CHAPTER 742

H.B. No. 1844

An Act relating to the provision of primary health care services to eligible low-income individuals.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The Texas Primary Health Care Services Act is adopted to read as follows:

Sec. 1. SHORT TITLE. This Act may be cited as the Texas Primary Health Care Services Act.

Sec. 2. DEFINITIONS. (a) In this Act:

(1) "Board" means the Texas Board of Health.

(2) "Commissioner" means the commissioner of health.

(3) "Department" means the Texas Department of Health.

(4) "Facility" includes hospitals, ambulatory surgical centers, public health clinics, birthing centers, outpatient clinics, and community health centers.

(5) "Medical transportation" means transportation services that are required to obtain appropriate and timely primary health care services for eligible individuals.

(6) "Other benefit" means a benefit, other than a benefit provided under this Act, to which an individual is entitled for payment of the costs of primary health care services, including:

(A) benefits available under:

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

(ii) Title XVIII or Title XIX of the Social Security Act;

(iii) the Veteran's Administration;

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

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

(B) a public program created by federal or state law, or by an ordinance or rule of a municipality or political subdivision of the state, except those benefits created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, a hospital district, or by the facilities of a publicly supported medical school; or

(C) benefits resulting from a cause of action for medical, facility, or medical transportation expenses, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided by this Act.

(7) "Person" includes an individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(8) "Primary health care services," referred to as "services," includes:

(A) diagnosis and treatment;

(B) emergency services;

(C) family planning services;

(D) preventive health services, including immunizations;

(E) health education;

(F) laboratory, X-ray, nuclear medicine, or other appropriate diagnostic services;

(G) nutrition services;

(H) health screening;

(I) home health care;

(J) dental care;

(K) transportation;

(L) prescription drugs and devices and durable supplies;

(M) environmental health services;

(N) podiatry services; and

(O) social services.

(9) "Program" means the primary health care services program created by this Act.

(10) "Provider" means a person that through a grant or a contract with the department delivers primary health care services that are purchased by the department for the purposes of this Act.

(11) "Support" means the contribution of money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.

(b) The board may by rule define any word or term not defined in Subsection (a) of this section as necessary to administer this Act. The board may not define a word or term so that the word or term is inconsistent or in conflict with the purposes and objectives of this Act, or is in conflict with the definition and conditions of practice governing a provider who is required to be licensed, registered, certified, identified, or otherwise sanctioned under the laws of this state.

Sec. 3. LIMITATIONS. The department is not required to deliver primary health care services unless funds are appropriated to the department to administer this Act.

Sec. 4. PROGRAM. (a) The board may establish a primary health care services program in the department to provide for the delivery of primary health care services to eligible individuals.

(b) If the department establishes the program, the board shall adopt rules relating to the services to be furnished, and if budgetary limitations exist, rules establishing a system of priorities relating to the types of services provided, geographic areas covered, or classes of individuals eligible for services. The board shall base the rules relating to the geographic areas covered and the classes of individuals eligible for services on a statewide determination of the

need for services. The rules relating to the types of services provided shall be based on the set of service priorities established under this subsection. Initial service priorities shall focus on the funding of, provision of, and access to the following set of services:

(1) diagnosis and treatment;

(2) emergency services;

(3) family planning services;

(4) preventive health services, including immunizations;

(5) health education; and

(6) laboratory, X-ray, nuclear medicine, or other appropriate diagnostic services.

(c) Except as limited by Subsection (b) of this section, the department shall develop an integrated framework for the equitable provision of services throughout the state and shall utilize existing public and private health, transportation, and education resources.

(d) The department may deliver services directly to eligible individuals to the extent that the board determines that the existing private or public providers or other resources in the service area are unavailable or unable to provide those services. In making a determination that providers or resources are unavailable or unable to provide services, the department shall:

(1) initially determine the proposed need for services in the service area;

(2) notify existing private and public providers and other resources in the service area of the department's initial determination of the need for the services and the services the department proposes to deliver directly to eligible individuals;

(3) provide the existing private and public providers and other resources in the service area a reasonable opportunity to comment on the department's initial determination of the need for the proposed services and the availability and ability of existing private or public providers or other resources in the service area to satisfy the need for the services;

(4) provide the existing private and public providers and other resources in the service area a reasonable opportunity to apply and secure approval as providers under the program; and

(5) eliminate, reduce, or otherwise modify the proposed scope or type of services the department proposed to deliver directly to the extent that those services may be delivered by existing private or public providers or other resources in the service area that meet the board's criteria for approval as providers.

Sec. 5. RULES. (a) The board shall adopt necessary rules to administer this Act, including rules relating to:

(1) the type, amount, and duration of services to be delivered;

(2) application procedures for admission to the program and for the receipt of services, including health or medical, financial, and other criteria for eligibility;

(3) the selection of physicians, registered nurses, facilities, and other providers;

(4) the determination by the department of the services needed in each service area and whether the services are to be delivered through a network of approved providers, directly by the department, or by a combination of the department and approved providers as provided by Section 4(d) of this Act;

(5) the expedited selection of providers; and

(6) the denial of program participation and the modification, suspension, or termination of program participation.

(b) The board, with the advice and assistance of the commissioner and the department, shall adopt rules relating to the program, including rules that:

(1) establish the administrative structure of the program within the department;

(2) establish a plan of areawide administration to provide authorized services;

(3) establish areawide advisory committees as provided by Section 14(a) of this Act to advise and assist the department in planning and administering the program;

(4) designate, where possible, local public and private resources as providers; and

(5) prevent duplication by coordinating authorized primary health care services with existing federal, state, and local programs.

Sec. 6. FUNDS. (a) Except as provided by this Act or by other law, the board may seek, receive, and expend any funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer this Act.

(b) The board may charge fees for the services delivered directly by the department or through approved providers in accordance with Chapter 641, Acts of the 68th Legislature, Regular Session, 1983 (Article 4414c, Vernon's Texas Civil Statutes).

Sec. 7. POWERS AND DUTIES. The department shall:

(1) administer programs and deliver services in accordance with rules established by the board;

(2) design, establish the content of, and adopt all necessary forms;

(3) approve providers;

(4) render the final administrative decision in a due process hearing to deny, modify, suspend, or terminate the receipt of program services or to modify, suspend, or terminate the approval of a provider to deliver services;

(5) deliver services only as prescribed by rules adopted by the board;

(6) pay only for program services delivered by approved providers, except in an emergency situation;

(7) adopt standards and procedures to develop and implement a schedule of allowable charges for program services; and

(8) enter into contracts and agreements or award grants necessary to facilitate the efficient and economical provision of services under this Act, including contracts and grants for the purchase of services, equipment, and supplies from approved providers.

Sec. 8. REFERRAL AND APPLICATION FOR SERVICES. (a) Each applicant must complete or cause to be completed an application form prescribed by the department.

(b) The application form must be accompanied by:

(1) a statement by the individual, or by the person who has a legal obligation to provide for the individual's support, that the individual or person is financially unable to pay for all or part of the cost of the necessary services; and

(2) any other assurances from the applicant or any documentary evidence required by the board that is necessary to support the applicant's eligibility.

(c) The department shall determine or cause to be determined each applicant's eligibility in accordance with this Act and the program rules adopted by the board.

(d) Except as permitted by program rules, the department may not provide services or authorize payment for services delivered to an individual before the eligibility date assigned to the individual by the department. The department shall determine or cause to be determined the eligibility date in accordance with program rules. The date may not be later than the date on which the individual submits a properly completed application form and all supporting documents required by this Act or by the rules adopted by the board.

Sec. 9. ELIGIBILITY. (a) To be eligible to receive program services, an individual must comply with the eligibility criteria contained in the program rules. Except as modified by other program rules, the criteria must include a requirement that the individual is a bona fide resident of this state.

(b) If the department determines at the time of application or while an individual is receiving services that the individual or any person who has a legal obligation to support the individual is financially able to pay for all or part of the services provided under this Act, the department shall require the individual or the person who has a legal obligation to support the individual and who is financially able to bear a portion of the expense to pay for or reimburse the department for that portion of the cost of the services that the individual or person is able to pay.

Sec. 10. COORDINATION OF BENEFITS. (a) Except as provided by program rules, an individual is not eligible to receive services delivered under this Act to the extent that the individual or a person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(b) An applicant for or recipient of services delivered under this Act shall inform the department, at the time of application or at the time the applicant receives services, of any other benefit to which the individual or a person who has a legal obligation to support the individual may be entitled.

(c) An individual or a person who has a legal obligation to support an individual who has received services that are covered by some other benefit shall reimburse the department to the extent of the services provided when the other benefit is received.

(d) In certain individually considered cases in which enforcement of this section will deny services to a class of otherwise eligible individuals because of conflicting federal, state, or local laws or regulations, the commissioner may waive enforcement as prescribed by rules established by the board.

Sec. 11. RECOVERY OF COSTS. The department may recover the cost of services delivered under this Act from a person who does not reimburse the department as required by Section 9(b) or 10(c) of this Act 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. At the request of the commissioner, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department. The court may award attorney's fees, court costs, and interest accruing from the date on which the department delivered the service to the date the department is reimbursed in a judgment in favor of the department.

Sec. 12. DENIAL OF APPLICATION; MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The department may, for cause, deny an application for services after notice to the applicant or recipient and an opportunity for a fair hearing.

(b) The department may modify, suspend, or terminate services to an individual who is eligible for or is receiving services after notice to the applicant or recipient and an opportunity for a fair hearing.

(c) The program rules adopted by the board shall contain criteria for departmental action.

(d) Sections 12 through 20 of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) do not apply to the granting, denial, modification, suspension, or termination of services delivered under this Act. The department shall conduct hearings in accordance with the board's due process hearing rules.

(e) If the department restricts program services to conform to budgetary limitations that require the board to establish service priorities relating to the types of services provided, geographical areas covered, or classes of individuals eligible in accordance with Section 4(b) of this Act, the notice and hearing requirements of Subsections (a)-(d) of this section do not apply.

Sec. 13. PROVIDERS. (a) The department shall select providers to participate in the program according to the criteria and procedures adopted by the board.

(b) The board may not adopt criteria for approval of facilities that discriminate against one or more classes of facilities on the basis that the facilities are operated for profit.

(c) In its selection of providers, the department may not exclude a provider solely because the provider receives federal funds if those federal funds are inadequate to provide the services authorized by this Act to all eligible individuals seeking services from that provider.

(d) The board shall provide a due process hearing procedure for the resolution of conflicts between the department and a provider. Sections 12 through 20 of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) do not apply to conflict resolution procedures adopted under this section.

(e) The department may not terminate a grant or contract during the pendency of a due process hearing under this section. The department may withhold payments during the pendency of a hearing, but shall pay the withheld payments and resume grant or contract payments if the final determination is in favor of the provider.

(f) If a grant or contract is canceled by the department because of exhaustion of funds or because insufficient funds require the board to adopt service priorities relating to the type of services provided, geographical areas covered, or classes of individuals eligible, or if the grant or contract expires according to its terms, the notice and hearing requirements of Subsections (d) and (e) of this section do not apply.

Sec. 14. ADVISORY COMMITTEES. (a) The board may appoint a statewide advisory committee to the primary health care services program and any necessary areawide advisory committees. Appointments to the advisory committees shall be made without regard to the race, creed, handicap, sex, religion, age, or national origin of the appointee. In addition, appointments to the statewide advisory committee shall be made with consideration of the geographical representation of the appointee.

(b) The statewide advisory committee is composed of:

(1) one physician licensed to practice medicine in this state who is in private practice and who specializes in primary medical care;

(2) one dentist licensed to practice in this state who has a private dental practice;

(3) one director of a local health department or a public health district;

(4) one administrator of a federally funded community health center;

(5) two administrators of hospitals located in Texas, at least one of whom is a member of the Texas Association of Public Hospitals;

(6) one representative of The University of Texas School of Public Health;

(7) one representative of the health insurance industry;

(8) one professional nurse registered by the Board of Nurse Examiners; and

(9) three members of the general public.

(c) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the health care field;

(2) is employed by a health care facility, corporation, or agency, or by a corporation authorized to underwrite health care insurance;

(3) governs or administers a health care facility, corporation, or agency; or

(4) has a financial interest, other than a consumer's interest, in a health care facility, corporation, or agency.

(d) Statewide advisory committee members serve for staggered six-year terms, with the terms of four members expiring on August 31 of each odd-numbered year.

(e) A vacancy on the statewide advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(f) A member of the statewide advisory committee is entitled to reimbursement for expenses incurred in performing duties under this Act. The reimbursement may not exceed the amount specified in the General Appropriations Act for travel and per diem allowances for state employees.

(g) The board shall adopt rules to govern the statewide and areawide committees' operations.

Sec. 15. ADMINISTRATION AND PROGRAM REVIEW. (a) To prevent duplication of services, the board and the department should coordinate the services authorized by this Act with existing federal, state, and local programs. The board should require that the services provided under this Act are reserved to the greatest extent possible for low-income individuals who are not eligible for similar services through any other publicly funded program.

(b) The board and the department are encouraged to:

(1) design and employ a plan of areawide administration for furnishing authorized services;

(2) seek and receive advice and other assistance to plan and conduct the program from areawide advisory committees; and

(3) use local public and private resources as providers of services.

(c) The program rules shall require the department to maintain a continuing review of the services it provides directly to the eligible individuals who participate in the program. At least annually, the department shall review and determine the continued need for the services it provides directly in each service area in accordance with the methods and procedures used to make the initial determination prescribed by Section 4(d) of this Act. If after a review the board determines that a private or public provider or other resource that meets the board's criteria for approval as a provider is available to provide services, has applied for approval as a provider, and has been approved as a provider, the department shall, immediately after approving the provider, eliminate, reduce, or modify the scope and type of services the department delivers directly to the extent the private or public provider or other resource is available and able to provide the service.

Sec. 16. RECORDS. (a) The department shall require each provider receiving reimbursement under this Act to maintain records and information for each person who applies for or receives services under this Act.

(b) The department shall adopt rules relating to the information a provider is required to report to the department, and shall adopt procedures and forms for reporting information as required to prevent unnecessary and duplicative reporting of data under this section.

(c) The department shall review records, information, and reports prepared by program providers and shall annually prepare a report for submission to the governor and the legislature relating to the status of the primary health care services program. The department shall make the report available to the general public.

(d) The report required under Subsection (c) of this section must include:

(1) the number of individuals receiving care under this Act;

(2) the total cost of the program, including a delineation of the total administrative costs of the program and the total cost for each service authorized under Section 4 of this Act;

(3) the average cost per recipient of services;

(4) the number of recipients of services who received services in each public health region; and

(5) any other information required by the board.

(e) In computing the number of individuals to be reported under Subsection (d)(1) of this section, the department shall ensure that no individual is counted more than once.

Sec. 17. LONG-RANGE PLAN. (a) The department shall initiate a long-range plan that will continue at least six years. The first plan must be completed and submitted to the governor and the legislature by January 1, 1986.

(b) The department shall update the plan every two years.

(c) The department shall include at least the following elements in the long-range plan:

(1) quantifiable indicators of output and outcome;

(2) identification of priority client population;

(3) identification of the minimum types of services necessary to address the needs of the priority client populations;

(4) a description of the appropriate use of providers, including a plan for the future role of providers, with consideration of the type, location, and specialization of the providers;

(5) criteria for phasing out unnecessary services;

(6) a comprehensive assessment of needs and inventory of resources; and

(7) coordination of administration and service delivery with federal, state, and local public and private programs that provide similar services.

(d) The department shall develop a short-range plan that is derived from the long-range plan. The department shall identify and project the costs relating to implementation of the short-range plan.

(e) Every two years as part of its budget preparation process, the department shall assess the progress made toward achieving the goals identified in each plan. The department's biennial budget shall be based on the results of the assessment and the short-range plan. The department shall base its requests for new program funding and for continuation funding on demonstrated need.

(f) The department shall use the information collected under Section 16 of this Act to develop the long-range and short-range plans.

SECTION 2. This Act takes effect September 1, 1985, but services may not be provided under this Act until January 1, 1986.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 17, 1985, by the following vote: Yeas 81, Nays 39, 2 present, not voting; passed by the Senate on May 24, 1985, by a viva-voce vote.

Approved: June 14, 1985

Effective: September 1, 1985