CHAPTER 705

S.B. No. 205

AN ACT

relating to the regulation of the provision of services to persons with certain disabilities or in need of counseling in a crisis or an emergency; creating offenses and providing civil, administrative, and criminal penalties.

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

ARTICLE 1

SECTION 1.01. Title 4, Health and Safety Code, is amended by adding Subtitle G to read as follows:

SUBTITLE G. PROVISION OF SERVICES IN CERTAIN FACILITIES

CHAPTER 321. PROVISION OF MENTAL HEALTH, CHEMICAL DEPENDENCY, AND REHABILITATION SERVICES

Sec. 321.001. DEFINITIONS. In this chapter:

(1) "Comprehensive medical rehabilitation" means the provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

(2) "Hospital" has the meaning assigned by Section 241.003.

(3) "License" means a state agency permit, certificate, approval, registration, or other form of permission required by state law.

(4) "Mental health facility" has the meaning assigned by Section 571.003.

(5) "State health care regulatory agency" means a state agency that licenses a health care professional.

(6) "Treatment facility" has the meaning assigned by Section 464.001.

Sec. 321.002. BILL OF RIGHTS. (a) The Texas Board of Mental Health and Mental Retardation, Texas Board of Health, and Texas Commission on Alcohol and Drug Abuse by rule shall each adopt a "patient's bill of rights" that includes the applicable rights included in this chapter, Subtitle C of Title 7, Chapters 241, 462, 464, and 466, and any other provisions the agencies consider necessary to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services in an inpatient facility. In addition, each agency shall adopt rules that:

(1) provide standards to prevent the admission of a minor to a facility for treatment of a condition that is not generally recognized as responsive to treatment in an inpatient treatment setting; and

(2) prescribe the procedure for presenting the applicable bill of rights and obtaining each necessary signature if:

(A) the patient cannot comprehend the information because of illness, age, or other factors; or

(B) an emergency exists that precludes immediate presentation of the information.

(b) The Board of Protective and Regulatory Services by rule shall adopt a "children's bill of rights" for a minor receiving treatment in a child-care facility for an emotional, mental health, or chemical dependency problem.

(c) A "bill of rights" adopted under this section must specifically address the rights of minors and provide that a minor is entitled to:

(1) appropriate treatment in the least restrictive setting available;

(2) not receive unnecessary or excessive medication;

(3) an individualized treatment plan and to participate in the development of the plan; and

(4) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

(d) Rules adopted under this section shall provide for:

(1) treatment of minors by persons who have specialized education and training in the emotional, mental health, and chemical dependency problems and treatment of minors;

(2) separation of minor patients from adult patients; and

(3) regular communication between a minor patient and the patient's family, subject only to a restriction in accordance with Section 576.006.

(e) The Texas Board of Health, Texas Board of Mental Health and Mental Retardation, Texas Commission on Alcohol and Drug Abuse, and Board of Protective and Regulatory Services shall consult each other for assistance in adopting rules under this section.

(f) Before a facility may admit a patient for inpatient mental health, chemical dependency, or comprehensive medical rehabilitation services, or before a child-care facility may accept a minor for treatment, the facility shall provide to the person and, if appropriate, to the person's parent, managing conservator, or guardian, a written copy of the applicable "bill of rights" adopted under this section. The facility shall provide the written copies in the person's primary language, if possible. In addition, the facility shall ensure that, within 24 hours after the person is admitted to the facility, the rights specified in the written copy are explained to the person and, if appropriate, to the person's parent, managing conservator, or guardian:

(1) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a person who has an impairment of vision or hearing, if applicable.

(g) The facility shall ensure that:

(1) each patient admitted for inpatient mental health, chemical dependency, or comprehensive rehabilitation services and each minor admitted for treatment in a child-care facility and, if appropriate, the person's parent, managing conservator, or guardian signs a copy of the document stating that the person has read the document and understands the rights specified in the document; and

(2) the signed copy is made a part of the person's clinical record.

(h) A facility shall prominently and conspicuously post a copy of the "bill of rights" for display in a public area of the facility that is readily available to patients, residents, employees, and visitors. The "bill of rights" must be in English and in a second language.

Sec. 321.003. SUIT FOR HARM RESULTING FROM VIOLATION. (a) A treatment facility or mental health facility that violates a provision of, or a rule adopted under, this chapter, Subtitle C of Title 7, or Chapter 241, 462, 464, or 466 is liable to a person receiving care or treatment in or from the facility who is harmed as a result of the violation.

(b) A person who has been harmed by a violation may sue for injunctive relief, damages, or both.

(c) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(d) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(e) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff received care or treatment; or

(2) the defendant conducts business.

(f) A person harmed by a violation must bring suit not later than the second anniversary of the date on which the person's injury is discovered, except that a minor whose injury is discovered before the minor's 18th birthday may bring suit at any time before the minor's 20th birthday.

(g) This section does not supersede or abrogate any other remedy existing in law.

Sec. 321.004. PENALTIES. In addition to the penalties prescribed by this chapter, a violation of a provision of this chapter by an individual or facility that is licensed by a state health care regulatory agency is subject to the same consequence as a violation of the licensing law applicable to the individual or facility or of a rule adopted under that licensing law.

SECTION 1.02. The changes in law made by this article apply only to a cause of action that accrues on or after the effective date of this article. A cause of action that accrues before the effective date of this article is governed by the law in effect on the date the cause of action accrues, and that law is continued in effect for this purpose.

ARTICLE 2

SECTION 2.01. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 164 to read as follows:

CHAPTER 164. TREATMENT FACILITIES MARKETING AND ADMISSION PRACTICES

Sec. 164.001. SHORT TITLE. This chapter may be cited as the Treatment Facilities Marketing Practices Act.

Sec. 164.002. LEGISLATIVE PURPOSE. The purpose of this chapter is to safeguard the public against fraud, deceit, and misleading marketing practices and to foster and encourage competition and fair dealing by mental health facilities and chemical dependency treatment facilities by prohibiting or restricting practices by which the public has been injured in connection with the marketing and advertising of mental health services and the admission of patients. Nothing in this chapter should be construed to prohibit a mental health facility from advertising its services in a general way or promoting its specialized services. However, the public should be able to distinguish between the marketing activities of the facility and its clinical functions.

Sec. 164.003. DEFINITIONS. In this chapter:

(1) "Advertising" or "advertise" means a solicitation or inducement, through print or electronic media, including radio, television, or direct mail, to purchase the services provided by a treatment facility.

(2) "Chemical dependency" has the meaning assigned by Section 462.001.

(3) "Chemical dependency facility" means a treatment facility as that term is defined by Section 462.001.

(4) "Intervention and assessment service" means a service that offers assessment, counseling, evaluation, intervention, or referral services or makes treatment recommendations to an individual with respect to mental illness or chemical dependency.

(5) "Mental health facility" means:

(A) a "mental health facility" as defined by Section 571.003;

(B) a residential treatment facility, other than a mental health facility, in which persons are treated for emotional problems or disorders in a 24-hour supervised living environment; and

(C) an adult day-care facility or adult day health care facility as defined by Section 103.003, Human Resources Code.

(6) "Mental health professional" means a:

(A) "physician" as defined by Section 571.003;

(B) "licensed professional counselor" as defined by Section 2, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes);

(C) "chemical dependency counselor" as defined by Section 1, Chapter 635, Acts of the 72nd Legislature, Regular Session, 1991 (Article 4512o, Vernon's Texas Civil Statutes);

(D) "psychologist" offering "psychological services" as defined by Section 2, Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes);

(E) "registered nurse" licensed under Chapter 7, Title 71, Revised Statutes;

(F) "licensed vocational nurse" as defined by Section 1, Article 4528c, Revised Statutes;

(G) "licensed marriage and family therapist" as defined by Section 2, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes); and

(H) "social worker" as defined by Section 50.001(a), Human Resources Code.

(7) "Mental health services" has the meaning assigned by Section 531.002.

(8) "Mental illness" has the meaning assigned by Section 571.003.

(9) "Referral source" means a person who is in a position to refer or who refers a person to a treatment facility. "Referral source" does not include a physician, an insurer, a health maintenance organization (HMO), a preferred provider arrangement (PPA), or other third party payor or discount provider organization (DPO) where the insurer, HMO, PPA, third party payor, or DPO pays in whole or in part for the treatment of mental illness or chemical dependency.

(10) "Treatment facility" means a chemical dependency facility and a mental health facility.

Sec. 164.004. EXEMPTIONS. This chapter does not apply to:

(1) a treatment facility operated by the Texas Department of Mental Health and Mental Retardation, a federal agency, or a political subdivision;

(2) a community center established under Subchapter A, Chapter 534, or a facility operated by a community center; or

(3) a facility owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.

Sec. 164.005. CONDITIONING EMPLOYEE OR AGENT RELATIONSHIPS ON PATIENT REVENUE. A treatment facility may not permit or provide compensation or anything of value to its employees or agents, condition employment or continued employment of its employees or agents, set its employee or agent performance standards, or condition its employee or agent evaluations, based on:

(1) the number of patient admissions resulting from an employee's or agent's efforts;

(2) the number or frequency of telephone calls or other contacts with referral sources or patients if the purpose of the telephone calls or contacts is to solicit patients for the treatment facility; or

(3) the existence of or volume of determinations made respecting the length of patient stay.

Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN REFERRAL SOURCES. A treatment facility or a person employed or under contract with a treatment facility, if acting on behalf of the treatment facility, may not:

(1) contact a referral source or potential client for the purpose of soliciting, directly or indirectly, a referral of a patient to the treatment facility without disclosing its soliciting agent's, employee's, or contractor's affiliation with the treatment facility;

(2) offer to provide or provide mental health or chemical dependency services to a public or private school in this state, on a part-time or full-time basis, the services of any of its employees or agents who make, or are in a position to make, a referral, if the services are provided on an individual basis to individual students or their families. Nothing herein prohibits a treatment facility from:

(A) offering or providing educational programs in group settings to public schools in this state if the affiliation between the educational program and the treatment facility is disclosed; or

(B) providing counseling services to a public school in this state in an emergency or crisis situation if the services are provided in response to a specific request by a school; provided that, under no circumstances may a student be referred to the treatment facility offering the services;

(3) provide to an entity of state or local government, on a part-time or full-time basis, the mental health or chemical dependency services of any of its employees, agents, or contractors who make or are in a position to make referrals unless:

(A) the treatment facility discloses to the governing authority of the entity:

(i) the employee's, agent's, or contractor's relationship to the facility; and

(ii) the fact that the employee, agent, or contractor might make a referral, if permitted, to the facility; and

(B) the employee, agent, or contractor makes a referral only if:

(i) the treatment facility obtains the governing authority's authorization in writing for the employee, agent, or contractor to make the referrals; and

(ii) the employee, agent, or contractor discloses to the prospective patient the employee's, agent's, or contractor's relationship to the facility at initial contact; or

(4) in relation to intervention and assessment services, contract with, offer to remunerate, or remunerate a person who operates an intervention and assessment service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the intervention and assessment service is:

(A) operated by a community mental health and mental retardation center funded by the Texas Department of Mental Health and Mental Retardation;

(B) operated by a county or regional medical society;

(C) a qualified mental health referral service as defined by Section 164.007; or

(D) owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.

Sec. 164.007. QUALIFIED MENTAL HEALTH REFERRAL SERVICE: DEFINITION AND STANDARDS. (a) A qualified mental health referral service means a service that conforms to all of the following standards:

(1) the referral service does not exclude as a participant in the referral service an individual who meets the qualifications for participation and qualifications for participation cannot be based in whole or in part on an individual's or entity's affiliation or nonaffiliation with other participants in the referral service;

(2) a payment the participant makes to the referral service is assessed equally against and collected equally from all participants, and is only based on the cost of operating the referral service and not on the volume or value of any referrals to or business otherwise generated by the participants of the referral service;

(3) the referral service imposes no requirements on the manner in which the participant provides services to a referred person, except that the referral service may require that the participant charge the person referred at the same rate as it charges other persons not referred by the referral service, or that these services be furnished free of charge or at a reduced charge;

(4) a referral made to a mental health professional or chemical dependency treatment facility is made only in accordance with Subdivision (1) and the referral service does not make referrals to mental health facilities other than facilities maintained or operated by the Texas Department of Mental Health and Mental Retardation, community mental health and mental retardation centers, or other political subdivisions, provided that a physician may make a referral directly to any mental health facility;

(5) the referral service is staffed by appropriately licensed and trained mental health professionals and a person who makes assessments for the need for treatment of mental illness or chemical dependency is a mental health professional as defined by this chapter;

(6) in response to each inquiry or after personal assessment, the referral service makes referrals, on a clinically appropriate, rotational basis, to at least three mental health professionals or chemical dependency treatment facilities whose practice addresses or facilities are located in the county of residence of the person seeking the referral or assessment, but if there are not three providers in the inquirer's county of residence, the referral service may include additional providers from other counties nearest the inquirer's county of residence;

(7) no information that identifies the person seeking a referral, such as name, address, or telephone number, is used, maintained, distributed, or provided for a purpose other than making the requested referral or for administrative functions necessary to operating the referral service;

(8) the referral service makes the following disclosures to each person seeking a referral:

(A) the manner in which the referral service selects the group of providers participating in the referral service;

(B) whether the provider participant has paid a fee to the referral service;

(C) the manner in which the referral service selects a particular provider from its list of provider participants to which to make a referral;

(D) the nature of the relationship or any affiliation between the referral service and the group of provider participants to whom it could make a referral; and

(E) the nature of any restriction that would exclude a provider from continuing as a provider participant;

(9) the referral service maintains each disclosure in a written record certifying that the disclosure has been made and the record certifying that the disclosure has been made is signed by either the person seeking a referral or by the person making the disclosure on behalf of the referral service; and

(10) if the referral service refers callers to a 1-900 telephone number or another telephone number that requires the payment of a toll or fee payable to or collected by the referral service, the referral service discloses the per minute charge.

(b) A qualified mental health referral service may not limit participation by a person for a reason other than:

(1) failure to have a current, valid license without limitation to practice in this state;

(2) failure to maintain professional liability insurance while participating in the service;

(3) a decision by a peer review committee that the person has failed to meet prescribed standards or has not acted in a professional or ethical manner;

(4) termination of the contract between the participant and the qualified mental health referral service by either party under the terms of the contract; or

(5) significant dissatisfaction of consumers that is documented and verifiable.

Sec. 164.008. OPERATING AN INTERVENTION AND ASSESSMENT SERVICE. A treatment facility may not own, operate, manage, or control an intervention and assessment service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the intervention and assessment service:

(1) is a qualified mental health referral service under Section 164.007;

(2) discloses in all advertising the relationship between the treatment facility and the intervention and assessment service; and

(3) discloses to each person contacting the service, at the time of initial contact, the relationship between the treatment facility and the intervention and assessment service.

Sec. 164.009. DISCLOSURES AND REPRESENTATIONS. (a) A treatment facility may not admit a patient to its facilities without fully disclosing to the patient or, if the patient is a minor, the patient's parent, managing conservator, or guardian, in, if possible,

the primary language of the patient, managing conservator, or guardian, as the case may be, the following information in writing before admission:

(1) the treatment facility's estimated average daily charge for inpatient treatment with an explanation that the patient may be billed separately for services provided by mental health professionals;

(2) the name of the attending physician, if the treatment facility is a mental health facility, or the name of the attending mental health professional, if the facility is a chemical dependency facility; and

(3) the current "patient's bill of rights" as adopted by the Texas Department of Mental Health and Mental Retardation, the Texas Commission on Alcohol and Drug Abuse, or the Texas Department of Health that sets out restrictions to the patient's freedom that may be imposed on the patient during the patient's stay in a treatment facility.

(b) A treatment facility may not misrepresent to a patient or the parent, guardian, managing conservator, or spouse of a patient, the availability or amount of insurance coverage available to the prospective patient or the amount and percentage of a charge for which the patient will be responsible.

(c) A treatment facility may not represent to a patient who requests to leave a treatment facility against medical advice that:

(1) the patient will be subject to an involuntary commitment proceeding or subsequent emergency detention unless that representation is made by a physician or on the written instruction of a physician who has evaluated the patient within 48 hours of the representation; or

(2) the patient's insurance company will refuse to pay all or any portion of the medical expenses previously incurred.

(d) A mental health facility may not represent or recommend that a prospective patient should be admitted for inpatient treatment unless the representation is made by a licensed physician or, subsequent to evaluation by a licensed physician, by a mental health professional.

(e) A chemical dependency facility may not represent or recommend that a prospective patient should be admitted to a facility for treatment unless and until:

(1) the prospective patient has been evaluated, in person, by a mental health professional; and

(2) the mental health professional determines that the patient meets the facility's admission standards.

Sec. 164.010. PROHIBITED ACTS. It is a violation of this chapter, in connection with the marketing of mental health services, for a person to:

(1) advertise, expressly or impliedly, the services of a treatment facility through the use of:

(A) promises of cure or guarantees of treatment results that cannot be substantiated; or

(B) any unsubstantiated claims;

(2) advertise, expressly or impliedly, the availability of intervention and assessment services unless and until the services are available and are provided by mental health professionals licensed or certified to provide the particular service;

(3) fail to disclose before soliciting a referral source or prospective patient to induce a person to use the services of the treatment facility an affiliation between a treatment facility and its soliciting agents, employees, or contractors;

(4) obtain information considered confidential by state or federal law regarding a person for the purpose of soliciting that person to use the services of a treatment facility unless and until consent is obtained from the person or, in the case of a minor, the person's parent, managing conservator, or legal guardian or another person with authority to give that authorization; or

(5) represent that a referral service is a qualified mental health referral service unless and until the referral service complies with Section 164.007.

Sec. 164.011. INJUNCTION. (a) If it appears that a person is in violation of this chapter, the attorney general, a district attorney, or a county attorney may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties of not less than $1,000 and not more than $25,000 per violation.

(b) A civil action filed under this section shall be filed in a district court in Travis County or in the county in which the defendant resides.

(c) The attorney general, a district attorney, or a county attorney may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including court costs, reasonable attorney fees, investigative costs, witness fees, and deposition expenses.

(d) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to that local government.

Sec. 164.012. PENALTIES. In addition to the penalties prescribed by this chapter, a violation of a provision of this chapter by an individual or treatment facility that is licensed by a state health care regulatory agency is subject to the same consequences as a violation of the licensing law applicable to the individual or treatment facility or of a rule adopted under that licensing law.

Sec. 164.013. DECEPTIVE TRADE PRACTICES. A person may bring suit under Subchapter E, Chapter 17, Business & Commerce Code, for a violation of this chapter, and a public or private right or remedy prescribed by that subchapter may be used to enforce this chapter.

Sec. 164.014. RULE-MAKING AUTHORITY. The Texas Commission on Alcohol and Drug Abuse and Texas Board of Mental Health and Mental Retardation may adopt rules interpreting the provisions of this chapter relating to the activities of a chemical dependency facility or mental health facility under its jurisdiction.

ARTICLE 3

SECTION 3.01. Subsection (b), Section 241.053, Health and Safety Code, is amended to read as follows:

(b) A hospital whose license is suspended or revoked may apply to the department for the reissuance of a license. The department may reissue the license if the department determines that the hospital has corrected the conditions that led to the suspension or revocation. *A hospital whose license is suspended or revoked may not admit new patients until the license is reissued.*

SECTION 3.02. Section 241.054, Health and Safety Code, is amended by amending Subsections (b), (d), and (e) and adding Subsections (f), (g), (h), and (i) to read as follows:

(b) After the notice and opportunity to comply, the *commissioner of health* [~~department~~] may *request the attorney general or the appropriate district or county attorney to institute and conduct a suit for a violation of this chapter or a rule adopted under this chapter* [~~petition a district court in the county in which a violation occurs for assessment and recovery of the civil penalty provided by Section 241.055, for injunctive relief, or both~~].

(d) *On his own initiative, the attorney general, a district attorney, or a county attorney may maintain an action in the name of the state for a violation of this chapter or a rule adopted under this chapter.*

(e) The district court shall *assess the civil penalty authorized by Section 241.055,* grant [~~the~~] injunctive relief, *or both, as* warranted by the facts. *The injunctive relief may include any prohibitory or mandatory injunction warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.*

(f) The department and the party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(g) Venue may be maintained in Travis County or in the county in which the violation occurred.

(h) Not later than the seventh day before the date on which the attorney general intends to bring suit on his own initiative, the attorney general shall provide to the department notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a patient. This section does not create a requirement that the attorney general obtain the permission of a referral from the department before filing suit.

(i) The injunctive relief and civil penalty authorized by this section and Section 241.055 are in addition to any other civil, administrative, or criminal penalty provided by law.

[~~(e) The attorney general or the appropriate district or county attorney shall initiate and conduct the suit at the request of the commissioner of health.~~]

SECTION 3.03. Section 241.055, Health and Safety Code, is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) A hospital that violates Subsection (a), *another provision of this chapter, or a rule adopted or enforced under this chapter* is liable for a civil penalty of not more than $1,000 for each day of violation and for each act of violation. *A hospital that violates this chapter or a rule or order adopted under this chapter relating to the provision of mental health, chemical dependency, or rehabilitation services is liable for a civil penalty of not more than $25,000 for each day of violation and for each act of violation.*

(c) In determining the amount of the penalty, the district court shall consider:

(1) the hospital's previous violations;

(2) the seriousness of the violation, *including the nature, circumstances, extent, and gravity of the violation;*

(3) whether the health and safety of the public was threatened by the violation; [~~and~~]

(4) the demonstrated good faith of the hospital; *and*

(5) the amount necessary to deter future violations.

(d) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

SECTION 3.04. Subchapter C, Chapter 241, Health and Safety Code, is amended by adding Section 241.058 to read as follows:

Sec. 241.058. ADMINISTRATIVE PENALTY FOR MENTAL HEALTH, CHEMICAL DEPENDENCY, OR REHABILITATION SERVICES. (a) The board may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter relating to the provision of mental health, chemical dependency, or rehabilitation services.

(b) The penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) enforcement costs relating to the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the commissioner determines that a violation has occurred, the commissioner may issue to the board a report that states the facts on which the determination is based and the

commissioner's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the commissioner shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the commissioner shall set a hearing and give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(l) The commissioner on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 3.041. Subchapter C, Chapter 241, Health and Safety Code, is amended by adding Section 241.0585 to read as follows:

Sec. 241.0585. RECOVERY OF COSTS. If the attorney general brings an action to enforce an administrative penalty assessed under Section 241.058 and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

SECTION 3.05. Section 462.008, Health and Safety Code, is amended by amending Subsections (c) and (d) and adding Subsections (e) through (g) to read as follows:

(c) *An individual who commits an offense under this section is subject on conviction to:*

(1) a fine of not less than $50 or more than $25,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than two years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(d) A person other than an individual who commits an offense under this section is subject on conviction to a fine of not less than $500 or more than $100,000 for each violation and each day of a continuing violation.

(e) If it is shown on the trial of an individual that the individual has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than $100 or more than $50,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than four years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(f) If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a

fine of not less than $1,000 or more than $200,000 for each violation and each day of a continuing violation.

(g) [~~An offense under this section is a misdemeanor punishable by a fine of not more than $5,000, confinement in the county jail for not more than one year, or both.~~

[~~(d)~~] The appropriate district or county attorney shall prosecute violations of this chapter.

SECTION 3.06. Section 464.014, Health and Safety Code, is amended to read as follows:

Sec. 464.014. DENIAL, REVOCATION, *SUSPENSION,* OR NONRENEWAL OF LICENSE. (a) The executive director of the commission may deny, revoke, *suspend,* or refuse to renew a license if the applicant, license holder, or owner, director, administrator, or clinical staff member of the facility:

(1) has a documented history of client abuse or neglect; or

(2) fails to comply with this subchapter or with a rule of the commission adopted under this subchapter.

(b) The denial, revocation, *suspension,* or nonrenewal takes effect on the 30th day after the date on which the notice was mailed unless:

(1) the commission secures an injunction under Section 464.015; or

(2) an administrative appeal is requested.

(c) If an administrative appeal is requested, the effective date of the commission's original decision must be postponed to allow the person whose license was denied, revoked, *suspended,* or not renewed to participate in the appeal. The commission shall provide an opportunity for the affected person to present additional evidence or testimony to the commission.

(d) A person whose license is denied, revoked, *suspended,* or not renewed is entitled to:

(1) appeal that decision at a hearing before the commission or a hearings officer appointed by the commission; and

(2) receive notice of the date, time, and place of the hearing not later than the 15th day before the date of the hearing.

(e) A request for a hearing must be received by the commission not later than the 15th day after the date on which the notice of denial, revocation, *suspension,* or nonrenewal is mailed to the applicant or license holder.

(f) The commission may restrict attendance at an appeals hearing to the parties and their agents.

(g) If a license is denied, revoked, *suspended,* or not renewed after a hearing, the commission shall send to the applicant or license holder a copy of the commission's findings and grounds for the decision.

(h) An order denying, revoking, *suspending,* or refusing to renew a license takes effect on the 31st day after the date on which the applicant or license holder receives final notice of the denial, revocation, *suspension,* or nonrenewal. *A license holder whose license is suspended or revoked may not admit new clients until the license is reissued.*

(i) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to a judicial review of a commission appeals hearing under this subchapter.

SECTION 3.07. Section 464.015, Health and Safety Code, is amended by amending Subsections (b) through (e) and adding Subsections (f) and (g) to read as follows:

(b) A suit for injunctive relief, *civil penalties authorized by Section 464.017, or both,* must be brought in Travis County *or the county in which the violation occurs.*

(c) A district court, on petition of the commission, *the attorney general, or a district or county attorney,* and on a finding by the court that a person or facility is violating *or has violated* this subchapter or a standard adopted under this subchapter, shall grant any *prohibitory or mandatory* injunctive relief warranted by the facts, *including a temporary restraining order, temporary injunction, or permanent injunction.*

(d) The court granting [~~the~~] injunctive relief shall order the person or facility to reimburse the commission *and the party bringing the suit* for all costs of investigation and litigation,

including reasonable attorney's fees, reasonable investigative expenses, *court costs, witness fees, deposition expenses,* and civil administrative costs.

(e) At the request of the commission, the attorney general *or the appropriate district or county attorney* shall institute and conduct a suit authorized by Subsection (a) in the name of this state.

(f) On his own initiative, the attorney general or a district attorney or county attorney may maintain an action for injunctive relief in the name of the state for a violation of this subchapter or a standard adopted under this subchapter.

(g) The injunctive relief and civil penalty authorized by this section and Section 464.017 are in addition to any other civil, administrative, or criminal penalty provided by law.

SECTION 3.08. Section 464.017, Health and Safety Code, is amended by amending Subsections (a), (c), and (e) and adding Subsections (f) and (g) to read as follows:

(a) A person or facility is subject to a civil penalty of not [~~less than $10 or~~] more than *$25,000* [~~$200~~] for each day of violation and for each act of violation of this subchapter or a rule adopted under this subchapter. *In determining the amount of the civil penalty, the court shall consider:*

(1) the person's or facility's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the person or facility; and

(5) the amount necessary to deter future violations.

(c) At the request of the commission, the attorney general *or the appropriate district or county attorney* shall institute and conduct the suit authorized by Subsection (b) in the name of this state. *The commission and the party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.*

(e) *On his own initiative, the attorney general, a district attorney, or a county attorney may maintain an action for civil penalties in the name of the state for a violation of this subchapter or a standard adopted under this subchapter.*

(f) Penalties collected under this section *by the attorney general* shall be deposited to the credit of the alcohol and drug abuse treatment licensure fund. *Penalties collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.*

(g) The commission and the party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

SECTION 3.09. Subchapter A, Chapter 464, Health and Safety Code, is amended by adding Sections 464.018 and 464.019 to read as follows:

Sec. 464.018. NOTICE OF SUIT. Not later than the seventh day before the date on which the attorney general intends to bring suit on his own initiative under Section 464.015 or 464.017, the attorney general shall provide to the commission notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a client. This section does not create a requirement that the attorney general obtain the permission of or a referral from the commission before filing suit.

Sec. 464.019. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) enforcement costs relating to the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the executive director determines that a violation has occurred, the director may issue to the commission a report that states the facts on which the determination is based and the director's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the commissioner shall set a hearing and give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(l) The commissioner on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 2.091.[1] Subchapter A, Chapter 464, Health and Safety Code, is amended by adding Section 464.0195 to read as follows:

Sec. 464.0195. RECOVERY OF COSTS. If the attorney general brings an action to enforce an administrative penalty assessed under Section 464.019 and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

SECTION 3.10. (a) Section 571.020, Health and Safety Code, is amended to read as follows:

Sec. 571.020. CRIMINAL PENALTIES. (a) A person commits an offense if the person intentionally causes, conspires with another to cause, or assists another to cause the unwarranted commitment of a person to a mental health facility. [~~An offense under this subsection is a misdemeanor punishable by a fine of not more than $5,000, confinement in the county jail for not more than two years, or both.~~]

(b) A person commits an offense if the person knowingly violates a provision of this subtitle. [~~An offense under this subsection is a misdemeanor punishable by a fine of not more than $5,000, confinement in the county jail for not more than one year, or both.~~]

(c) An individual who commits an offense under this section is subject on conviction to:

[1] Probably should read 3.091.

(1) a fine of not less than $50 or more than $25,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than two years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(d) A person other than an individual who commits an offense under this section is subject on conviction to a fine of not less than $500 or more than $100,000 for each violation and each day of a continuing violation.

(e) If it is shown on the trial of an individual that the individual has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than $100 or more than $50,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than four years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(f) If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a fine of not less than $1,000 or more than $200,000 for each violation and each day of a continuing violation.

(b) Section 3, Chapter 567, Acts of the 72nd Legislature, Regular Session, 1991, is repealed.

SECTION 3.11. Chapter 571, Health and Safety Code, is amended by adding Sections 571.022, 571.023, 571.024, and 571.025 to read as follows:

Sec. 571.022. INJUNCTION. (a) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct in the name of the state a suit for a violation of this subtitle or a rule adopted under this subtitle.

(b) On his own initiative, the attorney general or district or county attorney may maintain an action for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(c) Venue may be maintained in Travis County or in the county in which the violation occurred.

(d) The district court may grant any prohibitory or mandatory injunctive relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Sec. 571.023. CIVIL PENALTY. (a) A person is subject to a civil penalty of not more than $25,000 for each day of violation and for each act of violation of this subtitle or a rule adopted under this subtitle. In determining the amount of the civil penalty, the court shall consider:

(1) the person's or facility's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the person or facility; and

(5) the amount necessary to deter future violations.

(b) The department or party bringing the suit may:

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 571.022 or 577.019; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(c) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct the suit authorized by Subsection (b) in the name of the state.

(d) On his own initiative, the attorney general, district attorney, or county attorney may maintain an action as authorized by Subsection (b) for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(e) The department and the party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(f) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

(g) The civil penalty and injunctive relief authorized by this section and Sections 571.022 and 577.019 are in addition to any other civil, administrative, or criminal remedies provided by law.

Sec. 571.024. NOTICE OF SUIT. Not later than the seventh day before the date on which the attorney general intends to bring suit on his own initiative, the attorney general shall provide to the department notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a patient. This section does not create a requirement that the attorney general obtain the permission of or a referral from the department before filing suit.

Sec. 571.025. ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty against a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

(b) The penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) enforcement costs relating to the violation, including investigation costs, witness fees, and deposition expenses;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the commissioner determines that a violation has occurred, the commissioner may issue to the board a report that states the facts on which the determination is based and the commissioner's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the commissioner shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commissioner or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the commissioner, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the commissioner shall set a hearing and give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly

issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(l) The commissioner on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes); and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not

upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 3.111. Chapter 571, Health and Safety Code, is amended by adding Section 571.026 to read as follows:

Sec. 571.026. RECOVERY OF COSTS. If the attorney general brings an action to enforce an administrative penalty assessed under this chapter and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

SECTION 3.12. Section 577.016, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) A license holder whose license is suspended or revoked may not admit new patients until the license is reissued.

SECTION 3.13. Section 577.019, Health and Safety Code, is amended to read as follows:

Sec. 577.019. INJUNCTION. (a) The department, in the name of the state, may maintain an action in a district court of Travis County *or in the county in which the violation occurs* for an injunction or other process against any person to restrain the person from operating a mental hospital or mental health facility that is not licensed as required by this chapter.

(b) The district court [~~of Travis County, for cause shown,~~] may *grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction* [~~restrain a violation of this chapter~~].

(c) At the request of the department or on the initiative of the attorney general or district or county attorney, the attorney general or the appropriate district or county attorney shall institute and conduct a suit authorized by this section in the name of the state. The attorney general may recover reasonable expenses incurred in instituting and conducting a suit authorized by this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

ARTICLE 4

SECTION 4.01. Subsection (e), Section 572.001, Health and Safety Code, is amended to read as follows:

(e) A request for admission as a voluntary patient must state that the person for whom admission is requested agrees to voluntarily remain in the facility until the person's discharge and that the person consents to the diagnosis, observation, care, and treatment provided until the earlier of:

(1) the person's discharge; or

(2) the *period prescribed* [~~expiration of 96 hours after the time a written request for release is filed as provided~~] by Section 572.004.

SECTION 4.02. (a) Section 572.004, Health and Safety Code, is amended to read as follows:

Sec. 572.004. DISCHARGE [~~OR RELEASE~~]. (a) *A* [~~Except as provided by Subsection (b), a~~] voluntary patient is entitled to leave an inpatient mental health facility *in accordance with this section* [~~within 96 hours~~] after [~~the time~~] a written request for *discharge* [~~release~~] is filed with the facility administrator or the administrator's designee. The request must be signed, *timed, and dated* by the patient or a person *legally* responsible for the *patient and must be made a part of the patient's clinical record. If a patient informs an employee of or person associated with the facility of the patient's desire to leave the facility, the employee or*

person shall, as soon as possible, assist the patient in creating the written request and present it to the patient for the patient's signature [~~patient's admission~~].

(b) *The facility shall, within four hours after a request for discharge is filed, notify the physician responsible for the patient's treatment. If that physician is not available during that period, the facility shall notify any available physician of the request.*

(c) The notified physician shall discharge the patient before the end of the four-hour period unless the physician has reasonable cause to believe that the patient might meet the criteria for court-ordered mental health services or emergency detention.

(d) A physician who has reasonable cause to believe that a patient might meet the criteria for court-ordered mental health services or emergency detention shall examine the patient as soon as possible within 24 hours after the time the request for discharge is filed. The physician shall discharge the patient on completion of the examination unless the physician determines that the person meets the criteria for court-ordered mental health services or emergency detention. If the physician makes a determination that the patient meets the criteria for court-ordered mental health services or emergency detention, the physician shall, not later than 4 p.m. on the next succeeding business day after the date on which the examination occurs, either discharge the patient or file an application for court-ordered mental health services or emergency detention and obtain a written order for further detention. The physician shall notify the patient if the physician intends to detain the patient under this subsection or intends to file an application for court-ordered mental health services or emergency detention. A decision to detain a patient under this subsection and the reasons for the decision shall be made a part of the patient's clinical record.

(e) If extremely hazardous weather conditions exist or a disaster occurs, the physician may request the judge of a court that has jurisdiction over proceedings brought under Chapter 574 to extend the period during which the patient may be detained. The judge or a magistrate appointed by the judge may by written order made each day extend the period during which the patient may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(f) The patient is not entitled to leave the facility if before the end of the [~~96-hour~~] period *prescribed by this section*:

(1) a written withdrawal of the request for *discharge* [~~release~~] is filed; or

(2) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with this subtitle.

(g) [~~(e)~~] A plan for continuing care shall be prepared in accordance with Section 574.081 for each patient discharged. *If sufficient time to prepare a continuing care plan before discharge is not available, the plan may be prepared and mailed to the appropriate person within 24 hours after the patient is discharged* [~~or released if sufficient time is available before release~~].

(h) [~~(d)~~] The patient or other person who files a request for *discharge* [~~release~~] of a patient shall be notified that the person filing the request assumes all responsibility for the patient on discharge.

(b) In addition to the substantive changes made by this section, this section conforms Section 572.004, Health and Safety Code, to Section 4, Chapter 567, Acts of the 72nd Legislature, Regular Session, 1991.

(c) Section 4, Chapter 567, Acts of the 72nd Legislature, Regular Session, 1991, is repealed.

SECTION 4.03. Chapter 572, Health and Safety Code, is amended by adding Section 572.0025 to read as follows:

Sec. 572.0025. INTAKE, ASSESSMENT, AND ADMISSION. (a) The board shall adopt rules governing the voluntary admission of a patient to an inpatient mental health facility, including rules governing the intake and assessment procedures of the admission process.

(b) The rules governing the intake process shall establish minimum standards for:

(1) reviewing a prospective patient's finances and insurance benefits;

(2) explaining to a prospective patient the patient's rights; and

(3) explaining to a prospective patient the facility's services and treatment process.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by board rules.

(d) The rules governing the assessment process shall prescribe:

(1) the types of professionals who may conduct an assessment;

(2) the minimum credentials each type of professional must have to conduct an assessment; and

(3) the type of assessment that professional may conduct.

(e) In accordance with board rule, a facility shall provide annually a minimum of eight hours of inservice training regarding intake and assessment for persons who will be conducting an intake or assessment for the facility. A person may not conduct intake or assessments without having completed the initial and applicable annual inservice training.

(f) A prospective voluntary patient may not be formally accepted for treatment in a facility unless:

(1) the facility has a physician's signed order admitting the prospective patient; and

(2) the facility administrator or a person designated by the administrator has agreed to accept the prospective patient and has signed a statement to that effect.

(g) An assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a physician before admission.

(h) In this section:

(1) "Admission" means the formal acceptance of a prospective patient to a facility.

(2) "Assessment" means the administrative process a facility uses to gather information from a prospective patient, including a medical history and the problem for which the patient is seeking treatment, to determine whether a prospective patient should be examined by a physician to determine if admission is clinically justified.

(3) "Intake" means the administrative process for gathering information about a prospective patient and giving a prospective patient information about the facility and the facility's treatment and services.

SECTION 4.04. Subsections (a), (b), and (d), Section 574.081, Health and Safety Code, are amended to read as follows:

(a) The *physician responsible for the patient's treatment* [~~facility administrator~~] shall prepare a continuing care plan for a patient who is scheduled to be furloughed or discharged *unless* [~~if~~] the patient *does not require* [~~requires~~] continuing care.

(b) The *physician* [~~facility administrator~~] shall prepare the plan as prescribed by department rules and shall consult the patient and the mental health authority in the area in which the patient will reside before preparing the plan. The mental health authority is not required to participate in preparing a plan for a patient furloughed or discharged from a private mental health facility.

(d) The *physician* [~~facility administrator~~] shall deliver the plan and other appropriate information to the community center or other provider that will deliver the services if:

(1) the services are provided by:

(A) a community center or other provider that serves the county in which the patient will reside and that has been designated by the commissioner to perform continuing care services; or

(B) any other provider that agrees to accept the referral; and

(2) the provision of care by the center or provider is appropriate.

SECTION 4.05. Section 574.081, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) A physician who believes that a patient does not require continuing care and who does not prepare a continuing care plan under this section shall document in the patient's treatment record the reasons for that belief.

SECTION 4.06. Section 576.008, Health and Safety Code, is amended to read as follows:

Sec. 576.008. NOTIFICATION OF PROTECTION AND ADVOCACY SYSTEM. A patient shall be informed in writing, at the time of admission *and* [~~or~~] discharge, of the existence, purpose, telephone number, and address of the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Sec. 10801, et seq.).

SECTION 4.07. Chapter 577, Health and Safety Code, is amended by adding Section 577.0101 to read as follows:

Sec. 577.0101. NOTIFICATION OF TRANSFER OR REFERRAL. (a) The board shall adopt rules governing the transfer or referral of a patient from a private mental hospital to an inpatient mental health facility.

(b) The rules must provide that before a private mental hospital may transfer or refer a patient, the hospital must:

(1) provide to the receiving inpatient mental health facility notice of the hospital's intent to transfer a patient;

(2) provide to the receiving inpatient mental health facility information relating to the patient's diagnosis and condition; and

(3) obtain verification from the receiving inpatient mental health facility that the facility has the space, personnel, and services necessary to provide appropriate care to the patient.

(c) The rules must also require that the private mental hospital send the patient's appropriate records, or a copy of the records, if any, to the receiving inpatient mental health facility.

SECTION 4.08. Subchapter B, Chapter 462, Health and Safety Code, is amended by adding Section 462.025 to read as follows:

Sec. 462.025. INTAKE, ASSESSMENT, AND ADMISSION. (a) The commission shall adopt rules governing the voluntary admission of a patient to a treatment facility, including rules governing the intake and assessment procedures of the admission process.

(b) The rules governing the intake process shall establish minimum standards for:

(1) reviewing a prospective patient's finances and insurance benefits;

(2) explaining to a prospective patient the patient's rights; and

(3) explaining to a prospective patient the facility's services and treatment process.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by commission rules.

(d) The rules governing the assessment process shall prescribe:

(1) the types of professionals who may conduct an assessment;

(2) the minimum credentials each type of professional must have to conduct an assessment; and

(3) the type of assessment that professional may conduct.

(e) In accordance with commission rule, a treatment facility shall provide annually a minimum of eight hours of inservice training regarding intake and assessment for persons who will be conducting an intake or assessment for the facility. A person may not conduct intake or assessments without having completed the initial and applicable annual inservice training.

(f) A prospective voluntary patient may not be formally accepted for chemical dependency treatment in a treatment facility unless the facility's administrator or a person designated by the administrator has agreed to accept the prospective patient and has signed a statement to that effect.

(g) An assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a qualified professional before admission.

(h) In this section:

(1) "Admission" means the formal acceptance of a prospective patient to a treatment facility.

(2) "Assessment" means the administrative process a treatment facility uses to gather information from a prospective patient, including a medical history and the problem for which the patient is seeking treatment, to determine whether a prospective patient should be admitted.

(3) "Intake" means the administrative process for gathering information about a prospective patient and giving a prospective patient information about the treatment facility and the facility's treatment and services.

SECTION 4.09. This article takes effect immediately.

ARTICLE 5

SECTION 5.01. Subtitle C, Title 7, Health and Safety Code, is amended by adding Chapter 578 to read as follows:

CHAPTER 578. ELECTROCONVULSIVE AND OTHER THERAPIES

Sec. 578.001. APPLICATION. This chapter applies to the use of electroconvulsive therapy by any person, including a private physician who uses the therapy on an outpatient basis.

Sec. 578.002. USE OF ELECTROCONVULSIVE THERAPY. (a) Electroconvulsive therapy may not be used on a person who is younger than 16 years of age.

(b) Unless the person consents to the use of the therapy in accordance with Section 578.003, electroconvulsive therapy may not be used on:

(1) a person who is 16 years of age or older and who is voluntarily receiving mental health services; or

(2) an involuntary patient who is 16 years of age or older and who has not been adjudicated by an appropriate court of law as incompetent to manage the patient's personal affairs.

(c) Electroconvulsive therapy may not be used on an involuntary patient who is 16 years of age or older and who has been adjudicated incompetent to manage the patient's personal affairs unless the patient's guardian of the person consents to the treatment in accordance with Section 578.003. The decision of the guardian must be based on knowledge of what the patient would desire, if known.

Sec. 578.003. CONSENT TO THERAPY. (a) The board by rule shall adopt a standard written consent form to be used when electroconvulsive therapy is considered. The board by rule shall also prescribe the information that must be contained in the written supplement required under Subsection (c). In addition to the information required under this section, the form must include the information required by the Texas Medical Disclosure Panel for electroconvulsive therapy. In developing the form, the board shall consider recommendations of the panel. Use of the consent form prescribed by the board in the manner prescribed by this section creates a rebuttable presumption that the disclosure requirements of Sections 6.05 and 6.06, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), have been met.

(b) The written consent form must clearly and explicitly state:

(1) the nature and purpose of the procedure;

(2) the nature, degree, duration, and probability of the side effects and significant risks of the treatment commonly known by the medical profession, especially noting the possible degree and duration of memory loss, the possibility of permanent irrevocable memory loss, and the remote possibility of death;

(3) that there is a division of opinion as to the efficacy of the procedure; and

(4) the probable degree and duration of improvement or remission expected with or without the procedure.

(c) Before a patient receives each electroconvulsive treatment, the hospital, facility, or physician administering the therapy shall ensure that:

(1) the patient and the patient's guardian of the person, if any, receives a written copy of the consent form that is in the person's primary language, if possible;

(2) the patient and the patient's guardian of the person, if any, receives a written supplement that contains related information that pertains to the particular patient being treated;

(3) the contents of the consent form and the written supplement are explained to the patient and the patient's guardian of the person, if any:

(A) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(B) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable;

(4) the patient or the patient's guardian of the person, as appropriate, signs a copy of the consent form stating that the person has read the consent form and the written supplement and understands the information included in the documents; and

(5) the signed copy is made a part of the patient's clinical record.

(d) Consent given under this section is not valid unless the person giving the consent understands the information presented and consents voluntarily and without coercion or undue influence.

Sec. 578.004. WITHDRAWAL OF CONSENT. (a) A patient or guardian who consents to the administration of electroconvulsive therapy may revoke the consent for any reason and at any time.

(b) Revocation of consent is effective immediately.

Sec. 578.005. PHYSICIAN REQUIREMENT. (a) Only a physician may administer electroconvulsive therapy.

(b) A physician may not delegate the act of administering the therapy. A nonphysician who administers electroconvulsive therapy is considered to be practicing medicine in violation of the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

Sec. 578.006. REGISTRATION OF EQUIPMENT. (a) A person may not administer electroconvulsive therapy unless the equipment used to administer the therapy is registered with the department.

(b) A mental hospital or facility administering electroconvulsive therapy or a private physician administering the therapy on an outpatient basis must file an application for registration under this section. The applicant must submit the application to the department on a form prescribed by the department.

(c) The application must be accompanied by a nonrefundable application fee. The board shall set the fee in a reasonable amount not to exceed the cost to the department to administer this section.

(d) The application must contain:

(1) the model, manufacturer, and age of each piece of equipment used to administer the therapy; and

(2) any other information required by the department.

(e) The department may conduct an investigation as considered necessary after receiving the proper application and the required fee.

(f) The board by rule may prohibit the registration and use of equipment of a type, model, or age the board determines is dangerous.

(g) The department may deny, suspend, or revoke a registration if the department determines that the equipment is dangerous. The denial, suspension, or revocation of a

registration is a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 578.007. REPORTS. (a) A mental hospital or facility administering electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness or a physician administering the therapy on an outpatient basis shall submit to the department quarterly reports relating to the administration of the therapy in the hospital or facility or by the physician.

(b) A report must state for each quarter:

(1) the number of patients who received the therapy, including:

(A) the number of persons voluntarily receiving mental health services who consented to the therapy;

(B) the number of involuntary patients who consented to the therapy; and

(C) the number of involuntary patients for whom a guardian of the person consented to the therapy;

(2) the age, sex, and race of the persons receiving the therapy;

(3) the source of the treatment payment;

(4) the average number of nonelectroconvulsive treatments;

(5) the average number of electroconvulsive treatments administered for each complete series of treatments, but not including maintenance treatments;

(6) the average number of maintenance electroconvulsive treatments administered per month;

(7) the number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death;

(8) autopsy findings if death followed within 14 days after the date of the administration of the therapy; and

(9) any other information required by the department.

Sec. 578.008. USE OF INFORMATION; REPORT. (a) The department shall use the information received under Sections 578.006 and 578.007 to analyze, audit, and monitor the use of electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness.

(b) The department shall file annually with the governor and the presiding officer of each house of the legislature a written report summarizing by facility the information received under Sections 578.006 and 578.007. If the therapy is administered by a private physician on an outpatient basis, the report must include that information but may not identify the physician. The department may not directly or indirectly identify in a report issued under this section a patient who received the therapy.

SECTION 5.02. This article takes effect September 1, 1993, except:

(1) Subsection (a), Section 578.002 and Section 578.005, Health and Safety Code, as added by this article, take effect immediately;

(2) equipment in use to administer electroconvulsive therapy on the effective date of Section 578.006, Health and Safety Code, as added by this article, is not required to be registered under that section before January 1, 1994;

(3) a person administering electroconvulsive therapy shall file an initial report as prescribed by Section 578.007, Health and Safety Code, as added by this article, not later than September 15, 1993, for the period beginning June 1, 1993, and ending August 31, 1993; and

(4) the Texas Department of Mental Health and Mental Retardation shall file the initial report required under Subsection (b), Section 578.008, Health and Safety Code, as added by this article, not later than February 15, 1994, which report must summarize the information the department receives on or before January 1, 1994.

ARTICLE 6

SECTION 6.01. Subdivision (3), Section 311.031, Health and Safety Code, is amended to read as follows:

(3) "Hospital" means:

(A) a general or special hospital licensed under Chapter 241;

(B) a private mental hospital licensed under Chapter 577; and

(C) a treatment facility licensed under Chapter 464 [~~(Texas Hospital Licensing Law)~~].

SECTION 6.02. Subchapter C, Chapter 311, Health and Safety Code, is amended by adding Section 311.0335 to read as follows:

Sec. 311.0335. MENTAL HEALTH AND CHEMICAL DEPENDENCY DATA. (a) A hospital that provides mental health or chemical dependency services shall submit to the department financial and utilization data relating to the mental health and chemical dependency services provided by the hospital, including data for inpatient and outpatient services relating to:

(1) patient demographics, including race, ethnicity, age, gender, and county of residence;

(2) admissions;

(3) discharges, including length of inpatient treatment;

(4) specific diagnoses and procedures according to criteria prescribed by the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition, Revised, or a later version prescribed by the department;

(5) total charges and the components of the charges;

(6) payor sources; and

(7) use of mechanical restraints.

(b) The data must be submitted in the form and at the time established by the department.

SECTION 6.03. Section 311.035, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) The department shall enter into an interagency agreement with the Texas Department of Mental Health and Mental Retardation, Texas Commission on Alcohol and Drug Abuse, and Texas Department of Insurance relating to the mental health and chemical dependency hospital discharge data collected under Section 311.0335. The agreement shall address the collection, analysis, and sharing of the data by the agencies.

SECTION 6.04. Subsection (b), Section 311.038, Health and Safety Code, is amended to read as follows:

(b) The advisory committee must include representatives from:

(1) the hospital industry, *including private mental hospitals and chemical dependency treatment facilities*;

(2) private business;

(3) the insurance industry;

(4) state agencies, such as the Texas Department of Human Services, [~~and~~] Employees Retirement System of Texas, *Texas Department of Mental Health and Mental Retardation, Texas Commission on Alcohol and Drug Abuse, and Texas Department of Insurance*;

(5) consumer organizations; and

(6) the Statewide Health Coordinating Council.

ARTICLE 7

SECTION 7.01. Section 11.52, Education Code, is amended by adding Subsections (p) and (q) to read as follows:

(p) The commissioner of education shall adopt rules governing the relationship between a school district and an outside counselor to whom a student may be referred for care or

treatment of an emotional, psychological, or chemical dependency condition, including rules that:

(1) require the school district and the outside counselor to disclose to the student and the parent, managing conservator, or guardian of the student the relationship between the district and the outside counselor to whom the student is referred for care or treatment;

(2) require the school to inform the student and the parent, managing conservator, or guardian of the student, as appropriate, of any public and private alternative sources of care or treatment reasonably available in the area;

(3) require the approval of appropriate school district personnel before the counselor refers a student for care or treatment or suggests to or advises a student that a referral is warranted; and

(4) specifically prohibit the disclosure of student records if the disclosure violates state or federal law.

(q) The commissioner of education shall adopt rules that specify procedures to be followed in an emergency or crisis situation in which a district may request counseling services from a private treatment facility.

ARTICLE 8

SECTION 8.01. Except as otherwise provided by this Act, this Act takes effect September 1, 1993.

SECTION 8.02. (a) The changes in law made by this Act apply only to an offense committed or a violation that occurs on or after the effective date of this Act. For the purposes of this Act, an offense is committed or a violation occurs before the effective date of this Act if any element of the offense or violation occurs before that date.

(b) An offense committed or violation that occurs before the effective date of this Act is covered by the law in effect when the offense was committed or the violation occurred, and the former law is continued in effect for this purpose.

SECTION 8.03. 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, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed the Senate on March 25, 1993: Yeas 31, Nays 0; the Senate concurred in House amendments on May 25, 1993, by a viva-voce vote; passed the House, with amendments, on May 22, 1993, by a non-record vote.

Approved June 16, 1993.

Effective Sept. 1, 1993, except Art. 4 and as provided in § 5.02(1), effective Aug. 30, 1993, 90 days after date of adjournment.