGISLATURE. Not later than January 1 of each odd-numbered year, the office shall submit a biennial report to the legislature regarding the activities of the office and any findings and recommendations relating to minority health issues.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 17, eff. Sept. 1, 1993.

SUBCHAPTER H. MEDICAL ADVISORY BOARD

Sec. 12.091. DEFINITIONS. In this subchapter:

(1) "Medical standards division" means the Medical Standards on Motor Vehicle Operations Division of the department.

(2) "Panel" means a panel of the medical advisory board.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.

Sec. 12.092. MEDICAL ADVISORY BOARD; BOARD MEMBERS. (a) The commissioner shall appoint the medical advisory board members from:

(1) persons licensed to practice medicine in this state, including physicians who are board certified in internal medicine, psychiatry, neurology, physical medicine, or ophthalmology and who are jointly recommended by the Texas Department of Health and the Texas Medical Association; and

(2) persons licensed to practice optometry in this state who are jointly recommended by the department and the Texas Optometric Association.

(b) The medical advisory board shall assist the Department of Public Safety of the State of Texas in determining whether:

(1) an applicant for a driver's license or a license holder is capable of safely operating a motor vehicle; or

(2) an applicant for or holder of a license to carry a concealed handgun under the authority of Subchapter H, Chapter 411, Government Code, is capable of exercising sound judgment with respect to the proper use and storage of a handgun.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1261, Sec. 21, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 9.23, eff. Sept. 1, 1999.

Sec. 12.093. ADMINISTRATION; RULES. (a) the medical advisory board is administratively attached to the medical standards division.

(b) The medical standards division:

(1) shall provide administrative support for the medical advisory board and panels of the medical advisory board; and

(2) may collect and maintain the individual medical records necessary for use by the medical advisory board and the panels under this section from a physician, hospital, or other health care provider.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.

Sec. 12.094. RULES RELATING TO MEDICAL ADVISORY BOARD MEMBERS. (a) The board:

(1) may adopt rules to govern the activities of the medical advisory board;

(2) by rule may establish a reasonable fee to pay a member of the medical advisory board for the member's professional consultation services; and

(3) if appropriate, may authorize per diem and travel allowances for each meeting a member attends, not to exceed the amounts authorized for state employees by the General Appropriations Act.

(b) The fee under Subsection (a)(2) may not be less than \$75 or more than \$150 for each meeting that the member attends.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.

Sec. 12.095. BOARD PANELS; POWERS AND DUTIES. (a) If the Department of Public Safety of the State of Texas requests an opinion or recommendation from the medical advisory board as to the ability of an applicant or license holder to operate a motor vehicle safely or to exercise sound judgment with respect to the proper use and storage of a handgun, the commissioner or a person designated by the commissioner shall convene a panel to consider the case or

question submitted by that department.

(b) To take action as a panel, at least three members of the medical advisory board must be present.

(c) Each panel member shall prepare an individual independent written report for the Department of Public Safety of the State of Texas that states the member's opinion as to the ability of the applicant or license holder to operate a motor vehicle safely or to exercise sound judgment with respect to the proper use and storage of a handgun, as appropriate. In the report the panel member may also make recommendations relating to that department's subsequent action.

(d) In its deliberations, a panel may examine any medical record or report that contains material that may be relevant to the ability of the applicant or license holder.

(e) The panel may require the applicant or license holder to undergo a medical or other examination at the applicant's or holder's expense. A person who conducts an examination under this subsection may be compelled to testify before the panel and in any subsequent proceedings under Subchapter N, Chapter 521, Transportation Code, concerning the person's observations and findings.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1261, Sec. 22, eff. Sept. 1, 1997.

Sec. 12.096. PHYSICIAN REPORT. (a) A physician licensed to practice medicine in this state may inform the Department of Public Safety of the State of Texas or the medical advisory board, orally or in writing, of the name, date of birth, and address of a patient older than 15 years of age whom the physician has diagnosed as having a disorder or disability specified in a rule of the Department of Public Safety of the State of Texas.

(b) The release of information under this section is an exception to the patient-physician privilege requirements imposed under Section 159.002, Occupations Code.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.768, eff. Sept. 1, 2001.

Sec. 12.097. CONFIDENTIALITY REQUIREMENTS. (a) All records, reports, and testimony relating to the medical condition of an applicant or license holder:

(1) are for the confidential use of the medical advisory board, a panel, or the Department of Public Safety of the State of Texas;

(2) are privileged information; and

(3) may not be disclosed to any person or used as evidence in a trial except as provided by Subsection (b).

(b) In a subsequent proceeding under Subchapter N, Chapter 521, Transportation Code, the medical standards division may provide a copy of the report of the medical advisory board or panel and a medical record or report relating to an applicant or license holder to:

(1) the Department of Public Safety of the State of Texas;

(2) the applicant or license holder; and

(3) the officer who presides at the hearing.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.

Sec. 12.098. LIABILITY. A member of the medical advisory board, a member of a panel, a person who makes an examination for or on the recommendation of the medical advisory board, or a physician who reports to the medical advisory board or a panel under Section 12.096 is not liable for a professional opinion, recommendation, or report made under this subchapter.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.

SUBCHAPTER I. TEXAS VOLUNTEER HEALTH CORPS

Sec. 12.111. TEXAS VOLUNTEER HEALTH CORPS. (a) The department shall establish the Texas Volunteer Health Corps to enhance community-based public health services.

(b) The Texas Volunteer Health Corps shall connect volunteers with residents of local communities to involve those residents in preventive health care, expand the role of those residents in making decisions about their own health, and build community support for public health.

Added by Acts 1995, 74th Leg., ch. 768, Sec. 1, eff. Aug. 28, 1995. Renumbered from V.T.C.A., Health and Safety Code Sec. 12.091 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(52), eff. Sept. 1, 1997.

Sec. 12.112. COORDINATORS. (a) The department may employ coordinators to recruit, train, and refer volunteers for service in local communities.

(b) A coordinator employed under this section may apply for grants from any public or private source for purposes of this subchapter.

Added by Acts 1995, 74th Leg., ch. 768, Sec. 1, eff. Aug. 28, 1995. Renumbered from V.T.C.A., Health and Safety Code Sec. 12.092 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(52), eff. Sept. 1, 1997.

Sec. 12.113. VOLUNTEERS. (a) Volunteers recruited under this subchapter may include students in high school or an institution of higher education, senior citizens, participants in the AFDC job opportunities and basic skills (JOBS) training program, VISTA and AmeriCorps volunteers, and volunteers from business and community networks.

(b) To build healthy local communities, Texas Volunteer Health Corps volunteers may promote health, expand clients' capacity for self-help, make clinic appointments, arrange transportation, and identify community resources and provide links to those resources.

Added by Acts 1995, 74th Leg., ch. 768, Sec. 1, eff. Aug. 28, 1995. Renumbered from V.T.C.A., Health and Safety Code Sec. 12.093 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(52), eff. Sept. 1, 1997.

Sec. 12.114. VITAL HEALTH CARE ISSUES. (a) The department may identify vital health care issues, including the use of tobacco and alcohol, end-of-life needs, health and safety issues on the Texas/Mexico border, family issues, oral health, violence, immunizations, homelessness, responsible adult and teen pregnancy, substance abuse, health promotion and education, and disease prevention.

(b) The Texas Volunteer Health Corps may address a vital health care issue if a local community identifies the issue as a priority.

Added by Acts 1995, 74th Leg., ch. 768, Sec. 1, eff. Aug. 28, 1995. Renumbered from V.T.C.A., Health and Safety Code Sec. 12.094 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(52), eff. Sept. 1, 1997.

Sec. 12.115. MENTORS. The department shall encourage health care professionals to volunteer as mentors in the Texas Volunteer Health Corps.

Added by Acts 1995, 74th Leg., ch. 768, Sec. 1, eff. Aug. 28, 1995. Renumbered from V.T.C.A., Health and Safety Code Sec. 12.095 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(52), eff. Sept. 1, 1997.

Sec. 12.116. INFORMATION. The department may provide public health information materials as needed by the Texas Volunteer Health Corps.

Added by Acts 1995, 74th Leg., ch. 768, Sec. 1, eff. Aug. 28, 1995. Renumbered from V.T.C.A., Health and Safety Code Sec. 12.096 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(52), eff. Sept. 1, 1997.

SUBCHAPTER J. TOBACCO SETTLEMENT PROCEEDS

Sec. 12.131. DEFINITIONS. In this subchapter:

(1) "Account" has the meaning assigned by Section 403.1041, Government Code.

(2) "Advisory committee" means the tobacco settlement permanent trust account administration advisory committee.

(3) "Agreement" has the meaning assigned by Section 403.1041, Government Code.

(4) "Political subdivision" has the meaning assigned by Section 403.1041, Government Code.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.132. CERTIFICATION TO COMPTROLLER. The department shall collect information relating to the unreimbursed health care expenditures of each political subdivision and, based on that information and using the formula established in Paragraph 5.B. of the agreement, shall certify to the comptroller the percentage of each annual distribution to be paid from the account to each political subdivision.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.133. COLLECTION OF INFORMATION. (a) Each political subdivision shall submit to the department, in the manner and at the time required by the department, information that relates to the political subdivision's unreimbursed health care expenditures and is required by the department to make the certification under Section 12.132.

(b) Subject to the approval of the advisory committee, the board shall adopt rules governing the collection of information under Subsection (a). The rules may provide for regular audits of randomly selected political subdivisions and may govern the manner in which a political subdivision is selected for an audit and the selection of an auditor.
Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.134. DISPUTES RELATING TO INFORMATION COLLECTED. (a) Subject to the approval of the advisory committee, the board shall adopt rules under which a political subdivision or agency of this state may dispute information submitted by a political subdivision under Section 12.133.

(b) The rules may provide for:

(1) an audit of the political subdivision that submitted the disputed information;

(2) payment of the costs of the audit by the party to the dispute who does not prevail in the dispute;

(3) a deadline for filing a dispute for a particular year; and

(4) a reasonable monetary penalty to be applied to a subsequent annual distribution made to a political subdivision that is found to have overstated unreimbursed health care expenditures in the information submitted under Section 12.133.

(c) The monetary penalty applied under Subsection (b)(4) may not exceed 10 percent of the amount of the overstatement of unreimbursed health care costs.

(d) A dispute under this section is a contested case for purposes of Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.135. EFFECT OF DISPUTE. A dispute filed under department rules adopted under Section 12.134 does not affect the percentage of the annual distribution of the earnings from the account to be paid to the political subdivision for the year for which the information that is the subject of the dispute was submitted.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.136. ADJUSTMENT FOLLOWING AUDIT. (a) If the board finds, after an audit conducted under Section 12.133 or 12.134, that a political subdivision has overstated unreimbursed health care expenditures in the information submitted under Section 12.133 for any year, the department shall report that fact to the comptroller and shall reduce that political subdivision's percentage of the subsequent annual distribution of the earnings from the account appropriately.

(b) If a monetary penalty is applied under Section 12.134, the department shall also reduce the political subdivision's percentage of the subsequent annual distribution of the earnings from the account appropriately.

(c) If a political subdivision is assessed the cost of an audit under Section 12.134, the department shall report the amount assessed to the comptroller, and the comptroller may withhold that amount from the political subdivision's subsequent annual distribution. The comptroller may use the amount withheld to reimburse the general revenue fund for the cost of the audit.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.137. TOBACCO SETTLEMENT PERMANENT TRUST ACCOUNT ADMINISTRATION ADVISORY COMMITTEE. (a) The tobacco settlement permanent trust account administration advisory committee shall advise the board on the implementation of the department's duties under this subchapter.

(b) The advisory committee is composed of 11 members appointed as follows:

(1) one member appointed by the board to represent a public hospital or hospital district located in a county with a population of 50,000 or less or a public hospital owned or maintained by a municipality;

(2) one member appointed by the political subdivision that, in the year preceding the appointment, received the largest annual distribution paid from the account;

(3) one member appointed by the political subdivision that, in the year preceding the appointment, received the second

largest annual distribution paid from the account;

(4) four members appointed by the Texas Conference of Urban Counties from nominations received from political subdivisions that in the year preceding the appointment, received the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, or 12th largest annual distribution paid from the account;

(5) one member appointed by the County Judges and Commissioners Association of Texas;

(6) one member appointed by the North and East Texas County Judges and Commissioners Association;

(7) one member appointed by the South Texas County Judges and Commissioners Association; and

(8) one member appointed by the West Texas County Judges and Commissioners Association.

(b-1) An appointing entity under Subsection (b) is not a state association of counties.

(c) A commissioners court that sets the tax rate for a hospital district must approve any person appointed by the hospital district to serve on the advisory committee.

(d) The advisory committee shall elect the officers of the committee from among the members of the committee.

(e) The advisory committee may act only on the affirmative votes of eight members of the committee.

(f) Members of the advisory committee serve staggered six-year terms expiring on August 31 of each odd-numbered year.

(g) Appointments to the advisory committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(h) A member of the advisory committee may not receive compensation from the trust fund or the state for service on the advisory committee and may not be reimbursed from the trust fund or the state for travel expenses incurred while conducting the business of the advisory committee.

(i) The department shall provide administrative support and resources to the advisory committee as necessary for the advisory committee to perform the advisory committee's duties under this subchapter.

(j) Chapter 2110, Government Code, does not apply to the advisory committee.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999. Amended by Acts 2005, 79th Leg., ch. 1094, Sec. 9, eff. Sept. 1, 2005.

Sec. 12.138. APPROVAL OF RULES. A rule to be adopted by the board relating to certification of a percentage of an annual distribution under Section 12.132 or collection of information under Sections 12.132, 12.133, and 12.134 must be submitted to the advisory committee and may not become effective before the rule is approved by the advisory committee. If the advisory committee disapproves a proposed rule, the advisory committee shall provide the board the specific reasons that the rule was disapproved.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.

Sec. 12.139. ANNUAL REVIEW. The advisory committee shall annually:

(1) review the results of any audit conducted under this subchapter and the results of any dispute filed under Section 12.134; and

(2) review the rules adopted by the board under this subchapter and propose any amendments to the rules the advisory committee considers necessary.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.