

CHAPTER 747

H.B. No. 1510

AN ACT

relating to the powers and duties of the Health and Human Services Commission, the Department of Protective and Regulatory Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, and other health and human services agencies, to the statewide health coordinating council, and to the Interagency Council on Early Childhood Intervention Services providing civil and criminal penalties.

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

SECTION 1. Section 1.06(c), Chapter 15, Acts of the 72nd Legislature, 1st Called Session, 1991, is amended to read as follows:

(c) On September 1, 1993, or an earlier date provided by an interagency agreement with the affected agencies, the following functions, programs, and activities are transferred from the Texas Department of Human Services to the Department of Protective and Regulatory Services:

(1) ~~[except as provided in Section 1.11 of this article, from the Texas Department of Health:~~

~~[(A) investigations of abuse and neglect in long-term care facilities;~~

~~[(B) functions, programs, and activities concerning institutions other than long-term care facilities; and~~

~~[(C) the institutional component of licensing and certification activity other than long-term care facilities;~~

~~[(2) from the Texas Department of Human Services:~~

~~[(A) the adult protective services program, including investigations and client services; and~~

~~(2) [(B)] activity concerning licensure of child care facilities.~~

SECTION 2. Section 1.07, Chapter 15, Acts of the 72nd Legislature, 1st Called Session 1991, is amended to read as follows:

Sec. 1.07. TRANSFER OF PROPERTY, RECORDS, OBLIGATIONS, FUNDS, FUNCTIONS, PROGRAMS, AND ACTIVITIES TO THE TEXAS DEPARTMENT OF [PUBLIC HEALTH. (a) On September 1, 1993, or an earlier date provided by an interagency agreement with the affected agencies, the following functions, programs, and activities are transferred to the Texas Department of [Public] Health established under Chapter 11, Health and Safety Code:

(1) from the Texas Department of Human Services:

(A) preventive health services programs;

(B) early and periodic screening and diagnosis and treatment;

(C) family planning;

(D) the purchased health services program; and

(E) the indigent health care program; and

(2) ~~[from the Texas Department of Health:~~

~~[(A) the community and rural health program, including colonias;~~

- ~~[(B) the disease prevention program;~~
- ~~[(C) vital statistics activity;~~
- ~~[(D) milk and dairy activity;~~
- ~~[(E) food and drug activity;~~
- ~~[(F) shellfish sanitation activity;~~
- ~~[(G) zoonosis control activity;~~
- ~~[(H) cooperative meat inspection activity;~~
- ~~[(I) general sanitation activity;~~
- ~~[(J) maternal and child health activity;~~
- ~~[(K) women, infants, and children activity;~~
- ~~[(L) epilepsy activity;~~
- ~~[(M) chronic disease prevention and control activity;~~
- ~~[(N) primary care activity;~~
- ~~[(O) dental health activity;~~
- ~~[(P) activity of the Texas Diabetes Council;~~
- ~~[(Q) all programs of the San Antonio State Chest Hospital;~~
- ~~[(R) all programs of the South Texas Hospital;~~
- ~~[(S) chronically ill and disabled children activity;~~
- ~~[(T) children's outreach heart activity;~~
- ~~[(U) kidney health care activity; and~~
- ~~[(V) adult hemophilia activity; and~~

~~[(3)] from the Texas Department of Mental Health and Mental Retardation the genetics screening and counseling program.~~

(b) On September 1, 1993, or an earlier date provided by an interagency agreement with the affected agencies, all funds, obligations, and contracts of an entity listed in Subsection (a) of this section related to a function, program, or activity transferred under that subsection are transferred to the *Texas Department of [Public] Health established under Chapter 11, Health and Safety Code.*

(c) On September 1, 1993, or an earlier date provided by an interagency agreement with the affected agencies, all property and records in the custody of an entity listed in Subsection (a) of this section related to a function, program, or activity transferred under that subsection and all funds appropriated by the legislature for the function, program, or activity shall be transferred to the *Texas Department of [Public] Health established under Chapter 11, Health and Safety Code.*

(d) On September 1, 1993, or an earlier date provided by an interagency agreement with the affected agencies, all employees of an entity listed in Subsection (a) of this section who perform the duties transferred under that subsection become employees of the *Texas Department of [Public] Health*, to be assigned duties by the director of the *Texas Department of [Public] Health established under Chapter 11, Health and Safety Code.*

(e) A rule or form adopted by an entity listed in Subsection (a) of this section that relates to a function, program, or activity transferred under that subsection is a rule or form of the *Texas Department of [Public] Health established under Chapter 11, Health and Safety Code*, and remains in effect until altered by the department. The secretary of state is authorized to adopt rules as necessary to expedite the implementation of this section.

SECTION 3. Section 1.11, Chapter 15, Acts of the 72nd Legislature, 1st Called Session, 1991, is amended to read as follows:

Sec. 1.11. TRANSFER OF CERTAIN LONG-TERM CARE FUNCTIONS TO THE TEXAS DEPARTMENT OF HUMAN SERVICES. Not later than September 1, 1993, all functions, powers, duties, funds, and obligations of the Texas Department of Health relating to long-term care licensing, certification, and surveys, *and to investigations of abuse and neglect in long-term care facilities*, and all employees who perform these duties and all

relevant records are transferred to the Texas Department of Human Services. A rule, form, or policy relating to these functions is a rule, form, or policy of the Texas Department of Human Services on transfer of the functions under this section and remains in effect until altered by the department, *except that not later than January 1, 1995, the department shall review and streamline all rules, forms, policies, and procedures relating to these functions to eliminate overlapping or unnecessary systems, programs, punitive actions, and functions.* The intent of the legislature is that all regulation and rate setting for long-term care facilities be consolidated into a single state agency. The secretary of state is authorized to adopt rules as necessary to expedite the implementation of this section.

SECTION 4. Section 3.03(d), Chapter 15, Acts of the 72nd Legislature, 1st Called Session, 1991 (Article 4413(505), Vernon's Texas Civil Statutes), is amended to read as follows:

(d) In this section, "health and human service agency" means the:

- (1) Interagency Council on Early Childhood Intervention Services;
- (2) Texas Department on Aging;
- (3) Texas Commission on Alcohol and Drug Abuse;
- (4) Texas Commission for the Blind;
- (5) Texas Commission for the Deaf and Hearing Impaired;
- (6) Texas Department of Health;
- (7) Texas Department of Human Services;
- (8) Texas Juvenile Probation Commission;
- (9) Texas Department of Mental Health and Mental Retardation;
- (10) Texas Rehabilitation Commission; and
- (11) *Department of Protective and Regulatory Services* [~~Texas Youth Commission~~].

SECTION 5. Section 3.08(c), Chapter 15, Acts of the 72nd Legislature, 1st Called Session, 1991 (Article 4413(505), Vernon's Texas Civil Statutes), is amended to read as follows:

(c) In this section, "health and human service agencies" includes the:

- (1) Interagency Council on Early Childhood Intervention Services;
- (2) Texas Department on Aging;
- (3) Texas Commission on Alcohol and Drug Abuse;
- (4) Texas Commission for the Blind;
- (5) Texas Commission for the Deaf and Hearing Impaired;
- (6) Texas Department of Health;
- (7) Texas Department of Human Services;
- (8) Texas Juvenile Probation Commission;
- (9) Texas Department of Mental Health and Mental Retardation;
- (10) Texas Rehabilitation Commission; and
- (11) *Department of Protective and Regulatory Services* [~~Texas Youth Commission~~].

SECTION 6. Section 4, Article 4413(502), Revised Statutes, is amended to read as follows:

Sec. 4. [~~OPEN MEETINGS;~~] ADMINISTRATIVE PROCEDURE. The commission is subject to [~~the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and] the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).~~

SECTION 7. Section 10(a), Article 4413(502), Revised Statutes, is amended to read as follows:

(a) The commissioner shall develop a coordinated, six-year strategic plan for health and human services in the state and shall update the plan biennially. The commissioner shall submit [~~the initial plan and] each [subsequent] biennial update of the plan to the governor, lieutenant governor, and speaker of the house of representatives no later than October 1 [15] of each even-numbered year[, with the initial plan submitted no later than October 15, 1992].~~

SECTION 8. Section 13(a), Article 4413(502), Revised Statutes, is amended to read as follows:

(a) The commission shall prepare and submit to the Legislative Budget Board and the governor by October 15 [1] of even-numbered years a consolidated health and human services budget recommendation.

SECTION 9. Section 19, Article 4413(502), Revised Statutes, is amended to read as follows:

Sec. 19. HEALTH AND HUMAN SERVICES AGENCIES. In this article, "health and human services agencies" includes the:

- (1) Interagency Council on Early Childhood Intervention Services;
- (2) Texas Department on Aging;
- (3) Texas Commission on Alcohol and Drug Abuse;
- (4) Texas Commission for the Blind;
- (5) Texas Commission for the Deaf and Hearing Impaired;
- (6) Texas Department of Health;
- (7) Texas Department of Human Services;
- (8) Texas Juvenile Probation Commission;
- (9) Texas Department of Mental Health and Mental Retardation;
- (10) Texas Rehabilitation Commission; and
- (11) *Department of Protective and Regulatory Services* [~~Texas Youth Commission~~].

SECTION 10. Article 4413(502), Revised Statutes, is amended by adding Sections 20 and 21 to read as follows:

Sec. 20. GIFTS AND GRANTS. *The commission may accept gifts and grants from public or private sources to perform any of its powers or duties.*

Sec. 21. CONTRACTS; POWERS. *The commission may enter into contracts as necessary to perform any of its powers or duties and has all the powers and duties necessary to administer this article.*

SECTION 11. Section 3, Article 4413(503), Revised Statutes, is amended by adding Subsection (j) to read as follows:

(j) *While performing their duties, board members are entitled to per diem as prescribed by the General Appropriations Act.*

SECTION 12. Section 12, Article 4413(503), Revised Statutes, is amended to read as follows:

Sec. 12. DEPARTMENT POWERS AND DUTIES. (a) The department shall:

- (1) develop a departmental strategic plan based on the goals and priorities stated in the commission's coordinated strategic plan for health and human services;
- (2) submit any legislative appropriation request to the commission for comment and for incorporation in the commission's statewide health and human services budget recommendations in keeping with state priorities and federal requirements;
- (3) propose and implement service delivery standards for departmental programs;
- (4) propose and adopt rules to ensure the department's compliance with state and federal law and to facilitate the implementation of departmental programs;
- (5) provide training and technical assistance to regional and local service providers;
- (6) develop and implement systems for monitoring departmental program performance and service delivery;
- (7) promote innovative service delivery at the local level;
- (8) cooperate and coordinate with other departments in the delivery of services; and
- (9) perform other functions as required by law.

(b) *The department shall operate a program entitled "Services for Runaways and At-Risk Youth" to provide services for runaways, truants, and other children who are considered at*

risk of running away from home or at risk of suffering abuse or neglect and for the families of those children. The services may include crisis family intervention, emergency short-term residential care, family counseling, parenting skills training, and youth coping skills training.

(c) The department and the Texas Department of Mental Health and Mental Retardation shall adopt companion rules providing for the disposition of corrective action recommendations made by the department concerning findings of abuse or neglect in facilities of the Texas Department of Mental Health and Mental Retardation.

SECTION 13. Article 4413(503), Revised Statutes, is amended by adding Sections 14 and 15 to read as follows:

Sec. 14. GIFTS AND GRANTS. The department may accept gifts and grants from public or private sources to perform any of its powers or duties.

Sec. 15. CONTRACTS. The department may enter into contracts as necessary to perform any of its powers or duties.

SECTION 14. Section 2, Article 4413(701), Revised Statutes, is amended to read as follows:

Sec. 2. POWERS AND DUTIES. (a) The Health and Human Services Transportation and Planning Office shall:

(1) collect data on health and human services client transportation needs, services, and expenditures;

(2) create a statewide coordination plan regarding a system of transportation for clients of health and human services agencies including the designation of locally based transportation coordinators;

(3) establish standards of reporting and accounting methods for all agencies providing health and human services client transportation;

(4) maximize federal funds for client transportation through the use of available state funds for matching purposes and the possible use of oil overcharge money and planning funds available through the federal Department of Transportation;

(5) evaluate the effectiveness of pooling client transportation resources for purposes of capital acquisition and the joint purchase of liability insurance;

(6) assist state agencies in coordinating transportation resources;

(7) ensure coordination between the Health and Human Services Transportation and Planning Office and the State Department of Highways and Public Transportation with regard to the use of funds received by the State Department of Highways and Public Transportation under 49 U.S.C. Section 1612(b)(1);

(8) examine the feasibility of consolidating all funding for health and human services client transportation and creating a transportation system through which clients of any state or local agency or program could be matched with the most cost-effective and appropriate transportation services for their needs; ~~and~~

(9) evaluate the use of existing computer software for use at the local level in client transportation services; *and*

(10) review the feasibility of taking medical care to those in need, including the use of mobile clinics, and review the possibility of using federal highway funds for those transportation needs.

(b) The Health and Human Services Transportation and Planning Office shall coordinate with the Health and Human Services Commission and health and human services agencies in implementing the goals listed in Section 10(b), Article 4413(502), Revised Statutes. The office shall report its findings and proposals to the commissioner of health and human services not later than September 1 of each even-numbered year.

SECTION 15. Sections 11.001, 11.004–11.007, 11.010, and 11.011, Health and Safety Code, are amended to read as follows:

Sec. 11.001. DEFINITIONS. In this title:

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

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

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

Sec. 11.004. COMPOSITION AND RESPONSIBILITY OF DEPARTMENT. (a) The department is composed of *the board*,[;

[1] the commissioner, [;

[2] an administrative staff, [;

[3] the San Antonio State Chest Hospital, [;—and

[4] the South Texas Hospital, *and other officers and employees necessary to perform efficiently its powers and duties.*

(b) *The department is the state agency with primary responsibility for providing health services, including:*

(1) *disease prevention;*

(2) *health promotion;*

(3) *indigent health care;*

(4) *certain acute care service.,*

(5) *health care facility regulation, excluding long-term care facilities;*

(6) *licensing of certain health professions; and*

(7) *other health-related services as provided by law.*

Sec. 11.005. COMPOSITION OF BOARD. (a) The board is composed of *six* [the following 18] members appointed by the governor with the advice and consent of the senate[;

~~[(1) six physicians licensed under the laws of this state, each of whom has been engaged in the practice of medicine in this state for at least five years before appointment and one of whom specializes in the treatment of disabled children;~~

~~[(2) two hospital administrators with at least five years of experience in hospital administration in this state before appointment;~~

~~[(3) one dentist licensed under the laws of this state who has been engaged in the practice of dentistry in this state for at least five years before appointment;~~

~~[(4) one registered nurse licensed to practice professional nursing under the laws of this state who has been engaged in the practice of nursing in this state for at least five years before appointment;~~

~~[(5) one veterinarian licensed under the laws of this state who has been engaged in the practice of veterinary medicine in this state for at least five years before appointment;~~

~~[(6) one pharmacist licensed under the laws of this state who has been engaged in the practice of pharmacy in this state for at least five years before appointment;~~

~~[(7) one nursing home administrator licensed under the laws of this state who has been engaged as a nursing home administrator in this state for at least five years before appointment;~~

~~[(8) one optometrist licensed under the laws of this state who has been engaged in the practice of optometry in this state for at least five years before appointment;~~

~~[(9) one professional engineer licensed under the laws of this state who holds a civil engineering degree from an accredited university or college and who has specialized in the practice of sanitary engineering in this state for at least five years before appointment;~~

~~[(10) one doctor of chiropractic licensed under the laws of this state who has been engaged in the practice of chiropractic in this state for at least five years before appointment; and~~

~~[(11) two public members who have none of the qualifications required of the other members].~~

(b) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

(c) *Four members of the board must have a demonstrated interest in the services provided by the department, and two members must represent the public.*

Sec. 11.006. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) ~~is registered, certified, or licensed by an occupational regulatory agency in the field of health care;~~

[2] is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;

(2) [(3)] owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or

(3) [(4)] uses or receives a substantial amount of tangible goods, services, or funds from the department.

(b) An officer, employee, or paid consultant of a trade association in the field of health care may not be a member or employee of the board.

(c) A person who is the spouse of an officer, managerial employee, or paid consultant of a trade association in the field of health care may not be a board member or a board employee grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(d) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 11.007. TERMS. Board members serve for staggered six-year terms, with the terms of two [six] members expiring February 1 of each odd-numbered year.

Sec. 11.010. PER DIEM; REIMBURSEMENT FOR EXPENSES. A board member receives no fixed salary but is entitled to receive:

(1) *a per diem as prescribed by the General Appropriations Act* [~~\$50 per day~~] for each day spent in *performing the member's official duties* [~~attending board meetings~~]; and

(2) reimbursement for travel expenses and other necessary expenses incurred in performing official duties.

Sec. 11.011. MEETINGS. (a) The board shall meet in the city of Austin or in other places fixed by the board.

(b) The board shall meet *at least once each calendar quarter* on dates determined by the board and shall hold special meetings at the call of the chairman. The chairman shall give timely notice to each member of any special meeting.

(c) A meeting of a board committee shall be held in compliance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

(d) *Four members of the board constitute a quorum.*

SECTION 16. Section 11.012(f), Health and Safety Code, is amended to read as follows:

(f) The board may supplement the salary of the commissioner *with the approval of the governor*. The salary may not exceed 1.5 times the salary of the governor, from funds appropriated to the department. The use of funds from other sources are not limited by this subsection.

SECTION 17. Chapter 12, Health and Safety Code, is amended by adding Subchapter G to read as follows:

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.

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.

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

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.

SECTION 18. Section 104.001(a), Health and Safety Code, is amended to read as follows:

(a) The policy of this state and the purpose of this chapter are to:

(1) ensure that health care services and facilities are available to all citizens in an orderly and economical manner; and

(2) meet the requirements of applicable federal law [and implement the National Health Planning and Resources Development Act of 1974 (Pub. L. No. 93-641), as amended by the Health Planning and Resources Development Amendments of 1979 (Pub. L. No. 96-79), the federal rules and regulations adopted under that Act, and other pertinent federal authority].

SECTION 19. Section 104.011, Health and Safety Code, is amended to read as follows:

Sec. 104.011. **COMPOSITION OF COUNCIL.** The statewide health coordinating council is composed of 15 [21] members appointed by the governor [in accordance with federal law]. The governor shall appoint three members who represent health care professionals, three members who represent institutions of higher education, three members who are consumer advocates, and six public members.

SECTION 20. Subchapter B, Chapter 104, Health and Safety Code, is amended by adding Section 104.0115 to read as follows:

Sec. 104.0115. **TERMS.** (a) Members of the council serve for staggered six-year terms, with the terms of five members expiring August 31 of each odd-numbered year.

(b) An appointment to fill a vacancy is for the unexpired term.

SECTION 21. Section 104.021(a), Health and Safety Code, is amended to read as follows:

(a) The department, in accordance with rules adopted by the statewide health coordinating council, shall prepare and[,] review[, and revise] a proposed state health plan every six years and shall revise and update the plan biennially.

SECTION 22. Sections 104.022(e) and (f), Health and Safety Code, are amended to read as follows:

(e) The state health plan shall be developed and used in accordance with applicable state and federal law. The plan must identify:

- (1) major statewide health concerns;
 - (2) the availability and use of current health resources of the state, *including resources associated with state-supported institutions of higher education*; and
 - (3) future health service and facility needs of the state.
- (f) The state health plan must:
- (1) propose strategies for the correction of major deficiencies in the service delivery system; ~~and~~
 - (2) *propose strategies for involving state-supported institutions of higher education in providing health services and for coordinating those efforts with health and human services agencies in order to close gaps in services*; and
 - (3) provide direction for the state's legislative and executive decision-making processes to implement the strategies proposed by the plan.

SECTION 23. Section 242.002(6), Health and Safety Code, is amended to read as follows:

(6) "Institution" means:

(A) an establishment that:

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

(ii) provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or other services that meet some need beyond the basic provision of food, shelter, and laundry; *or*

~~(B) [a place or establishment that receives, treats, or cares for, overnight or longer, within a period of 12 months, four or more pregnant women or women who, within two weeks before the date of the treatment or care, gave birth to a child, not including a woman who receives maternity care in the place or establishment that is the home of a relative of the woman related within the third degree of consanguinity or affinity, as determined under Article 5996h, Revised Statutes; or~~

~~[(C)] a foster care type residential facility that provides room and board to fewer than five persons who:~~

~~(i) are not related within the second degree of consanguinity or affinity, as determined under Article 5996h, Revised Statutes, to the proprietor; and~~

~~(ii) because of their physical or mental limitation, or both, require a level of care and services suitable to their needs that contributes to their health, comfort, and welfare.~~

SECTION 24. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 249 to read as follows:

CHAPTER 249. MATERNITY HOMES

Sec. 249.001. *DEFINITIONS. In this chapter:*

- (1) "Board" means the Board of Protective and Regulatory Services.
- (2) "Department" means the Department of Protective and Regulatory Services.
- (3) "Maternity home" means a place or establishment that receives, treats, or cares for, overnight or longer, within a period of 12 months, four or more pregnant women or women who, within two weeks before the date of the treatment or care, gave birth to a child, not including a woman who receives maternity care in the place or establishment that is the home of a relative of the woman related within the third degree of consanguinity or affinity, as determined under Article 5996h, Revised Statutes.

Sec. 249.002. *LICENSE REQUIRED.* (a) A person may not establish or operate a maternity home in this state without a license issued under this chapter.

(b) A license is not transferable or assignable.

Sec. 249.003. *LICENSE APPLICATION AND ISSUANCE.* (a) An applicant for a maternity home license must submit an application to the department on a form prescribed by the department.

(b) *Each application must be accompanied by a nonrefundable license fee in an amount set by the board.*

(c) *The department shall issue a license if, after inspection and investigation, it finds that the applicant and the center meet the requirements of this chapter and the standards adopted under this chapter.*

(d) *The license fee must be paid annually on renewal of the license.*

Sec. 249.004. *INSPECTIONS. The department may inspect a maternity home at reasonable times as necessary to assure compliance with this chapter.*

Sec. 249.005. *FEES. The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.*

Sec. 249.006. *MATERNITY HOME LICENSING FUND. All fees collected under this chapter shall be deposited in the state treasury to the credit of the maternity home licensing fund and may be appropriated to the department only to administer and enforce this chapter.*

Sec. 249.007. *ADOPTION OF RULES. The board shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate a maternity home.*

Sec. 249.008. *MINIMUM STANDARDS. (a) The rules must contain minimum standards applicable to a maternity home and for:*

- (1) *the qualifications of the professional staff and other personnel;*
- (2) *the equipment essential to the health and welfare of the patients; and*
- (3) *the sanitary and hygienic conditions within the home and its surroundings.*

(b) *This section does not authorize the board to:*

- (1) *establish the qualifications of a licensed practitioner; or*
- (2) *permit a person to provide health care services who is not authorized to provide those services under another state law.*

Sec. 249.009. *DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.*

(b) *The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

Sec. 249.010. *INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of a maternity home.*

(b) *A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:*

- (1) *prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;*
- (2) *restrain or prevent the establishment or operation of a maternity home without a license issued under this chapter; or*
- (3) *grant any other injunctive relief warranted by the facts.*

(c) *The attorney general shall institute and conduct a suit authorized by this section at the request of the department.*

(d) *Venue for a suit brought under this section is in the county in which the maternity home is located or in Travis County.*

Sec. 249.011. *CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 249.002(a).*

(b) An offense under this section is punishable by a fine of not more than \$1,000 for the first offense and not more than \$500 for each subsequent offense.

(c) Each day of a continuing violation constitutes a separate offense.

Sec. 249.012. *CIVIL PENALTY.* (a) A person who violates this chapter or who fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$10,000 for each violation if the department determines the violation threatens the health and safety of a patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

SECTION 25. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 250 to read as follows:

CHAPTER 250. NURSE AIDE REGISTRY AND CRIMINAL HISTORY CHECKS OF EMPLOYEES AND APPLICANTS FOR EMPLOYMENT IN CERTAIN FACILITIES SERVING THE ELDERLY OR PERSONS WITH DISABILITIES

Sec. 250.001. *DEFINITIONS.* In this chapter:

(1) "Nurse aide registry" means a list maintained by the department of nurse aides under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203).

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

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

(4) "Direct contact with a consumer" means any contact with a resident or client or a family member or visitor of a resident or client in a facility covered by this chapter.

(5) "Facility" means:

(A) a nursing home, custodial care home, or other institution licensed by the department under Chapter 242;

(B) a personal care facility licensed by the department under Chapter 247;

(C) a home health agency licensed by the department under Chapter 142;

(D) an adult day care facility or adult day health care facility licensed by the department under Chapter 103, Human Resources Code;

(E) a facility for persons with mental retardation licensed or certified by the department;

(F) an unlicensed attendant care agency that contracts with the Texas Department of Human Services;

(G) an intermediate care facility for persons with mental retardation that is certified to participate in the Medicaid program under Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.); or

(H) an adult foster care provider that contracts with the Texas Department of Human Services.

Sec. 250.002. *VERIFICATION OF EMPLOYABILITY; DISCHARGE.* (a) A facility may not employ a person in a position the duties of which involve direct contact with a consumer in the facility if the results of a criminal history check reveal that a person has been convicted of an offense listed in this chapter that bars employment, and if the applicant is a nurse aide, until the facility further verifies that the applicant is listed in the nurse aide registry and verifies that the applicant is not designated in the registry as having a finding entered into the registry concerning abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property. A person licensed under another law of this state is exempt from the requirements of this chapter.

(b) The facility may not employ the applicant if it is notified by the department that a conviction bars employment, except that in an emergency requiring immediate employment, a facility may hire a person not listed in the registry pending the results of a criminal conviction check, which must be submitted within 72 hours of employment.

(c) A facility shall immediately discharge any employee in a position the duties of which involve direct contact with a consumer in the facility who is designated in the nurse aide registry as having committed an act of abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property, or whose criminal history check reveals conviction of a crime that bars employment as provided by this chapter.

Sec. 250.003. CRIMINAL HISTORY RECORD OF EMPLOYEES. (a) Identifying information, including mailing addresses, of employees in direct contact with consumers in covered facilities shall be submitted to the Department of Public Safety to obtain the person's criminal conviction record when the person applies for employment and at other times as the department or the facility may determine appropriate.

(b) If the Department of Public Safety reports to the department that a person has a criminal conviction of any kind, the conviction shall be reviewed by the department to determine if the conviction may bar the person from employment in a facility under Section 250.005 or 250.006.

Sec. 250.004. NOTICE AND OPPORTUNITY FOR ADMINISTRATIVE REVIEW. (a) If the department believes that a conviction may bar a person from employment in a facility under Section 250.005 or 250.006, the department shall notify the facility and applicant.

(b) The notification shall state that the finding of a criminal conviction that may bar employment is a preliminary finding and that the person has the right to object to the accuracy of the report and to object to the finding that the crime is one that bars employment under Section 250.005 or 250.006. If a crime is one that requires the consideration of mitigating factors under Section 250.006, the notification shall also state that the person has the right to submit documentation concerning the misdemeanor classification of the offense, the age of the person when the offense was committed, rehabilitation including employment history in a facility, or mitigating circumstances when the offense was committed. The right to request removal of the bar to employment does not extend to any finding by a court involving abuse, neglect, or mistreatment of a consumer of a facility.

(c) The notification shall state:

(1) that the person may submit a written request, not later than the 20th day after the date the notification is received, for an administrative review of the criminal history report;

(2) the name of the office, including its address, to which the request must be submitted; and

(3) that the failure to request an administrative review will cause the department to designate the person as "unemployable" in the registry, if the person is an applicant for a nurse aide position, and to bar the person from employment in any facility.

(d) On receipt of a timely request, an administrative review shall be provided in accordance with board rules. The review is not subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The review shall be conducted by an administrative review panel consisting of five members and at least two alternates appointed by the board. The panel shall be composed of representatives of the facilities covered by this chapter, a representative of employees of those facilities, and representatives of consumers. The review panel shall consider each application submitted in writing by an applicant to determine if mitigating circumstances existed at the time the crime was committed or whether the applicant has been substantially rehabilitated since that time. The panel's decision shall be made solely from the documentation and other information submitted by the applicant. The department may not be required to make an independent investigation of the applicant's allegations. If the panel finds the documentation submitted by the applicant is insufficient to remove the bar to employment, the panel shall provide the applicant an opportunity to appear personally before the panel and offer further information.

(e) A designation of "unemployable" may not be entered in the registry or a facility may not be notified of unemployability until the person affected has exhausted all appeals available under board rules.

(f) A nurse aide for whom there is a finding of abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property, and who is listed in

the nurse aide registry as “unemployable” as a result of those findings, shall be offered the opportunity of a hearing under board rules. The hearing is not subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon’s Texas Civil Statutes). The hearing may be conducted and decided by a hearing officer designated by the department.

Sec. 250.005. CONVICTIONS BARRING EMPLOYMENT. (a) A person convicted of an offense listed in this section may not be employed in a position the duties of which involve direct contact with a consumer in a facility:

- (1) an offense under Chapter 19, Penal Code (criminal homicide);
- (2) an offense under Chapter 20, Penal Code (kidnapping and false imprisonment);
- (3) an offense under Section 21.11, Penal Code (indecent with a child);
- (4) an offense under Section 25.031, Penal Code (agreement to abduct from custody);
- (5) an offense under Section 25.06, Penal Code (solicitation of a child);
- (6) an offense under Section 25.11, Penal Code (sale or purchase of a child);
- (7) an offense under Section 28.02, Penal Code (arson);
- (8) an offense under Section 29.02, Penal Code (robbery); or
- (9) an offense under Section 29.03, Penal Code (aggravated robbery).

(b) When the proceedings under Section 250.004 are complete, the department shall enter in the nurse aide registry, if the person is an applicant for a nurse aide position, the designation “unemployable” under the name of a person convicted of an offense listed in this section and shall notify the facility that employs the person of the designation.

Sec. 250.006. CONVICTIONS POTENTIALLY BARRING EMPLOYMENT. (a) A person convicted of an offense listed in this section may not be employed in a position the duties of which involve direct contact with a consumer in a facility unless:

(1) the offense for which the person was convicted is punishable as a Class C misdemeanor; or

(2) the department finds through its administrative review process that the person is unlikely to be a threat to the consumers or property of the consumers in a facility.

(b) In making a finding under Subsection (a)(2), the department shall consider the misdemeanor classification of the offense, the age of the person at the time the offense was committed, the length of time since the offense was committed, evidence of rehabilitation including employment history in a facility, or mitigating circumstances when the offense was committed.

(c) A conviction for any of the following offenses may bar employment under this section:

- (1) an offense under Chapter 22, Penal Code (assaultive offenses);
- (2) an offense under Chapter 30, Penal Code (burglary and criminal trespass);
- (3) an offense under Chapter 31, Penal Code (theft);
- (4) an offense under Chapter 46, Penal Code (weapons);
- (5) a felony violation of a statute intended to control the possession or distribution of a substance included in Chapter 481, Government Code (Texas Controlled Substances Act);
- (6) an offense under Chapter 32, Penal Code (fraud);
- (7) an offense under Section 21.07, Penal Code (public lewdness);
- (8) an offense under Section 21.08, Penal Code (indecent exposure); or
- (9) an offense under Chapter 43, Penal Code (public indecency).

(d) Except as provided by Subsection (a), and when the proceedings under Section 250.004 are completed, the department shall enter in the nurse aide registry, if the person is an applicant for a nurse aide position, the designation “unemployable” under the name of a person found to have been convicted of an offense listed in this section and shall notify the facility that employs the person of the designation.

(e) If the department finds that a person is unlikely to be a threat as provided by Subsection (a)(2), the department shall note in the nurse aide registry that the person’s conviction has been reviewed and excepted from the bar to employment.

Sec. 250.007. RECORDS PRIVILEGED. (a) The criminal history records are for the exclusive use of the department and the requesting facility.

(b) All criminal records and reports and the information they contain that are received by the department are privileged information and are for the exclusive use of the department.

(c) The criminal records and reports and the information they contain may not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the person being investigated.

Sec. 250.008. CRIMINAL PENALTY. (a) A person commits an offense if the person releases or otherwise discloses any information received under this chapter except as prescribed by Section 250.007(b) or (c).

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

Sec. 250.009. CIVIL LIABILITY. A facility or an officer or employee of a facility is not civilly liable for failure to comply with this chapter if the facility makes a good faith effort to comply.

SECTION 26. Section 222.042, Health and Safety Code, is amended to read as follows:

Sec. 222.042. LICENSING OF ICF-MR BEDS AND FACILITIES. The department may not license or approve as meeting licensing standards new ICF-MR beds or the expansion of an existing ICF-MR facility unless[:

~~(1) the new beds or the expansion was included in the plan approved by the Health and Human Services Commission in accordance with Section 533.062 [Interagency Council on ICF-MR Facilities in accordance with Section 2.43, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes); and~~

~~(2) the Texas Department of Mental Health and Mental Retardation has approved the beds or the expansion for certification in accordance with Section 2.44, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes)].~~

SECTION 27. Section 533.062, Health and Safety Code, is amended to read as follows:

Sec. 533.062. PLAN ON LONG-TERM CARE FOR PERSONS WITH MENTAL RETARDATION [ICF-MR FACILITIES]. (a) The department shall biennially develop a proposed [annually] plan on long-term care for persons with mental retardation [for the creation of new beds in the ICF-MR program].

(b) The proposed plan must specify the capacity of the HCS waiver program for persons with mental retardation and the number and levels of new ICF-MR beds to be authorized [created] in each region. In developing the proposed plan, the department shall consider:

(1) the needs of the population to be served;

(2) ~~projected appropriation amounts for the biennium [the resources of the governmental entities responsible for providing services]; and~~

(3) the requirements of applicable federal law.

(c) Each proposed plan shall cover the subsequent fiscal biennium [year]. The department shall conduct a public hearing on the proposed plan. Not later than July 1 of each even-numbered year, the department shall submit the plan to the Health and Human Services Commission [Interagency Council on ICF-MR Facilities] for approval.

(d) ~~The Health and Human Services Commission may modify the proposed plan as necessary before its final approval. In determining the appropriate number of ICF-MR facilities for persons with a related condition, the department and the Health and Human Services Commission shall consult with the Texas Department of Human Services [The board by rule shall adopt the plan approved by the Interagency Council on ICF-MR Facilities].~~

(e) ~~The Health and Human Services Commission shall submit the proposed plan as part of the consolidated health and human services budget recommendation required under Section 13, Article 44.13(502), Revised Statutes [The department may submit to the Interagency Council on ICF-MR Facilities proposed amendments to a plan in operation that the department considers necessary].~~

(f) After legislative action on the appropriation for long-term care services for persons with mental retardation, the Health and Human Services Commission shall adjust the plan to ensure that the number of ICF-MR beds licensed or approved as meeting license requirements and the capacity of the HCS waiver program are within appropriated funding amounts.

(g) After any necessary adjustments, the Health and Human Services Commission shall approve the final biennial plan and publish the plan in the Texas Register.

(h) The department may submit proposed amendments to the plan to the Health and Human Services Commission.

(i) In this section, "HCS waiver program" means services under the state Medicaid home and community-based services waiver program for persons with mental retardation adopted in accordance with 42 U.S.C. Section 1396n(c).

SECTION 28. Section 402.0211(e), Government Code, is amended to read as follows:

(e) This section does not apply to:

- (1) the governor's office;
- (2) an institution of higher education, as defined by Section 61.003, Education Code;
- (3) an agency expressly authorized by the General Appropriations Act or other statute to hire or select legal counsel;
- (4) an agency governed by one or more elected officials;
- (5) an agency with a director appointed by the governor;
- (6) the Central Education Agency;
- (7) the Department of Public Safety;
- (8) the Employees Retirement System of Texas or the Teacher Retirement System of Texas;
- (9) the Parks and Wildlife Department;
- (10) the State Board of Insurance;
- (11) the ~~Texas [State Highway and Public] Transportation Commission~~ or the ~~Texas [State] Department of [Highways and Public] Transportation~~;
- (12) the Texas Department of Criminal Justice;
- (13) the Texas Employment Commission;
- (14) the Texas Higher Education Coordinating Board;
- (15) the Texas Natural Resource Conservation Commission;
- (16) the Texas Workers' Compensation Commission; ~~or~~
- (17) the Texas Youth Commission; or
- (18) the health and human services agencies listed by Section 19, Article 4413(502), Revised Statutes.

SECTION 29. Chapter 22, Human Resources Code, is amended by adding Section 22.0065 to read as follows:

Sec. 22.0065. ACCESS TO OTHER CRIMINAL HISTORY INFORMATION RECORDS.

(a) Subject to the availability of funds appropriated by the legislature, the department is entitled to obtain criminal history information records maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, or another law enforcement agency to investigate:

- (1) an adult who lives with a person who provides or applies to provide adoptive or foster care for a child in the care of the department if the person lives or will live in the residence in which the child will reside;
- (2) a department employee who is engaged in the direct delivery of protective services to an elderly person or a person with a disability;
- (3) a person who applies for a position with the department the duties of which include direct delivery of protective services to an elderly person or a person with a disability;

(4) a person who is the subject of a report the department receives alleging that the person has abused or neglected a child; or

(5) a relative providing or applying to provide in-home care for a child in the care of the department and other adults living with that relative in the residence in which the child will reside.

(b) The provisions of Section 22.006 apply to criminal history information records requested or received by the department under this section.

SECTION 30. Sections 73.002(a), (b), (g), and (h), Human Resources Code, are amended to read as follows:

(a) The council is composed of ~~three~~ ~~[one]~~ lay members ~~[member]~~ who are ~~[is]~~ the parents ~~[parent]~~ of ~~[a]~~ developmentally delayed children ~~[child]~~ and one representative each from the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, ~~[and]~~ the Central Education Agency, the Department of Protective and Regulatory Services, and the Texas Commission on Alcohol and Drug Abuse. The governor with the advice and consent of the senate shall appoint the lay members ~~[member]~~, and the commissioner, ~~director, or executive director~~ of each agency shall appoint that agency's representative. The agency representative should be a person in the agency with administrative responsibility for the supervision of early childhood intervention support staff or related services.

(b) ~~Members of the council serve for staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year. If a member appointed by a state agency terminates employment with the agency, the member's position becomes vacant on the date of termination [A member appointed by an agency serves for a term of two years or until the person terminates employment with the agency, whichever occurs first. The member appointed by the governor serves for a term of two years expiring February 1 of every odd-numbered year].~~

(g) ~~[The council shall direct the Texas Department of Health to allocate funds appropriated to the Texas Department of Health under this chapter to each agency that assumes implementation responsibilities.~~

~~[(h)]~~ The council shall develop a method for programs funded under this chapter to respond to individual complaints regarding services provided by the program.

SECTION 31. Section 73.006, Human Resources Code, is amended to read as follows:

Sec. 73.006. REIMBURSEMENT AND STAFF SUPPORT. (a) Agency representatives on the council are entitled to reimbursement for expenses incurred in the performance of their council duties by the appointing agencies in accordance with the travel provisions for state employees in the General Appropriations Act. The lay members described by Section 73.002(a) ~~[member]~~ and advisory committee members are entitled to reimbursement from the council for actual and necessary expenses incurred in the performance of council duties, including reimbursement for child care or attendant care.

(b) The agencies represented on the council shall provide staff support to the council. The agencies may provide staff support to the committee.

(c) The council shall select ~~and employ~~ an early childhood intervention administrator ~~and other personnel necessary for the administration of the council's duties [and shall direct the Texas Department of Health to employ that person].~~

SECTION 32. Sections 73.009(a) and (b), Human Resources Code, are amended to read as follows:

(a) The council shall establish policies ~~concerning [to provide direction to the Texas Department of Health in performing the]~~ services described by this section. A child under six years of age may be referred ~~[to the Texas Department of Health]~~ for services described by this section if the child is:

- (1) identified as developmentally delayed;
- (2) suspected of being developmentally delayed; or
- (3) considered at risk of developmental delay because of certain biological or environmental factors.

(b) For each child referred, the *council* [~~Texas Department of Health~~] shall:

(1) seek appropriate medical or developmental screening or evaluation and if such screening services or evaluation services are not available, the *council* [~~Texas Department of Health~~] shall provide those services either directly or by contract; and

(2) refer the child to a public or private program that can meet the child's needs.

SECTION 33. Section 73.010(b), Human Resources Code, is amended to read as follows:

(b) The *council* [~~Texas Department of Health~~] may charge fees for services provided under this chapter.

SECTION 34. Section 73.011, Human Resources Code, is amended to read as follows:

Sec. 73.011. PARENT COUNSELING AND CASE MANAGEMENT. (a) The council shall establish policies [~~to provide direction to the Texas Department of Health~~] concerning the services described by this section. For an eligible developmentally delayed child, the *council* [~~Texas Department of Health~~] shall provide parent counseling and case management services designed to:

(1) assist in the development of positive attitudes and coping skills;

(2) provide objective information about alternatives for securing direct services for the child;

(3) actively involve the case manager in procuring needed services on the parent's behalf;

(4) actively involve the case manager in responding to complaints about services procured through this process; and

(5) facilitate communication among providers serving the child, including the primary physician.

(b) The services shall be provided before a child is placed in an appropriate program. If the child is placed in a program that meets the standards established by Section 73.019 [~~of this code~~], that program shall assume responsibility for providing parent counseling and case management services following placement. If the child is not placed in such a program, the *council* [~~Texas Department of Health~~] shall continue to provide those services.

SECTION 35. Section 73.012, Human Resources Code, is amended to read as follows:

Sec. 73.012. MONITORING. (a) The council shall develop policies to [~~provide direction to the Texas Department of Health in implementing a system to~~] ensure that the overall progress of an eligible developmentally delayed child who receives services under this chapter is monitored until the child enters the public school system, including the monitoring of the parental counseling and case management services.

(b) Periodic reevaluations shall be obtained as the *council* [~~Texas Department of Health~~] considers necessary. If an original placement no longer meets the child's needs, the *council* [~~Texas Department of Health~~] shall provide additional referrals.

SECTION 36. Sections 73.013(a) and (c), Human Resources Code, are amended to read as follows:

(a) The council shall develop policies for [~~to provide direction to the Texas Department of Health in~~] providing intervention services to an eligible developmentally delayed child if the *council* [~~Texas Department of Health~~] is not able to place the child in a program that meets the standards established by Section 73.019 [~~of this code~~].

(c) The *council* [~~Texas Department of Health~~] may either directly provide the services needed to comply with the requirements of this section or contract for the provision of the services.

SECTION 37. Sections 73.014 and 73.015, Human Resources Code, are amended to read as follows:

Sec. 73.014. REPORT. The agencies represented on the council and the lay *members* [~~member~~] shall report to the council any needs that are identified for the provision of early childhood intervention services.

Sec. 73.015. NEW PROGRAM STRATEGY. The council shall develop a strategy for establishing new programs to meet needs identified by the agencies represented on the council and the lay *members* [~~member~~] in accordance with Section 73.014 [~~of this code~~].

SECTION 38. Sections 73.018(a) and (b), Human Resources Code, are amended to read as follows:

(a) For each grant approved by the council, the council shall ~~[direct the Texas Department of Health to]~~ allocate appropriated funds for the program to the service provider in the amount specified by the council.

(b) The council shall require the service provider to execute a contract with the *council* ~~[Texas Department of Health]~~ specifying the program standards and council guidelines that the provider has agreed to meet.

SECTION 39. Section 73.019, Human Resources Code, is amended to read as follows:

Sec. 73.019. PROGRAM STANDARDS. Before a grant request for a new program may be approved, a service provider must agree to meet the following program standards:

- (1) the program must be maintained within the guidelines established by the council;
- (2) the provider must ensure that for each child served an individualized developmental plan is developed and is based on a comprehensive developmental evaluation performed by an interdisciplinary team with parent participation and periodic review and reevaluation;
- (3) the provider must provide services to meet the unique needs of each child as indicated by the child's individualized developmental plan;
- (4) the provider must demonstrate a capability to obtain or provide an array of services that must include:

(A) training, counseling, case management services, and home visits for the parents of each child served;

(B) instruction or treatment based on an individualized plan in the following areas of development: cognitive, gross or fine motor, language or speech, social or emotional, and self-help skills; and

(C) related services, including occupational therapy, physical therapy, speech and language therapy, adaptive equipment, transportation, and other therapies as needed or prescribed;

(5) the provider must maintain a plan for in-service personnel training;

(6) the provider must cooperate with the *council's* ~~[Texas Department of Health's]~~ monitoring and case management efforts;

(7) the provider must cooperate with the periodic evaluation efforts of the council; and

(8) the provider must develop an approved method to respond to individual complaints regarding services provided by a program funded under this chapter in accordance with rules adopted by the council.

SECTION 40. Section 73.021(b), Human Resources Code, is amended to read as follows:

(b) If the council determines that a program is not meeting a requirement that was agreed on as a condition for funding, the council shall ~~[notify the Texas Department of Health to]~~ withhold further funding for the program. If the *council* ~~[Texas Department of Health]~~ discovers gross mismanagement of a program, the *council* ~~[department]~~ may withhold further funding for the program ~~[without obtaining the council's prior approval]~~.

SECTION 41. Sections 34.22(b) and (c), Family Code, are amended to read as follows:

(b) Each state agency shall notify the *Department of Protective and Regulatory Services* ~~[Office of Youth Care Investigations]~~ of each report of abuse or neglect it receives under this subchapter relating to abuse or neglect in a facility operated by the agency *according to rules adopted by the department*.

(c) Each state agency shall adopt rules relating to the investigation and resolution of reports received under this subchapter. The *Health and Human Services Commission* ~~[Office of Youth Care Investigations]~~ shall review and approve such rules to ensure that all agencies implement appropriate standards for the conduct of investigations and that uniformity exists among agencies in the investigation and resolution of reports.

SECTION 42. Section 34.23, Family Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) If the investigation relates to a report of abuse or neglect in a facility operated by a state agency, the agency shall submit a copy of the report to the *Department of Protective and Regulatory Services* [~~Office of Youth Care Investigations~~].

(d) *A state agency that licenses, certifies, or registers a facility in which children are located shall compile, maintain, and make available statistics on the incidence of child abuse and neglect in a facility the agency licenses, regulates, or certifies. The Department of Protective and Regulatory Services shall compile, maintain, and make available statistics on the incidence of child abuse and neglect in a facility operated by a state agency.*

SECTION 43. Section 34.24, Family Code, is amended to read as follows:

Sec. 34.24. COMPLAINTS. (a) If a state agency receives a complaint relating to an investigation conducted by the agency *concerning a facility operated by that agency in which children are located*, the agency shall refer the complaint to its board [~~the Office of Youth Care Investigations~~].

(b) *The board of a state agency that operates a facility in which children are located shall ensure that the procedure for investigating abuse and neglect allegations and inquiries in the agency's facility is periodically reviewed under the agency's internal audit program required by the Texas Internal Auditing Act (Article 6252-5d, Vernon's Texas Civil Statutes).*

SECTION 44. Section 5.341(b), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) In this section, "health and human service agency" means the:

- (1) Interagency Council on Early Childhood Intervention Services;
- (2) Texas Department on Aging;
- (3) Texas Commission on Alcohol and Drug Abuse;
- (4) Texas Commission for the Blind;
- (5) Texas Commission for the Deaf and Hearing Impaired;
- (6) Texas Department of Health;
- (7) Texas Department of Human Services;
- (8) Texas Juvenile Probation Commission;
- (9) Texas Department of Mental Health and Mental Retardation;
- (10) Texas Rehabilitation Commission; and
- (11) *Department of Protective and Regulatory Services* [~~Texas Youth Commission~~].

SECTION 45. Section 6.031(b), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) In this section, "health and human service agency" means the:

- (1) Interagency Council on Early Childhood Intervention Services;
- (2) Texas Department on Aging;
- (3) Texas Commission on Alcohol and Drug Abuse;
- (4) Texas Commission for the Blind;
- (5) Texas Commission for the Deaf and Hearing Impaired;
- (6) Texas Department of Health;
- (7) Texas Department of Human Services;
- (8) Texas Juvenile Probation Commission;
- (9) Texas Department of Mental Health and Mental Retardation;
- (10) Texas Rehabilitation Commission; and
- (11) *Department of Protective and Regulatory Services* [~~Texas Youth Commission~~].

SECTION 46. Section 2, Texas Nursing Home Administrators Licensure Act (Article 4442d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. DEFINITIONS. For the purposes of this Act and as used herein:

(1) "board" means the "Texas Board of Licensure for Nursing Home Administrators";

(2) "nursing home administrator" means the person who administers, manages, supervises, or is in general administrative charge of a nursing home, irrespective of whether or not such individual has an ownership interest in such home, and whether or not his functions and duties are shared with one or more other persons;

(3) "nursing home" means any institution or facility [~~now or hereafter~~] licensed as a "nursing home" or "custodial care home" [~~by the Texas State Department of Public Health~~] under the provisions of Chapter 242, Health and Safety Code;

(4) "practice of nursing home administration" means the performance of acts by any person which amounts to the administration, management, supervision, and general administrative charge of a nursing home, whether or not such functions and duties are shared with one or more individuals.

SECTION 47. Section 3(c), Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The board shall issue a barber shop permit to an applicant who holds a valid class A barber license and whose shop meets the minimum health standards for barber shops as promulgated by the *Texas* [State] Department of [Public] Health and all rules and regulations of the board.

SECTION 48. (a) In this section:

(1) "Department" means the Texas Department of Human Services or its successor in function.

(2) "Medical assistance" means the medical assistance program administered under Chapter 32, Human Resources Code.

(b) The department by rule shall establish a pilot program to provide for a telephone health care system for persons currently receiving medical assistance during the 1994-95 biennium. The purpose of the program is to study the efficiency and cost-effectiveness of a telephone-based health care system.

(c) The scope and size of the pilot may be in part determined by the availability of funds. The department may encourage private and public entities to participate in the program.

(d) During the time the pilot program is operating, the state auditor shall conduct quarterly reviews and assessments of the program.

(e) The department shall report to the 74th Legislature not later than February 1, 1995, concerning the efficiency and cost-effectiveness of the pilot program.

(f) If before implementing Subsection (b) of this section, the department determines that a waiver or authorization from a federal agency is necessary for implementation, the department shall request the waiver or authorization and may delay implementing those provisions until the waiver or authorization is granted.

SECTION 49. (a) DEFINITION. In this section, "department" means the Texas Department of Mental Health and Mental Retardation.

(b) APPLICATION OF SECTION. (1) This section applies to an individual employed by the department at a state school scheduled for closure under the settlement of the *Lelsz v. Kavanagh* litigation who continues employment at the school for as long as needed to deliver services.

(2) This section does not apply to an individual:

(A) who is not a regular department employee at the facility campus;

(B) who leaves a position at the facility before the date on which the employee's services are not needed, unless the individual leaves to accept a position under Subsection (c) of this section; or

(C) whose employment is terminated because of an act or omission of the individual constituting good cause for employment termination.

(c) ENTITLEMENT. (1) An employee covered by this section is entitled to:

(A) a comparable position at another department facility; or

(B) payment for:

- (i) two months' administrative leave; and
- (ii) one week of leave for each full year of service with the department.

(2) Payment under Paragraph (B) of Subdivision (1) of this subsection shall be computed at the employee's salary rate on the date on which the employee's services are no longer needed.

(3) An individual who accepts a position with the department under this section is also entitled to:

(A) reimbursement of travel expenses and leave with full pay to visit prospective job sites within the department during the movement period designated by the department; and

(B) reimbursement for moving expenses actually incurred in transferring to the new facility during the movement period, but not to exceed \$1,500.

SECTION 50. This Act does not affect the transfer to the Health and Human Services Commission of the powers and duties of a state agency that formerly exercised jurisdiction over an activity transferred to the commission under Chapter 15, Acts of the 72nd Legislature, 1st Called Session, 1991.

SECTION 51. (a) On September 1, 1993, all functions, programs, activities, funds, obligations, contracts, property, and records related to the Services for Runaways and At-Risk Youth program are transferred from the Texas Department of Human Services to the Department of Protective and Regulatory Services.

(b) A rule or form adopted by the Texas Department of Human Services for the Services for Runaways and At-Risk Youth program that relates to a function, program, or activity transferred by this Act from the Texas Department of Human Services to the Department of Protective and Regulatory Services is a rule or form of the Department of Protective and Regulatory Services and remains in effect until altered by that department.

SECTION 52. In accordance with Section 104.0115, Health and Safety Code, as added by this Act, the governor shall appoint five members of the statewide health coordinating council to terms expiring August 31, 1995, five members to terms expiring August 31, 1997, and five members to terms expiring August 31, 1999.

SECTION 53. (a) Except as provided by Subsection (b) of this section, the state agency exercising the powers and duties relating to investigations of abuse and neglect in long-term care facilities on September 1, 1993, shall exercise the powers and duties assigned to the Texas Department of Health under Chapter 250, Health and Safety Code, as added by this Act.

(b) If a facility listed in Section 250.001, Health and Safety Code, as added by this Act, is not regulated by the state agency exercising the powers and duties relating to investigations of abuse and neglect in long-term care facilities on September 1, 1993, the agency that regulates that facility shall exercise the powers and duties assigned to the Texas Department of Health under Chapter 250, Health and Safety Code, as added by this Act, for that facility.

SECTION 54. (a) All records, personnel, property, and unobligated and unexpended appropriations of the Interagency Council on Early Childhood Intervention Services are transferred from the Texas Department of Health to the council.

(b) Any rule of the Texas Department of Health regarding the council or its functions that exists at the time this Act takes effect is continued in effect until superseded by a rule of the council.

(c) A person who is serving a term as a member of the advisory committee at the time this Act takes effect is entitled to serve for the remainder of the term for which the person was appointed.

(d) The terms of all members of the council expire February 1, 1995. At that time, in accordance with Section 73.002(b), Human Resources Code, as amended by this Act, the governor shall appoint one lay member to a term expiring February 1, 1997, one lay member to a term expiring February 1, 1999, and one lay member to a term expiring February 1, 2001. At that time, in accordance with Section 73.002(b), Human Resources Code, as amended by this Act:

(1) the Central Education Agency and the Department of Protective and Regulatory Services shall appoint their respective members to serve terms expiring February 1, 1997;

(2) the Texas Department of Health and the Texas Commission on Alcohol and Drug Abuse shall appoint their respective members to serve terms expiring February 1, 1999; and

(3) the Texas Department of Human Services and the Texas Department of Mental Health and Mental Retardation shall appoint their respective members to serve terms expiring February 1, 2001.

SECTION 55. (a) The Office of Youth Care Investigations established by Subchapter B, Chapter 34, Family Code, is abolished.

(b) Sections 34.21 and 34.25, Family Code, are repealed.

SECTION 56. (a) On September 1, 1993, all functions, programs, activities, funds, obligations, contracts, property, and records related to the Office of Youth Care Investigations are transferred to the Department of Protective and Regulatory Services.

(b) A rule or form adopted by the Office of Youth Care Investigations that relates to a function, program, or activity transferred by this Act to the Department of Protective and Regulatory Services is a rule or form of the Department of Protective and Regulatory Services and remains in effect until altered by the department.

SECTION 57. Section 533.061, Health and Safety Code, is repealed.

SECTION 58. (a) Not later than October 1, 1993, the Texas Department of Mental Health and Mental Retardation shall submit to the Health and Human Services Commission the proposed plan for the 1994–1995 biennium as required by Section 533.062, Health and Safety Code, as amended by this Act.

(b) In addition to the changes in law made by this Act relating to the provision of services to persons with mental retardation, this Act conforms certain provisions of the Health and Safety Code relating to the provision of those services to changes in the law made by Section 1, Chapter 248, Acts of the 72nd Legislature, Regular Session, 1991.

(c) Section 1, Chapter 248, Acts of the 72nd Legislature, Regular Session, 1991, is repealed.

(d) Sections 26 and 27 of this Act do not affect the transfer of powers, duties, rights, and obligations of the Texas Department of Health to the Texas Department of Human Services or another agency as prescribed by Section 1.11, Chapter 15, Acts of the 72nd Legislature, 1st Called Session, 1991, or by any other law.

SECTION 59. (a) Chapter 107, Health and Safety Code, and Chapter 136, Human Resources Code, are repealed.

(b) On the effective date of this Act, all records, property, and equipment in the possession of the Council on Minority Health Affairs shall be transferred to the office of minority health.

(c) The office of minority health shall use all paper and forms transferred from the Council on Minority Health Affairs before ordering or purchasing new paper and forms.

SECTION 60. A reference in Chapter 34, Family Code, to the Texas Department of Human Services is a reference to the Department of Protective and Regulatory Services.

SECTION 61. The following are repealed:

(1) Section 1.16, Chapter 15, Acts of the 72nd Legislature, 1st Called Session, 1991;

(2) Article 4413(504), Revised Statutes;

(3) Section 22.001(e), Human Resources Code;

(4) Section 52.002, Human Resources Code; and

(5) Chapter 106, Human Resources Code.

SECTION 62. This Act takes effect September 1, 1993.

SECTION 63. 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 6, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 1510 on May 27, 1993: Yeas 128, Nays 7, 2

present, not voting; passed by the Senate, with amendments, on May 22, 1993, by a viva-voce vote.

Approved June 8, 1993.

Effective Sept. 1, 1993.