

HEALTH & SAFETY CODE
CHAPTER 42. KIDNEY HEALTH CARE

Sec. 42.001. SHORT TITLE; PURPOSE. (a) This chapter may be cited as the Texas Kidney Health Care Act.

(b) The state finds that one of the most serious and tragic problems facing the public health and welfare is the death each year from chronic kidney disease of hundreds of persons in this state, when the present state of medical art and technology could return many of those individuals to a socially productive life. Patients may die for lack of personal financial resources to pay for the expensive equipment and care necessary for survival. The state therefore recognizes a responsibility to allow its citizens to remain healthy without being pauperized and a responsibility to use the resources and organization of the state to gather and disseminate information on the prevention and treatment of chronic kidney disease.

(c) A comprehensive program to combat kidney disease must be implemented through the combined and correlated efforts of individuals, state and local governments, persons in the field of medicine, universities, and nonprofit organizations. The program provided by this chapter is designed to direct the use of resources and to coordinate the efforts of the state in this vital matter of public health.

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

Sec. 42.002. DEFINITIONS. In this chapter:

(1) "Division" means the kidney health care division.

(2) "Other benefit" means a benefit, other than one provided under this chapter, to which a person is entitled for payment of the costs of medical care and treatment, services, pharmaceuticals, transportation, and supplies, including benefits available from:

(A) an insurance policy, group health plan, or prepaid medical care plan;

(B) Title XVIII or Title XIX of the Social Security Act (42 U.S.C. Sec. 1395 et seq. and 42 U.S.C. Sec. 1396 et seq.);

(C) the Veterans Administration;

(D) the Civilian Health and Medical Program of the Uniformed Services;

(E) workers' compensation or other compulsory employers' insurance program;

(F) a public program created by federal law, state law, or the ordinances or rules of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, or a hospital district; or

(G) a cause of action for medical expenses brought by an applicant for or recipient of services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

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

Sec. 42.003. KIDNEY HEALTH CARE DIVISION. (a) The kidney health care division is in the department to carry out this chapter. The board shall administer the division.

(b) The division may assist in the development and expansion of programs for the care and treatment of persons with chronic kidney disease, including dialysis and other lifesaving medical procedures and techniques.

(c) The board may adopt rules necessary to carry out this chapter and to provide adequate kidney care and treatment for citizens of this state.

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

Sec. 42.004. SERVICES. (a) The division shall provide kidney care services directly or through public or private resources to persons determined by the board to be eligible for services authorized under this chapter.

(b) The division may cooperate with other departments, agencies, political subdivisions, and public and private institutions to provide the services authorized by this chapter to eligible persons, to study the public health and welfare needs involved, and to plan, establish, develop, and provide programs or facilities and services that are necessary or desirable, including any that are jointly administered with state agencies.

(c) The division may conduct research and compile statistics relating to the provision of kidney care services and the need for the services by disabled or handicapped persons.

(d) The division may contract with schools, hospitals, corporations, agencies, and individuals, including doctors, nurses, and technicians, for training, physical restoration, transportation, and other services necessary to treat and care for persons with kidney disease.

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

Sec. 42.0045. DISTRIBUTION OF DRUGS AND DEVICES. (a) Sections 483.041(a) and 483.042, Subtitle J, Title 3, Occupations Code, and other applicable laws establishing prohibitions do not apply to a dialysate, device, or drug exclusively used or necessary to perform dialysis that a physician prescribes or orders for administration or delivery to a person with chronic kidney failure if:

(1) the dialysate, device, or drug is lawfully held by a manufacturer or wholesaler registered with the board;

(2) the manufacturer or wholesaler delivers the dialysate, device, or drug to:

(A) a person with chronic kidney failure for self-administration at the person's home or a specified address, as ordered by a physician; or

(B) a physician for administration or delivery to a person with chronic kidney failure; and

(3) the manufacturer or wholesaler has sufficient and qualified supervision to adequately protect the public health.

(b) The board shall adopt rules necessary to ensure the safe distribution, without the interruption of supply, of a dialysate, device, or drug covered by Subsection (a). The rules must include provisions regarding manufacturer and wholesaler licensing, record keeping, evidence of a delivery to a patient or a patient's designee, patient training, specific product and quantity limitation, physician prescriptions or order forms, adequate facilities, and appropriate labeling to ensure that necessary information is affixed to or accompanies the dialysate, device, or drug.

(c) If the board determines that a dialysate, device, or drug distributed under this chapter is ineffective or unsafe for its intended use, the board may immediately recall the dialysate, device, or drug distributed to an individual patient.

(d) A dialysate, device, or drug covered by Subsection (a) may be delivered only by:

(1) the manufacturer or wholesaler to which the physician has issued an order; or

(2) a carrier authorized to possess the dialysate, device, or drug under Section 483.041(c).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 12, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.769, eff. Sept. 1, 2001.

Sec. 42.005. FACILITIES. (a) The board may establish and maintain standards for the accreditation of all facilities designed or intended to deliver care or treatment for persons with chronic kidney disease.

(b) The division may conduct surveys of existing facilities in this state that diagnose, evaluate, and treat patients with kidney disease and may prepare and submit its findings and a specific program of action.

(c) The division may evaluate the need to create local or regional facilities and to establish a major kidney research center.

(d) The division may:

(1) establish or construct rehabilitation facilities and workshops;

(2) make grants to public agencies and make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities; and

(3) operate facilities to carry out this chapter.

(e) The board may provide for the establishment, supervision, management, and control of kidney care facilities.

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

Sec. 42.006. SELECTION OF SERVICE PROVIDERS. (a) The department shall select providers to furnish kidney health care services under the program according to the criteria and procedures

adopted by the board.

(b) The board shall provide a hearing procedure for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, do not apply to conflict resolution procedures adopted under this section.

(c) The department may not terminate a contract while a hearing is pending under this section. The department may withhold payments while the hearing is pending, but shall pay the withheld payments and resume contract payments if the final determination is in favor of the provider.

(d) Subsections (b) and (c) do not apply if a contract:

(1) is canceled because program services are restricted to conform to budgetary limitations that require the board to adopt service priorities regarding types of services to be furnished or classes of eligible individuals; or

(2) expires according to its terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

Sec. 42.007. ELIGIBILITY FOR SERVICES. The board may determine the terms, conditions, and standards, including medical and financial standards, for the eligibility of persons with chronic kidney disease to receive the aid, care, or treatment provided under this chapter.

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

Sec. 42.008. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) After notice and an opportunity for a hearing, the department for cause may deny the application of or modify, suspend, or terminate services to an applicant for or recipient of services.

(b) The program rules adopted by the board must contain the criteria for the department's action under this section.

(c) Chapter 2001, Government Code, do not apply to the granting, denial, modification, suspension, or termination of services provided under this chapter. Hearings under this section must be conducted in accordance with the board's hearing rules.

(d) This section does not apply if program services are restricted to conform to budgetary limitations that require the board to adopt service priorities regarding types of services to be furnished or classes of eligible persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

Sec. 42.009. REIMBURSEMENT. (a) An applicant or recipient is not eligible to receive services provided by this chapter to the extent that the applicant or recipient, or another person with a legal obligation to support the applicant or recipient, is eligible for some other benefit that would pay for all or part of the services provided by this chapter.

(b) When an application is made under this chapter or at any time while a person is eligible and receiving services under this chapter, the applicant or recipient, or the person with a legal obligation to support the applicant or recipient, shall inform the department of any other benefit to which the applicant or recipient, or the person with a legal obligation to support the applicant or recipient, may be entitled.

(c) A recipient who has received services that are covered by some other benefit, or the person with a legal obligation to support that recipient, shall reimburse the department to the extent of the cost of services provided when the other benefit is received.

(d) The board may waive the provisions of Subsection (a) in certain individually considered cases when the enforcement of that provision will deny services to a class of end stage renal disease patients because of conflicting state or federal laws or rules.

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

Sec. 42.010. RECOVERY OF COSTS. (a) The department may recover the costs of services provided under this chapter from a person who does not reimburse the department as required by Section 42.009(c), or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

(b) At the request of the commissioner, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department.

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the

date on which the department provides the service to the date on which the department is reimbursed.

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

Sec. 42.011. FUNDING. (a) The division may receive and use gifts to carry out this chapter.

(b) The board may comply with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportions possible to carry out this chapter.

(c) The comptroller may receive all money appropriated by congress and allotted to this state for carrying out this chapter or agreements or plans authorized by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 10.01, eff. Sept. 1, 1997.

Sec. 42.012. CONTRACTS. (a) The division may enter into contracts and agreements with persons, colleges, universities, associations, corporations, municipalities, and other units of government as necessary to carry out this chapter.

(b) A contract may provide for payment by the state, within the limits of funds available, for material, equipment, or services.

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

Sec. 42.013. COOPERATION. (a) The division may cooperate with private or public agencies to facilitate the availability of adequate care for all citizens with chronic kidney disease.

(b) The board shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this chapter or of any federal statute or rule relating to the prevention, care, or treatment of kidney disease or the care, treatment, or rehabilitation of persons with kidney disease. The board may adopt rules and methods of administration found by the federal government to be necessary for the proper and efficient operation of the agreements, arrangements, or plans.

(c) The division may enter into reciprocal agreements with other states.

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

Sec. 42.014. SCIENTIFIC INVESTIGATIONS. (a) The division may develop and administer scientific investigations into the cause, prevention, methods of treatment, and cure of kidney disease, including research into kidney transplantation.

(b) The division may develop techniques for an effective method of mass testing to detect kidney disease and urinary tract infections.

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

Sec. 42.015. EDUCATIONAL PROGRAMS. (a) The division may institute, carry on, and supervise educational programs for the public and health providers, including physicians, hospitals, and public health departments, concerning chronic kidney disease, including prevention and methods of care and treatment.

(b) The division may use existing public or private programs or groups for the educational programs.

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

Sec. 42.016. REPORTS. The board shall report to the governor and the legislature not later than February 1 of each year concerning its findings, progress, and activities under this chapter and the state's total need in the field of kidney health care.

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

Sec. 42.017. INSURANCE PREMIUMS. The board may provide for payment of the premiums required to maintain coverage under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) for certain classes of persons with end stage renal disease, in individually considered instances according to criteria established by board rules.

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

Sec. 42.018. FREEDOM OF SELECTION. The freedom of an eligible person to select a treating physician, a treatment facility, or a treatment modality is not limited by Section 42.009 if the physician, facility, or modality is approved by the board as required by this chapter.

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