

CHAPTER 347

S.B. No. 894

An Act relating to a program to furnish oral health services to eligible individuals and to the establishment of the Oral Health Improvement Services Program within the Texas Department of Health.

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

SECTION 1. SHORT TITLE. This Act shall be known and may be cited as the Texas Oral Health Improvement Act.

SECTION 2. PURPOSE. (a) The intent of the legislature is to authorize the Texas Board of Health to create within the Texas Department of Health a program to furnish oral health services to eligible individuals. The program's minimum goals may include:

- (1) a reduction in the incidence of oral disease through oral health promotion and education; and
- (2) the efficient delivery of oral treatment services to eligible low-income individuals in a timely and appropriate manner.

(b) It is the further intent of the legislature that this Act be construed liberally in order that eligible individuals may receive appropriate and adequate oral health services in a timely manner.

SECTION 3. DEFINITIONS. (a) As used in this Act, unless the context otherwise requires, the following words have the meanings indicated:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the Commissioner of Health.
- (3) "Dentist" means an individual licensed by the Texas State Board of Dental Examiners to practice dentistry in the State of Texas.
- (4) "Department" means the Texas Department of Health.
- (5) "Eligible individual" means an "individual," as that word is defined in Subdivision (6) of this subsection, who meets the criteria established by the board to receive oral health services from the department or a provider.
- (6) "Individual" means a single human being.
- (7) "Oral health services" or "services" means preventive or treatment services affecting the structures of the mouth, including the hard and soft tissues such as teeth and jaws, gums, vestibule, tongue, cheeks, lips, floor, roof of the mouth, and adjacent masticatory structures, and oral health education and promotion activities.
- (8) "Other benefit" means a benefit to which an individual is entitled, other than a benefit provided under this Act, for the payment of the costs of oral health treatment services, including:
 - (A) benefits available from:

- (i) an insurance policy, group oral health plan, or prepaid oral care plan;
 - (ii) Title XVIII or Title XIX of the Social Security Act, as amended;
 - (iii) the Veterans' Administration;
 - (iv) the Civilian Health and Medical Program of the Uniformed Services; or
 - (v) workers' compensation or any other compulsory employer's insurance program;
- (B) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state; or
- (C) benefits available to an individual applying for or receiving treatment services from the department arising out of a cause of action for dental or oral health treatment services expenses or a settlement or judgment based upon the cause of action, if the expenses are related to the need for treatment services provided under this Act.
- (9) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, partnership or association, or any other legal entity.
- (10) "Provider" means a person who through a contract with the department furnishes oral health treatment services which are purchased by the department for the purpose of this Act.
- (11) "Support" means the contribution by one person to another of money or services necessary for his or her maintenance and includes but is not limited to the furnishing of food, clothing, shelter, transportation, and health care.
- (b) The board may define by rule any word or term not defined in this section necessary to administer this Act. The definition may not be inconsistent or in conflict with the purposes or objectives of this Act.

SECTION 4. ORAL HEALTH IMPROVEMENT SERVICES PROGRAM. (a) The board shall establish the Oral Health Improvement Services Program within the department to provide comprehensive oral health services to eligible individuals.

(b) The board shall adopt rules describing the services to be furnished, and as necessary to conform the program to budgetary limitations, the board shall prescribe a system of program priorities regarding the types of services to be furnished, geographic areas to be covered, or classes of individuals to be eligible.

(c) Except as it may be limited by Subsection (b) of this section, the department shall develop an integrated framework for the equitable provision of oral health improvement services throughout the state or designated geographic areas, utilizing where possible existing public and private health-care resources.

(d) The program may comprise, but is not limited to, all or any combination of the following components which may be furnished directly by the department or through a network of approved providers:

(1) treatment services for eligible individuals, including but not limited to:

(A) emergency care for relief of pain and infection, including extractions and basic restorative services to prevent premature loss of teeth;

(B) periodontal therapy for the prevention and treatment of periodontal disease;

(C) endodontics to maintain aesthetics and occlusion;

(D) orthodontic care only in cases of severely handicapping malocclusion; and

(E) prosthetics and oral surgery in cases where health is impaired;

(2) a program of oral disease prevention, including:

(A) the fluoridation of community water supplies;

(B) school-based fluoride mouth rinse programs;

(C) promotion and implementation of sealants programs; and

(D) the development of appropriate means for prevention of oral disease including the use of recognized methods of primary, secondary, and tertiary prevention;

(3) oral health education and promotion, including:

(A) public health education to promote the prevention of oral disease through self-help methods, including initiation and expansion of education programs for adults, and preschool and school age programs for children to inculcate the principles of prevention;

(B) organized continuing health education training programs for health-care providers; and

(C) preventive health education information for the public; and

(4) facilitation of access to oral health services, including:

(A) the improvement of the existing oral health services delivery system for the provision of services to low-income residents;

(B) outreach activities to inform the public as to the type and availability of oral health services to increase the accessibility of oral health care for low-income residents; and

(C) assistance and cooperation in promoting better distribution of dentists and other oral health professionals throughout the state.

SECTION 5. REFERRAL; APPLICATION FOR TREATMENT SERVICES. (a) To apply for treatment services, an individual must be referred to the program by a third party nominator who knows the individual's economic condition, such as a school administrator or school nurse, a social worker, a city or county official, a public health clinic, a community health center, a dentist, a physician, a hospital, or another source acceptable to the board.

(b) Each individual who applies for treatment services must complete or cause to be completed an application form prescribed by the department.

(c) The application form must include or be accompanied by:

(1) a statement by the individual or the person responsible for the individual's support that the individual or the person is financially unable to pay for all or part of the cost of the necessary treatment services;

(2) A statement from the referring third-party nominator that the treatment services are necessary to prevent or reduce the probability of pain, infection, or disease; and

(3) any other assurances from the applicant or documentary evidence to support the applicant's eligibility which the board may require.

SECTION 6. ELIGIBILITY. (a) The department shall determine each individual's eligibility for treatment services according to the provisions of this Act and the program rules.

(b) An individual is not eligible to receive treatment services provided under this Act unless:

(1) the individual is a bona fide resident of Texas;

(2) the department has determined that neither the individual nor any person who has a legal obligation to support the individual is financially able to pay for all or part of the treatment services provided by this Act;

(3) the individual complies with any other requirements stated in the program rules; and

(4) at least one licensed dentist or physician has certified to the department that he or she has examined the individual and has found that:

(A) the individual meets the dental criteria established by the board; and

(B) the dentist or physician has reason to expect that the treatment services provided by or through the department will prevent or reduce the probability of the individual's experiencing pain, infection, or disease.

(c) Except as permitted by the program rules, the department may not furnish treatment services to an individual or authorize payment for treatment services furnished by a provider to an individual at any time before the individual's eligibility date assigned by the department.

(d) If the department determines at the time of application or at any time during the receipt of treatment services that the individual or any person who has a legal obligation to support the individual is able to pay a portion of the cost of the services, the department shall require that the individual or the person legally obligated to support the individual pay for or reimburse the department for that portion of the cost of the treatment services which the individual or the person is able to pay.

SECTION 7. RESOURCE DISCLOSURE; LIMITATION ON ELIGIBILITY FOR TREATMENT SERVICES. (a) An individual is not eligible to receive treatment services furnished by this Act to the extent that the individual or any person who has the legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(b) An individual who applies for or receives treatment services furnished under this Act shall inform the department at the time of application and at any time during eligibility and the receipt of treatment services of any other benefit to which the individual or any person who has the legal obligation to support the individual may be entitled.

(c) The individual or any person who has a legal obligation to support an individual who has received treatment services which are covered by some other benefit shall reimburse the department to the extent of the treatment services furnished when the other benefit is received.

(d) Subsection (a) of this section may be waived by the commissioner pursuant to the rules of the board in certain individually considered cases where its enforcement will deny treatment services to a class of otherwise eligible individuals because of conflicting state, local, or federal laws or regulations.

SECTION 8. RECOVERY OF COSTS. The department may recover the cost of treatment services provided under this Act from a person who does not pay or reimburse the department as required by 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 provides the service to the date the department is reimbursed in a judgment in favor of the department.

SECTION 9. DENIAL OF APPLICATION; MODIFICATION, SUSPENSION, OR TERMINATION OF PROGRAM SERVICES. (a) The department may for cause deny the application of or modify, suspend, or terminate treatment services to an individual who has applied for or is receiving treatment services after notice to the applicant or recipient and the opportunity for a due process hearing.

(b) The program rules adopted by the board shall contain the criteria for the department's action.

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

(d) This section does not apply if program services are restricted to conform to budgetary limitations and service priorities are adopted by the board under Section 6 of this Act regarding types of service to be furnished, geographic areas to be covered, or classes of individuals to be eligible.

SECTION 10. 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 shall provide a due process hearing procedure for the resolution of conflicts between the department and a provider. Sections 13 through 20 of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) shall not apply to conflict resolution procedures adopted under this section.

(c) The department may not terminate a contract during the pendency of a hearing under this section. The department may withhold payments during the pendency of a hearing, but the department shall pay the withheld payments and resume contract payments if the final determination is favorable to the provider.

(d) Subsections (b) and (c) of this section do not apply if a contract is cancelled by the department because of the exhaustion of funds, if the contract expires according to its terms, or if the contract is cancelled because program services are restricted to conform to budgetary limitations and service priorities are adopted by the board regarding types of service to be furnished, geographic areas to be covered, or classes of individuals to be eligible.

SECTION 11. GENERAL PROVISIONS. (a) If not otherwise established by this Act, the board may adopt rules to govern the program of oral health services including:

(1) rules prescribing a system of service priorities to conform the provision of program services to budgetary limitations;

(2) rules prescribing the type, amount, and duration of services to be provided;

(3) substantive and procedural rules to govern the application for admission to the program and the receipt of services, including the dental, financial, and other criteria for eligibility to receive services; and

(4) substantive and procedural rules for the selection of dentists, physicians, facilities, and other providers to furnish program services, including criteria for the emergency selection of providers, for the denial of program participation and the modification, suspension, or termination of such program participation.

(b) Subject to the limitations contained in this Act and to any limitations or conditions prescribed by the legislature, the board may seek, receive, and expend any funds received from any public or private source for the purposes of this Act.

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

(d) The department shall:

(1) administer the program of services established by the board;

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

(3) render the final administrative decision in due process hearings to deny, modify, suspend, or terminate the receipt of services; and

(4) approve providers to furnish services to eligible individuals and render the final administrative decision in due process hearings involving the modification, suspension, and termination of a provider's approval.

(e) The department may:

- (1) provide services only pursuant to the rules of the board;
- (2) pay only for program services furnished by approved providers except in an emergency situation;
- (3) conduct field research, collect data, and prepare statistical and other reports relating to the need for and the availability of oral health services in the state; and
- (4) enter into contracts and agreements necessary to facilitate the efficient and economical provision of services under this Act, including contracts for the purchase of services, equipment, and supplies from qualified providers.

SECTION 12. ADVISORY COMMITTEE. The board may appoint a technical advisory committee to assist the Oral Health Improvement Services Program in areas requiring professional dental and medical expertise. Appointees to the advisory committee must be practitioners licensed to practice in Texas by either the Texas State Board of Dental Examiners or the Texas State Board of Medical Examiners; however, appointments must be made without regard to the race, creed, sex, religion, or national origin of the appointee.

SECTION 13. LIMITATION. No provision of this Act shall require the department to provide oral health improvement services, and it is expressly provided that the provision of these services is limited to the funds which are expressly appropriated to the department to carry out the purposes of this Act.

SECTION 14. EFFECTIVE DATE. This Act takes effect September 1, 1985.

SECTION 15. EMERGENCY CLAUSE. 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 the Senate on April 18, 1985, by the following vote: Yeas 31, Nays 0; Senate concurred in House amendment on May 17, 1985, by a viva-voce vote; passed the House, with amendment, on May 16, 1985, by a non-record vote.

Approved: June 10, 1985

Effective: September 1, 1985