

CHAPTER 956

S.B. No. 257

AN ACT

relating to the continuation, composition, powers, and duties of the Texas Department of Mental Health and Mental Retardation and to the provision of mental health and mental retardation and related services; providing a penalty.

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

ARTICLE 1

SECTION 1.01. Section 1.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.01. PURPOSE AND POLICY. (a) It is the purpose of this Act to provide for ~~[the conservation and restoration of mental health among the people of this state, and toward this end to provide for]~~ the effective administration and coordination of mental health services at the state and local levels~~[-and to provide, coordinate, develop, and improve services for the mentally retarded persons of this state to the end that they will be afforded the opportunity to develop their respective mental capacities to the fullest practicable extent and to live as useful and productive lives as possible].~~

(b) *It is the goal of the state to provide a comprehensive range of services for mentally ill and mentally retarded persons who are in need of publicly supported care, treatment, or habilitation. In providing those services, efforts will be made to coordinate services and programs with the services and programs provided by other governmental entities to minimize duplication and to share with other governmental entities in financing those services and programs* ~~[The legislature declares that the public policy of this state is to encourage local agencies and private organizations to assume responsibility for the effective administration of mental health and mental retardation services, with the assistance, cooperation, and support of the Texas Department of Mental Health and Mental Retardation created by this Act].~~

(c) Recognizing that there exists a variety of alternatives for serving the mentally disabled, it is the purpose of this Act to provide for a continuum of services. *The continuum of services shall include facilities operated by the Texas Department of Mental Health and Mental Retardation, as well as community services provided by the department and other entities through contracts with the department. It [and it] is the policy of this state that when appropriate and feasible, mentally ill and mentally retarded persons shall be afforded treatment in their own communities.*

(d) *The public policy of this state is that mental health and mental retardation services be the responsibility of local agencies and organizations to the greatest extent possible. The Texas Department of Mental Health and Mental Retardation will assist the local agencies and organizations by coordinating the implementation of a state-wide system of services. The department will provide state-administered mental health and mental retardation services and provide technical assistance for and regulation of the programs that receive funding through contracts with the department.*

(e) *It is also the public policy of this state to offer services first to those persons who are most in need. Therefore, funds appropriated by the legislature for mental*

health and mental retardation services may be expended only to provide services to the priority populations identified in the department's long-range plan.

SECTION 1.02. (a) Subdivision (7), Section 1.02, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201, Vernon's Texas Civil Statutes), is amended to read as follows:

(7) "Mental retardation services" includes all services concerned with research, prevention, and the detection of mental retardation and all services related to the education, training, *habilitation* [~~rehabilitation~~], care, treatment, supervision, and control of mentally retarded persons, *except the education of school-age individuals that the public educational system is authorized to provide.*

(b) Subdivision (7), Section 1.02, Texas Mental Health and Mental Retardation Act (Article 5547-201, Vernon's Texas Civil Statutes), as amended by this section, takes effect September 1, 1988.

SECTION 1.03. Section 1.02, Texas Mental Health and Mental Retardation Act (Article 5547-201, Vernon's Texas Civil Statutes), is amended by amending Subdivision (10) and by adding Subdivisions (11) through (16) to read as follows:

(10) "*Medical Director*" means the *Medical Director of the Texas Department of Mental Health and Mental Retardation*, [~~"Director of Operations" means the director~~] appointed under Section 2.07 of this Act.

(11) "*Community center*" means a center established under Article 3 of this Act.

(12) "*ICF-MR*" means the medical assistance program serving mentally retarded persons receiving care in intermediate care facilities.

(13) "*Local mental health authority*" means a local service provider selected by the department to plan, facilitate, coordinate, or provide services to mentally ill persons in a local service area.

(14) "*Local mental retardation authority*" means a local service provider selected by the department to plan, facilitate, coordinate, or provide services to mentally retarded persons in a local service area.

(15) "*Priority client population*" means those groups of mentally ill or mentally retarded persons identified by the department as being most in need of mental health or mental retardation services.

(16) "*State school*" means a state-supported and structured residential facility operated by the department to provide to clients with mental retardation a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.

SECTION 1.04. Sections 2.01, 2.01A, and 2.01B, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2.01. COMPOSITION OF DEPARTMENT. The Texas Department of Mental Health and Mental Retardation shall consist of a Texas Board of Mental Health and Mental Retardation, a Commissioner of Mental Health and Mental Retardation, a *Medical Director* [~~Director of Operations, a Deputy Commissioner for Management and Support~~], a Deputy Commissioner for Mental Health Services, a Deputy Commissioner for Mental Retardation Services, [~~an Executive Deputy Commissioner~~], a staff under the direction of the Commissioner, *Medical Director* [~~the Director of Operations~~], and the Deputy Commissioners, and the following facilities and institutions together with such additional facilities and institutions as may hereafter by law be made a part of the Department:

- (1) the Central Office of the Department;
- (2) the Austin State Hospital;
- (3) the San Antonio State Hospital;
- (4) the Terrell State Hospital;
- (5) the Wichita Falls State Hospital;
- (6) the Rusk State Hospital;

- (7) the Big Spring State Hospital;
- (8) the Kerrville State Hospital;
- (9) the Vernon State Hospital;
- (10) the Austin State School;
- (11) the Travis State School;
- (12) the Mexia State School;
- (13) the Abilene State School;
- (14) the Lufkin State School;
- (15) the Richmond State School;
- (16) the Denton State School;
- (17) the Corpus Christi State School;
- (18) the Lubbock State School;
- (19) the Brenham State School;
- (20) the Fort Worth State School;
- (21) the San Antonio State School;
- (22) the San Angelo State School;
- (23) the *Harris County Psychiatric Center* [~~Texas Research Institute of Mental Sciences~~];
- (24) the Beaumont State Center;
- (25) the Amarillo State Center;
- (26) the El Paso State Center;
- (27) the Rio Grande State Center;
- (28) the Laredo State Center;
- (29) the Waco Center for Youth;
- (30) the Leander Rehabilitation Center.

Sec. 2.01A. EMPLOYEES [~~AND SALARIES~~]. (a) *The Commissioner shall develop an intraagency career ladder program one part of which shall require the intraagency posting concurrently with any public posting of all nonentry level positions [number of employees and the salaries shall be as fixed in the general appropriations bill].*

(b) *The Commissioner or the Commissioner's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity by which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement shall include:*

(1) *personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;*

(2) *a comprehensive analysis of the Department's work force that meets federal and state guidelines;*

(3) *procedures by which a determination can be made of significant underutilization in the Department's work force of all persons of whom federal or state guidelines encourage a more equitable balance; and*

(4) *reasonable methods to address appropriately areas of significant underutilization in the Department's work force of all persons of whom federal or state guidelines encourage a more equitable balance.*

(c) *The policy statement required by Subsection (b) of this section shall be filed with the Governor's office not later than November 1, 1987, cover an annual period, and be updated at least annually. The Governor's office shall develop a biennial report to the Legislature based on the information submitted. The report may be made separately or as a part of other biennial reports made to the Legislature.*

(d) *Not later than November 1, 1988, the Department shall prepare and submit to the Board a report documenting the impact of its efforts to reduce any underutilization in the Department's work force of all persons of whom federal or state guidelines encourage a more equitable balance. The report shall also include:*

(1) *information on the number of complaints of employment discrimination filed against the Department with the Texas Commission on Human Rights in fiscal years 1986, 1987, and 1988;*

(2) *the nature of the complaints;*

(3) *the facilities or offices involved in the complaints; and*

(4) *the current status of the complaints.*

(e) *Not later than January 1, 1989, the Board shall submit copies of the report required in Subsection (d) of this section to the Texas Commission on Human Rights and to the appropriate committees of the House and Senate.*

(f) *The Board shall adopt policies that clearly define the respective responsibilities of the Board and the staff of the Department.*

(g) *The Department shall inform its members and employees as often as is necessary of:*

(1) *the qualifications for office or employment prescribed by this Act; and*

(2) *their responsibilities under applicable laws relating to standards of conduct for state officers or employees.*

(h) *The Commissioner shall develop a system under which the job performance of Department employees is evaluated annually. All merit pay for Department employees must be based on the system established under this subsection.*

Sec. 2.01B. APPLICATION OF SUNSET ACT. The Texas Department of Mental Health and Mental Retardation is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the *Department* [department] is abolished and this article expires September 1, 1999 [1987].

SECTION 1.05. (a) Sections 2.02 and 2.03, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2.02. MEMBERS OF BOARD. (a) The Board consists of nine members appointed by the Governor with the advice and consent of the Senate.

(b) *The members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:*

(1) *owns or controls directly or indirectly more than a 10 percent interest in a business entity or other organization regulated by the Department or receiving funds from the Department; or*

(2) *uses or receives a substantial amount of tangible goods, services, or funds from the Department, other than compensation or reimbursement authorized by law for Board membership, attendance, or expenses, or other than as a parent or guardian of a client or patient receiving services from the Department.*

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

Sec. 2.03. TERMS OF OFFICE. [(a)] Each member holds office for a term of six years and until his successor is appointed and qualified.

~~[(b) Three of the first nine members appointed by the Governor shall serve terms expiring on January 31, 1967; three shall serve terms expiring on January 31, 1969; and three shall serve terms expiring on January 31, 1971.]~~

(b) A member of the Texas Board of Mental Health and Mental Retardation who is serving a term as a member on August 31, 1987, is not required to have, during that term or during any subsequent and consecutive term, the public membership qualifications required by Section 2.02, Texas Mental Health and Mental Retardation Act (Article

5547-202, Vernon's Texas Civil Statutes), as amended by this section. The member is not subject to removal for the failure to have such a qualification.

SECTION 1.06. (a) Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Sections 2.02A and 2.03A to read as follows:

Sec. 2.02A. RESTRICTIONS ON BOARD MEMBERSHIP AND EMPLOYMENT. (a) A person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of the person's activities for compensation in or on behalf of a profession related to the operation of the Department, may not serve as a member of the Board or act as the general counsel to the Department.

(b) An officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a member of the Board or an employee of the Department.

(c) A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of mental health or mental retardation may not be a member of the Board and may not be an employee of the Department, including an employee exempt from the state's classification plan, who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For purposes of this section, a trade association is a nonprofit, cooperative, voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

Sec. 2.03A. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (b) of Section 2.02 of this Act for appointment to the Board;

(2) does not maintain during the member's service on the Board the qualifications required by Subsection (b) of Section 2.02 of this Act for appointment to the Board;

(3) violates a prohibition established by Section 2.02A of this Act;

(4) is unable to discharge the member's duties for a substantial part of the term for which the member was appointed because of illness or disability; or

(5) is absent from more than one-half of the regularly scheduled Board meetings that the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the Board.

(b) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

(c) If the Commissioner has knowledge that a potential ground for removal exists, the Commissioner shall notify the Chairman of the Board of the ground. The Chairman of the Board shall then notify the Governor that a potential ground for removal exists.

(b) A member of the Texas Board of Mental Health and Mental Retardation who is serving a term as a member on August 31, 1987, is not required to have, during that term or any subsequent and consecutive term, the membership qualifications required by Section 2.02A, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), as added by this section. The member is not subject to removal for the failure to have such a qualification.

SECTION 1.07. Section 2.05, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) The Board shall adopt policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board.

SECTION 1.08. Section 2.07, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.07. COMMISSIONER AND *MEDICAL DIRECTOR* [~~DIRECTOR OF OPERATIONS~~]. (a) The Board shall appoint a qualified person to serve as Commissioner.

(b) The Commissioner shall, subject to Board approval, appoint a qualified person to serve as *Medical Director* [~~of Operations~~].

(c) To be qualified for the office of Commissioner, a person must *have professional training and experience in the administration or management of comprehensive health care or human service operations and must have demonstrated proven administrative and management ability preferably in the health care area* [~~be a physician licensed to practice in this state and must have proven administrative experience and ability~~].

(d) To be qualified for appointment as *Medical Director* [~~of Operations~~], a person must *be a physician licensed to practice in this state and must have proven administrative experience and ability in comprehensive health care or human service operations* [~~have professional training and experience and demonstrate proven administrative and management ability, preferably in the health care area~~].

(e) The Commissioner is responsible for the administration of the Department *and for* [~~Except for the administration of the medical and other programmatic functions, the Director of Operations is responsible for assisting the Commissioner in~~] assuring the effectual and efficient administration of the Department. *The Medical Director reports to the Commissioner and is responsible for the quality and appropriateness of services by developing policies relating to clinical services regulated by the Department and those delivered in Department facilities or under contract to the Department and directing the standards and quality assurance program, a utilization review program, a physician recruitment and retention program, and a peer review program for physicians and other clinical staff employed by or under contract to the Department.*

(f) The Commissioner holds office at the pleasure of the Board.

(g) The Commissioner is designated as the state mental health authority *and the state mental retardation authority*.

SECTION 1.09. Subsection (b), Section 2.08, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) To be qualified for appointment as Deputy Commissioner for Mental Health Services, a person must be a physician licensed to practice in this state, *must have completed a three-year residency in psychiatry approved by the American Board of Psychiatry and Neurology, and must have proven administrative abilities in mental health services* [~~have at least three years of specialized training in psychiatry~~]. *This subsection applies to any Deputy Commissioner for Mental Health Services appointed after September 1, 1987.*

SECTION 1.10. Subsection (a), Section 2.08A, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The *Department* [~~board~~] shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the *Department* [~~board~~] during the preceding *fiscal* year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.

SECTION 1.11. Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Sections 2.08B and 2.09 to read as follows:

Sec. 2.08B. AUDITS. (a) The State Auditor shall audit the financial transactions of the Department at least once during each biennium.

(b) The director of the internal audit unit shall report directly to the Commissioner.

(c) Each audit report shall be submitted directly to the Board.

Sec. 2.09. PUBLIC INFORMATION AND COMPLAINTS. (a) The Department shall prepare information of public interest describing the functions of the Department and describing the procedures by which complaints are filed with and resolved by the Department. The Department shall make the information available to the general public and appropriate state agencies.

(b) The Board by rule shall establish methods by which consumers or service recipients are notified of the name, mailing address, and telephone number of the Department for the purpose of directing complaints to the Department. The Board may provide for the notification through inclusion of the information:

(1) on each registration form, application, or written contract for services of an entity regulated under this Act or of an entity the creation of which is authorized by this Act;

(2) on a sign that is prominently displayed in the place of business of each entity regulated under this Act or of each entity the creation of which is authorized by this Act; or

(3) in a bill for service provided by an entity regulated under this Act or by an entity the creation of which is authorized by this Act.

(c) If a written complaint is filed with the Department that relates to an entity regulated by the Department, the Department, at least as frequently as quarterly and until final disposition of the complaint, shall notify the complainant and the entity regulated by the Department of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) The Department shall keep an information file about each complaint filed with the Department that relates to an entity regulated by the Department.

SECTION 1.12. Subsections (c) and (d), Section 2.12, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) The Commissioner shall, with the approval of the Board, appoint the head of each facility [~~or institution~~] that is administered by the Department. The person appointed as head of a facility [~~or institution~~] serves at the pleasure of the Commissioner.

(d) The Commissioner shall establish, for key departmental personnel [~~who are subject to Board approval~~], qualifications which balance clinical and programmatic knowledge and management experience.

SECTION 1.13. Section 2.24, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.24. APPLICATION OF HEALTH PLANNING ACT [~~CERTIFICATE OF NEED REQUIREMENT~~]. The acquisition, development, construction, modification, and expansion of facilities, provision of additional services, and expansion of existing services under Articles 2, 3, and 4 of this Act are subject to the applicable provisions of the Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), [~~including requirements for a certificate of need or an exemption certificate~~].

ARTICLE 2

SECTION 2.01. Section 2.10, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.10. ADVISORY COMMITTEES. The Board shall appoint a medical advisory committee [~~a citizens' planning advisory committee~~], and any other advisory committees it deems necessary to assist in the effective administration of the mental health and mental retardation programs of the Department. [~~The citizens' planning advisory committee shall advise the Department on all stages of the development and implementation of the Department's long-range strategic plan.~~] The Department may reimburse [~~pay~~] the members of any such committees [~~and the members of any advisory committees, the creation of which is approved by the Board,~~] for travel costs incurred in connection with

the exercise of their duties for the Department at rates authorized to be paid to state officers and employees under the provisions of the General Appropriations Act.

SECTION 2.02. Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.10A to read as follows:

Sec. 2.10A. CITIZENS' PLANNING ADVISORY COMMITTEE. (a) The Board shall appoint a nine-member citizens' planning advisory committee.

(b) The Board shall appoint:

(1) three persons who have demonstrated an interest in and knowledge of the Department system and the legal, political, and economic environment in which the Department operates;

(2) three persons who have expertise in the development and implementation of long-range plans; and

(3) three members of the general public.

(c) In addition to the requirements of Subsection (b) of this section, at least one member must be a consumer of services for the mentally ill or a family member of a consumer of services for the mentally ill, and at least one member must be a consumer of services for the mentally retarded or a family member of a consumer of services for the mentally retarded.

(d) The committee shall:

(1) advise the Department on all stages of the development and implementation of the long-range plan required by Section 2.12B of this Act;

(2) review the development, implementation, and any necessary revisions of the long-range plan;

(3) review the Department's biennial budget request and assess the degree to which the request allows for implementation of the long-range plan; and

(4) advise the Board on:

(A) the appropriateness of the long-range plan;

(B) any identified problems related to the implementation of the plan;

(C) any necessary revisions to the plan; and

(D) the adequacy of the Department's budget request.

(e) The Board shall review the committee's reports in conjunction with information provided by the Department on the long-range plan or the biennial budget request.

(f) The Board shall allow the committee opportunities to appear before the Board as needed.

(g) Before a Board meeting relating to the development, implementation, or revision of the Department's long-range plan, the Department shall, in a timely manner, provide the committee with any information that will be presented to the Board.

(h) Before submitting the Department's biennial budget request to the Board for discussion or approval, the Department shall, in a timely manner, provide the committee with a copy of the budget request.

(i) The Department shall provide the committee with the staff support necessary to allow the committee to fulfill its duties.

(j) The committee shall provide copies of its reports to the Board, the Governor, Lieutenant Governor, Speaker of the House, and the appropriate legislative committees.

SECTION 2.03. Subsections (a) and (c), Section 2.12A, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) *Every two years, the [The] commissioner shall, consistent with the purposes and policies of this Act, determine for persons exhibiting the various forms of mental disability the types of services for the mentally disabled that can be most economically and effectively delivered at the community level and those mental health services that can be most economically and effectively delivered by the facilities of the Department [department]. This determination shall include an assessment of the limits, if any, that should be placed on the duration of services to be provided an individual either at the community level or at the departmental facility level. The Department shall also conduct a biennial review of the types of services provided by the Department and shall determine if services of comparable quality can be made available through community providers at a cost that is less than the cost to the Department to provide the services.*

(c) *The commissioner shall report [the results of] his findings [determination] to the legislature, the Legislative Budget Board, and the Governor's budget office in conjunction with the Department's [department's] biennial appropriations request.*

SECTION 2.04. Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.12C through 2.12E to read as follows:

Sec. 2.12C. PROPOSALS FOR EXTENDED CARE. (a) In this section, "extended care unit" means a residential unit in a departmental facility that contains chronically mentally ill patients who require 24-hour supervision, long-term care, maintenance, and limited programming.

(b) The Department shall actively solicit proposals from community providers to operate community residential programs that will provide at least the same services that are provided by an extended care unit. A proposal may be designed to serve all or part of the population of an extended care unit.

(c) The Department shall require each provider to offer adequate assurances of ability to provide the services, meet Department standards, and safeguard the safety and well-being of each patient.

(d) The Department may fund a proposal through a contract if:

(1) the provider agrees to provide at least the same services that are provided by an extended care unit for the population the provider proposes to serve;

(2) the provider agrees to provide those services at a cost that is equal to or less than the cost to the Department to provide the services;

(3) the provider agrees to meet the requirements prescribed by Subsection (c) of this section; and

(4) the provider, if it is not the local mental health authority, has signed a memorandum of agreement with the local authority outlining the responsibilities for continuity of care and monitoring.

(e) The appropriate local mental health authority shall monitor the services provided to a patient placed in a program funded under this section. The Department may monitor any service for which it contracts.

(f) The Department retains responsibility for the care of a patient in a program funded under this section. If a program funded under this section ends or does not provide the required services, the Department may terminate the contract. If the Department terminates a contract, the Department shall provide the services or find another program that will provide the services.

Sec. 2.12D. PROPOSALS FOR TRANSITIONAL CARE. (a) In this section, "transitional living unit" means a residential unit that is designed for the primary purpose of facilitating the return of hard-to-place chronically mentally ill psychiatric patients from acute care units to the community through an array of services appropriate for those patients.

(b) The Department shall actively solicit proposals from community providers to operate transitional living units that will provide at least the same services that the Department traditionally provided in facility-based transitional care units. A pro-

posal may provide that the community provider operate the transitional living unit in a community setting or on the grounds of a departmental facility.

(c) The Department shall require each provider to offer adequate assurances of ability to provide the required services, meet Department standards, and safeguard the safety and well-being of each patient. The Department shall also require each provider, if it is not the local mental health authority, to sign a memorandum of agreement with the local authority outlining the responsibilities of the provider and the local authority for continuity of care and monitoring.

(d) The Department may contract with a community provider if the provider agrees to meet the requirements prescribed by Subsections (b) and (c) of this section and agrees to provide services at a cost that is equal to or less than the cost to the Department to provide the services.

(e) The appropriate local mental health authority shall monitor the services provided to a patient placed in a program funded under this section. The Department may monitor any service for which it contracts.

Sec. 2.12E. PROPOSALS FOR GERIATRIC CARE. *(a) In this section, "elderly resident" means an individual residing in a departmental facility who is 65 years of age or older.*

(b) At least every two years the Department shall solicit proposals from community providers to operate community residential programs for elderly residents.

(c) The Department shall require each provider to offer adequate assurances of ability to provide the required services, meet Department standards, and safeguard the safety and well-being of each resident. The Department shall also require each provider, if it is not the local mental health or mental retardation authority, to sign a memorandum of agreement with the local authority outlining the responsibilities for continuity of care and monitoring. The Department may fund a proposal if the provider agrees to provide services for elderly residents at a cost that is equal to or less than the cost to the Department to provide the services.

(d) The appropriate local mental health or mental retardation authority shall monitor the services provided to a resident placed in a program funded under this section. The Department may monitor any service for which it contracts.

SECTION 2.05. Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.13A to read as follows:

Sec. 2.13A. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN COMMUNITY CENTERS. *The Department may allocate any funds available and appropriated for the purpose of providing volunteer services to develop or expand volunteer programs in community centers. The Department shall develop formal policies that encourage the growth and development of volunteer services in community centers.*

SECTION 2.06. Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.17A to read as follows:

Sec. 2.17A. EMPLOYMENT OPPORTUNITIES FOR PATIENTS AND CLIENTS. *(a) Each departmental facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for patients and clients in the facility's or center's service area.*

(b) In making the assessment, each facility and community center shall consider the feasibility of using an array of job opportunities that may lead to competitive employment, including sheltered employment and supported employment.

(c) Each facility and community center shall annually submit a report to the Department demonstrating that the facility or center has assessed the possibility of converting positions as required by Subsection (a) of this section.

(d) The Department shall compile information from the reports required by Subsection (c) of this section and shall make the information available to each designated provider in a service area.

SECTION 2.07. Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.18 to read as follows:

Sec. 2.18. ANNUAL EVALUATION OF ELDERLY RESIDENTS. (a) In this section, "elderly resident" means an individual residing in a departmental facility who is 65 years of age or older.

(b) At least annually, the Department shall evaluate each elderly resident in a departmental facility to determine if the person can be appropriately served in a less restrictive setting. The proximity to the client of family, friends, and advocates concerned with the client's well-being shall be a consideration as to whether the client should be moved from a department facility or to a different department facility.

(c) If the elderly resident is in a departmental mental health facility, the resident's treating physician shall conduct the evaluation. If the elderly resident is in a departmental mental retardation facility, the appropriate interdisciplinary team shall conduct the evaluation.

(d) If the Department determines that an elderly resident can be appropriately served in a less restrictive setting, the Department shall actively attempt to place the resident, in coordination with the local mental health and mental retardation authority, in a less restrictive setting.

(e) In attempting to place an elderly resident in a less restrictive setting, the Department shall recognize that a nursing home may not be able to meet the special needs of an elderly person who has resided in a departmental mental health or mental retardation facility. To ensure that an appropriate placement is made, the Department shall, as part of the evaluation required by Subsection (b) of this section, identify the special needs of each elderly resident, the type of services that will best meet those needs, and the type of facility that will best provide those services.

(f) Each local mental health or mental retardation authority is responsible for providing continuing care for each elderly resident placed in the authority's service area under this section.

SECTION 2.08. Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.29 to read as follows:

Sec. 2.29. MANDATORY REPORTING OF PHYSICIAN MISCONDUCT OR MALPRACTICE. (a) If the Department receives an allegation that a physician employed or under contract with the Department has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 3.08, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), the Department shall report the allegation to the Texas State Board of Medical Examiners in the manner provided by Section 4.02 of that Act.

(b) The Department shall provide the Texas State Board of Medical Examiners with a copy of any report or finding relating to an investigation of an allegation reported to the Texas State Board of Medical Examiners.

SECTION 2.09. (a) Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.30 to read as follows:

Sec. 2.30. LIEN. (a) The Department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a mentally ill patient or mentally retarded client.

(b) The lien attaches to:

(1) all nonexempt real and personal property owned or later acquired by the mentally ill patient or mentally retarded client or by a person legally responsible for the support of the patient or client;

(2) a judgment of a court in this state or the decision of a public agency in a proceeding brought by the patient or client or by a person on the patient's or client's

behalf to recover damages arising from an injury for which the patient or client was admitted to a departmental facility or community center; and

(3) the proceeds of a settlement of a cause of action or a claim by the patient or client arising from an injury for which the patient or client was admitted to a departmental facility or community center.

(c) The lien is for the amount sought as reimbursement for the cost of providing support, maintenance, and treatment to a mentally ill patient or mentally retarded client. However, if the patient or client received the services in a departmental facility, the amount sought may not exceed the amount the Department is authorized to charge under Section 4, Chapter 152, Acts of the 45th Legislature, Regular Session, 1937 (Article 3196a, Vernon's Texas Civil Statutes), or under Section 61, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes). If the patient or client received the services in a community center, the amount sought may not exceed the amount the community center is authorized to charge under Section 3.14, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes).

(d) To secure the lien, the Department or community center must file written notice of the lien with the county clerk of the county in which:

(1) the patient or client, or the person legally responsible for the support of the patient or client, owns property; or

(2) the patient or client received or is receiving services.

(e) The notice must contain:

(1) the name and address of the patient or client;

(2) the name and address of the person legally responsible for the support of the patient or client, if applicable;

(3) the period during which the departmental facility or community center provided services or a statement that services are currently being provided; and

(4) the name and location of the departmental facility or community center.

(f) Thirty days prior to filing the written notice of the lien with the county clerk, the department shall notify by certified mail the mentally ill patient or mentally retarded client and the person legally responsible for the support of the patient or client. Notice shall contain a copy of the charges along with the statutory procedures regarding the filing of liens and procedures developed by the department for contesting the charges. The department shall adopt as rules the procedures to be used to contest the charges.

(g) The county clerk shall record on the written notice the name of the patient or client and the name and address of the departmental facility or community center and, if requested by the person filing the lien, the name of the person legally responsible for the support of the patient or client. The clerk shall index the notice record in the name of the patient or client and, if requested by the person filing the lien, in the name of the person legally responsible for the support of the patient or client.

(h) The notice record must include an attachment that contains a verified account of the charges made by the departmental facility or community center and the amount due to the facility or center. The superintendent or director of the facility or center must swear to the validity of the account. The account is presumed to be correct, and in a suit to cancel the debt and discharge the lien or to foreclose on the lien, the account is sufficient evidence to authorize a court to render a judgment for the facility or center.

(i) To discharge the lien, the superintendent or director of the departmental facility or community center or a claims representative of the facility or center must execute and file with the county clerk of the county in which the lien notice was filed a certificate stating that the debt covered by the lien has been paid, settled, or released and authorizing the clerk to discharge the debt. The county clerk shall record a

memorandum of the certificate and the date on which it was filed. The filing of the certificate and recording of the memorandum discharge the lien.

(b) Section 2.30, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), as added by this section, takes effect September 1, 1988.

SECTION 2.10. Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.32 to read as follows:

Sec. 2.32. DETERMINATION OF SAVINGS. (a) The Department shall determine the degree to which the costs of operating departmental facilities for the mentally ill and mentally retarded in compliance with applicable standards are affected as populations in the facilities fluctuate.

(b) In making the determination required by Subsection (a) of this section, the Department shall:

(1) assume that the current level of services and necessary state of repair of the facilities will be maintained; and

(2) include sufficient funds to allow the Department to comply with the requirements of litigation and applicable standards.

(c) If the Department realizes savings in the operation of departmental facilities for the mentally ill, the Department shall allocate those funds to community-based mental health programs.

(d) If the Department realizes savings in the operation of departmental facilities for the mentally retarded, the Department shall allocate those funds to increase funding of community-based mental retardation programs.

SECTION 2.11. Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.33 to read as follows:

Sec. 2.33. BUDGET INFORMATION FOR 71ST LEGISLATURE. (a) The Department shall determine the amount of funds per 100,000 persons the Department budgeted to each service area for community mental health and mental retardation services during the 1988-1989 fiscal years.

(b) In the Department's budget request for the 1990-1991 fiscal biennium, the Department shall include information detailing the amount of funds necessary to provide the same amount of funding per 100,000 persons in each local service area as the Department budgeted during the 1988-1989 fiscal biennium in the service area that received the greatest per capita funding.

(c) This section expires September 1, 1991.

SECTION 2.12. (a) Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.34 to read as follows:

Sec. 2.34. COMPETITIVE REVIEW REQUIREMENT. (a) It is the policy of the state that the Department establish procedures to:

(1) promote more efficient use of public funds;

(2) ensure periodic review of agency management and support activities in order to improve agency operations, better determine costs, increase agency productivity, and remain competitive with the private sector; and

(3) ensure that activities that are available through the private sector are provided by state government only if the state can provide the service at a lower cost.

(b) In the development of such procedures, the Department shall comply with any competitive review purchasing program provisions contained in S.B. 298 or H.B. 584 as enacted by the 70th Legislature in its regular session in 1987.

(b) This section applies only if S.B. 298 or H.B. 584 is enacted by the 70th Legislature in its regular session in 1987 and contains a provision related to the competitive review purchasing program.

SECTION 2.13. Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.35 to read as follows:

Sec. 2.35. COORDINATION OF SERVICES FOR CHILDREN AND YOUTH. The Department shall designate an employee authorized in the exempt salary schedule for the Department to be responsible for planning and coordinating services and programs for children and youth. The employee shall also be responsible for budget and policy review, as well as interagency coordination of services to children and youth.

SECTION 2.14. (a) Subchapter L, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), is amended by adding Section 59A to read as follows:

Sec. 59A. DEVELOPMENT OF JOINT LONG-RANGE PLAN. (a) The department and the Texas Department of Human Services shall develop a joint long-range plan for services to persons with developmental disabilities, including mental retardation.

(b) The commissioner of each department shall appoint necessary staff to develop the joint plan through research of appropriate topics and through the use of public hearings to obtain testimony from persons with knowledge of or interest in state services to persons with developmental disabilities, including mental retardation.

(c) In developing the joint plan, the departments shall consider existing plans or studies made by the departments.

(d) The joint plan developed by the departments must address at least the following topics:

(1) the needs of persons with developmental disabilities, including mental retardation, in the state;

(2) how state services should be structured to meet those needs;

(3) how the ICF-MR program, the waiver program under Section 1915(c), federal Social Security Act, other programs under Title XIX, federal Social Security Act, and other federally funded programs can best be structured and financed to assist the state in delivering services to persons with developmental disabilities, including mental retardation;

(4) the statutory limits and rule or policy changes that are necessary to ensure the controlled growth of the programs under Title XIX, federal Social Security Act, and other federally funded programs;

(5) methods for expanding services available through the ICF-MR program to "persons with related conditions" as defined by federal regulations relating to the medical assistance program; and

(6) the cost of implementing the joint plan.

(e) If necessary, the departments shall modify their respective long-range plans and any other existing plans relating to the provision of services to persons with developmental disabilities, including mental retardation, to incorporate the provisions of the joint plan.

(f) The departments shall review and update the joint plan biennially. Each department shall consider the updated joint plan in any future modifications of that department's long-range plans and in each future budget request.

(g) This section does not affect the authority of the department and the Texas Department of Human Services to carry out their separate functions as established by state and federal law.

(b) The Texas Board of Mental Health and Mental Retardation and the Texas Board of Human Services shall jointly review and approve the plan required by Section 59A, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), as added by this section, not later than June 1, 1988. The board of each department shall present the plan to the 71st Legislature not later than February 1, 1989. The Texas Department of Mental Health and Mental Retardation and the Texas Department of

Human Services shall consider the results of the plan in the development of their respective budget requests for the 1990-1991 fiscal year.

SECTION 2.15. Section 61, Mentally Retarded Persons Act of 1977, as amended (Article 5547-300, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 61. SUPPORT, ~~[AND]~~ MAINTENANCE, AND TREATMENT OF RESIDENTS.

(a) *The department shall establish by rule a sliding fee schedule for the payment of the cost of support, maintenance, and treatment by the parents of a mentally retarded person under 18 years of age who is a resident in a residential care facility operated by the department. The fee must be based on the parents' net taxable income and ability to pay. At the election of the parents, the parents' net taxable income is determined by the parents' most recent current financial statements or federal income tax returns. The sliding fee schedule must be designed to recover, from a mentally retarded person's parents who have sufficient income and ability to pay, the cost to the state of providing support, maintenance, and treatment to the mentally retarded person. In determining the portion of the cost of support, maintenance, and treatment that the parents of a minor are required to pay under this subsection, the department shall adjust, when appropriate, the payment required under the department's fee schedule to allow for consideration of other factors affecting the parents' ability to pay. No person shall be denied services because of inability to pay. ~~The parents of a mentally retarded person under 18 years of age who is a resident in a residential care facility operated by the department shall pay, if able to do so, the portions of the cost of support and maintenance of the mentally retarded person as may be applicable under the following formula:~~*

~~[If the amount shown as "Net Taxable Income" of the parents as reported on their latest current financial statement or on their latest Federal Income Tax return at the election of the parent or guardian is:~~

~~The Monthly payment per child shall not exceed:~~

[Less than \$4,000	\$ 5
[4,000 4,999	10
[5,000 5,999	20
[6,000 6,999	30
[7,000 7,999	40
[8,000 8,999	50
[9,000 9,999	60
[10,000 10,999	70
[11,000 11,999	80
[12,000 12,999	90
[13,000 13,999	100
[14,000 14,999	110
[15,000 15,999	120
[16,000 16,999	130
[17,000 17,999	140
[18,000 18,999	150
[19,000 19,999	160
[20,000 up	170]

~~No payment under the fee schedule [above formula] shall exceed [actual] cost to the state per resident[, and if the payment required under the formula is more than actual cost, then the amount paid shall be the actual cost]. If the parents are divorced, each parent's rate shall be based on his or her own [net-taxable] income. If the divorced parents' combined fees are [net-taxable income is] such that the maximum authorized fee [rate] is~~

~~exceeded [called for] under the fee schedule [above formula], the maximum authorized fee [rate] shall be equitably allocated between the parents in accordance with rules established by the department; provided, however, that neither parent's allocated fee shall exceed the fee called for under the fee schedule for that parent [the ratio of each parent's net taxable income to the parents' combined net taxable income]. A fee [rate] shall not be established against a parent based on the fee schedule [above formula] to the extent that the parent actually pays court-ordered child support on behalf of the resident; however, the department shall consider such court-ordered child support to be the property and estate of the resident and may establish a fee [rate] based on the child support obligation in addition to any other fees [rates] authorized by this subsection.~~

(b) Parents of a mentally retarded person who is 18 years of age or older shall not be required to pay for his support, ~~[and] maintenance, and treatment~~ as a resident in a residential care facility operated by the department, but the mentally retarded person and his estate shall be liable for his support, ~~[and] maintenance, and treatment~~ regardless of his age, except as provided in Subsection (g) of this section.

(c) The unpaid portion of charges for support, ~~[and] maintenance, and treatment~~ due before the effective date of this Act, under agreements made before the effective date of this Act, shall remain as obligations of parents under previous law, but such preexisting agreements for payment of support, ~~[and] maintenance, and treatment~~ shall be in force after the effective date of this Act only to the extent of parental responsibility set forth in the ~~department fee schedule [foregoing formula].~~

(d) Unpaid charges for support, ~~[and] maintenance, and treatment~~ accruing after the effective date of this Act due by parents for the support, ~~[and] maintenance, and treatment~~ of mentally retarded persons who are ~~[minors and] residents~~ in residential care facilities operated by the department shall be a claim in favor of the state for such support, ~~[and] maintenance, and treatment~~, and shall constitute a lien against the parents' property and estate as provided by Section 2.30, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), but shall not constitute a lien against any other estate or property of the mentally retarded person.

(e) With respect to a mentally retarded person who is a resident in a residential care facility operated by the department, the cost of his support, ~~[and] maintenance, and treatment~~ may be determined under rules and regulations adopted by the department provided that total charges from all sources for support, ~~[and] maintenance, and treatment~~ shall not exceed the ~~[actual] cost~~ of such support, ~~[and] maintenance, and treatment~~, and the costs determined under such rules and regulations shall constitute a claim by the state against the entire estate or any property of the mentally retarded person including but not limited to any share he may have by gift, descent, or devise in his parents' estates or any other person's estate, except as provided in Subsection (g) of this section.

(f) Child support payments for the benefit of a mentally retarded resident paid or owing by a parent pursuant to a divorce decree or other court order shall be considered by the department to be the property of the mentally retarded resident and his estate, and charges may be made against such child support obligations. ~~[Charges made against such child support obligations shall not be limited to the maximum charge authorized by Subsection (a) of this section.]~~ In determining the liability under the ~~department fee schedule [Subsection (a) of this section]~~ for a parent who is obligated to pay child support for the benefit of the resident, the department shall give the parent a credit against the monthly charge authorized for the parent by the ~~department fee schedule [Subsection (a) of this section]~~ for the amount of child support the parent actually pays for the benefit of the resident. The parent who receives the child support payments is liable for the monthly charges based on the child support obligation to the extent such payments are actually received in addition to the liability imposed by the ~~department fee schedule [Subsection (a) of this section]~~. The department may, upon the failure of a parent to pay child support payments or upon the failure of a parent to pay charges based on the child support obligation, file a motion to modify the court order to require the support to be paid directly to the residential care facility in which the mentally retarded person resides for the resident's support, ~~[and] maintenance, and treatment~~. The court may, in

addition, order all past due child support to be paid to the residential care facility to the extent that charges have been made against the child support obligation.

(g) For the purposes of this subchapter no portion of the corpus or income of a trust or trusts, with an aggregate principal amount not to exceed \$50,000, of which a mentally retarded person is a beneficiary shall be considered to be the property of such mentally retarded person or his estate, and no portion of the corpus or income of such trust shall be liable for the support, ~~and~~ maintenance, and treatment of such mentally retarded person regardless of his age. In order to qualify for the exemption granted by this subsection, a trust must be created by a written instrument and a copy of the trust instrument must be provided to the department. A trustee of such a trust shall, upon request, provide the department with a current financial statement which reflects the value of the trust estate. If a current financial statement is not provided within 30 days of the department's request, the department may petition a district court to order the trustee to provide it with a current financial statement. The court shall hold a hearing on the department's petition within 45 days of the date it is filed and shall order the trustee to provide the department with a current financial statement if the court finds that the trustee has failed to provide the statement. Failure of the trustee to comply with the court's order may be punishable by contempt. For the purposes of this subsection, a guardianship established pursuant to the Texas Probate Code; a trust established pursuant to *Chapter 142, Property Code* [~~Article 1994, Revised Statutes, as amended~~]; the facility custodial account established pursuant to Chapter 251, Acts of the 52nd Legislature, Regular Session, 1951 (Article 3183c, Vernon's Texas Civil Statutes); the provisions of a divorce decree or other court order relating to child support obligations; an administration of a decedent's estate; or an arrangement whereby funds are held in the registry or by the clerk of a court is not a "trust" and is not entitled to the exemption contained in this subsection.

(h) The department may use the projected cost of providing residential services to establish the maximum charge that may be made to a payer [~~whose maximum payment is not prescribed by Subsection (a) of this section~~]. The department may establish maximum charges on a statewide per capita basis, on an individual facility per capita basis, on the basis of the type of service provided, or on any combination of these bases. The department may establish charges and accept payments that are in excess of the department's projected cost from a payer who is not an individual and whose method of determining the rate of reimbursement to a provider results in the excess.

SECTION 2.16. Section 4, Chapter 152, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 3196a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. The Texas Department of Mental Health and Mental Retardation shall establish by rule a sliding fee schedule for the payment of the cost of support, maintenance, and treatment by the parents of a patient under 18 years of age who is in a state mental health facility. The fee must be based on the parents' net taxable income and ability to pay. At the election of the parents, the parents' net taxable income is determined by the parents' most recent current financial statements or federal income tax returns. The sliding fee schedule must be designed to recover from a patient's parents who have sufficient income and ability to pay, the cost to the state of providing support, maintenance, and treatment to the patient. In determining the portion of the cost of support, maintenance, and treatment that the parents of a minor are required to pay under this subsection, the department shall adjust, when appropriate, the payment required under the department's fee schedule to allow for consideration of other factors affecting the parents' ability to pay. No person shall be denied services because of an inability to pay. Except as provided by Section 5A of this Act, the department may not charge a fee that exceeds the cost to the state to support, maintain, and treat a patient. ~~The Texas Department of Mental Health and Mental Retardation, directly or through an authorized agent or agents, may make contracts fixing the price for the support, maintenance, and treatment of patients in any State hospital under its management and control at a sum not to exceed the cost of same or for such part thereof as such respective patient, his relatives or guardian of his estate~~

~~may be able to and agree to pay, and binding the persons making such contracts to payment thereunder.]~~

SECTION 2.17. Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Section 2.36 to read as follows:

Sec. 2.36. FEE ADVISORY COMMITTEE. (a) Not later than September 1, 1987, the Department shall appoint a seven-member fee advisory committee. At least four of the members must be parents of residents of a departmental facility. In making the appointments, the Department shall provide for a balance between parents of minors and adults in state hospitals and parents of minors and adults in state schools.

(b) The committee shall assist the Department in developing an equitable fee schedule as prescribed by Section 61, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), and by Section 4, Chapter 152, Acts of the 45th Legislature, Regular Session, 1937 (Article 3196a, Vernon's Texas Civil Statutes). The committee shall also advise the Board before adoption of the fee schedule and conduct a study of the impact of the fee schedule.

(c) The Department shall provide the committee with necessary support and technical assistance.

(d) In developing the fee schedule, the Department and committee shall consider the impact the fees would have on state general revenue and the state's ability to obtain reimbursement for services under Title XIX, federal Social Security Act.

(e) The committee shall submit a report to the 71st Legislature on the study prescribed by Subsection (b) of this section that includes any necessary statutory change or additional riders to the General Appropriations Act.

(f) This section expires on the date the committee submits to the 71st Legislature the report prescribed by Subsection (e) of this section.

SECTION 2.18. (a) Article 2, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding a new Section 2.37 to read as follows:

Sec. 2.37. JOINT STUDY OF TREATMENT FOR ABUSED CHILDREN. The Department and the Texas Department of Human Services shall conduct a joint study of current methods for treating abused children, the effectiveness of each method, and the feasibility of utilizing the methods in this state. The study shall consider fiscal impact and any necessary statutory changes. The findings from the study shall be submitted to the appropriate committees of the house and senate by January 1, 1989.

(b) This section expires on January 1, 1989.

SECTION 2.19. Section 2a, Interstate Compact on Mental Health (Article 5561f, Vernon's Texas Civil Statutes), as amended by Chapter 479, Acts of the 69th Legislature, Regular Session, 1985, and by Chapter 729, Acts of the 69th Legislature, Regular Session, 1985, is repealed.

ARTICLE 3

SECTION 3.01. Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-203, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) and (c) and by adding Subsection (d) to read as follows:

(a) Local agencies which may establish and operate community centers are a county, a city, a hospital district, a school district, or any organizational combination of two (2) or more of these. When community centers are established by an organizational combination, the governing bodies of such organizational combination shall enter into a contract between or among them which shall stipulate[:

~~[(1) the kinds and number of community centers, as that term is defined in subsection (b) below, which are to be established, and~~

~~[(2) whether the board of trustees shall consist of not less than five (5) nor more than nine (9) members selected from the governing bodies of the organizational combination, or~~

of not less than five (5) nor more than nine (9) members to be appointed from the qualified voters of the region to be served. This contract may be renegotiated or amended from time to time as necessary to ~~[provide for the establishment of additional community centers or to]~~ change the method of establishing a board of trustees.

(c) A community center is an agency of the state, *a governmental unit*, and a unit of local government as defined and specified by Chapters 101 and 102, *Civil Practice and Remedies Code*, and a local government as defined by Section 3, *The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes)* ~~[Section 2, Texas Tort Claims Act (Article 6252-19, Vernon's Texas Civil Statutes)]~~.

(d) *A community center may not be established unless the region to be served by the center contains a population of at least two hundred thousand (200,000), according to the most recent federal census.*

SECTION 3.02. Subsections (c), (e), and (f), Section 3.11, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-203, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) A special fund to be known as the special community centers facilities construction and renovation fund is established in the state treasury. The fund may be used only to finance the construction of facilities by the Department or the renovation of buildings and facilities by community centers under this section. The Texas Board of Mental Health and Mental Retardation shall establish priorities for the use of facilities constructed or renovated under this section in terms of appropriate types of community-based services and alternative living arrangements for the mentally disabled. These priorities shall serve as a basis for criteria to be used by the Department in determining the eligibility of a proposal for facility construction or renovation. If the Department agrees to construct a facility for a community center, the agreement must include provision for a lease-purchase arrangement between the community center, the governing body of each local agency establishing the community center, and the Department. If the Department agrees to provide funding to renovate a building or facility owned or leased by a community center, the renovation funding agreement must include provision for obtaining a lien against the community center's buildings or facilities in an amount equal to the funding provided. The renovation funding agreement must also include a provision authorizing the Department to withhold state *contract funds* ~~[grant-in-aid]~~ if the community center fails to make repayments on time. The Department shall specify a leasing or repayment arrangement which includes an amortization of the cost of the facility or renovation over a period not to exceed forty (40) years. The agreement may provide for reasonable interest to be paid by the center on the total cost of the facility or renovation. The rate of interest may not exceed fifty (50) percent of the market interest rate, as determined by the Department, applicable at the time of the signing of the lease-purchase or renovation funding agreement to any establishing agency's revenue bonds if the agency were to issue bonds for the construction of the community center or for the renovation of the building or facility for the same term as the term covered by the lease-purchase or renovation funding agreement. The leasing payments shall be credited to the special community centers facilities construction and renovation fund toward the purchase of the facility by the community center. The repayments by a community center of funding provided to renovate a building or facility shall be credited to the special community centers facilities construction and renovation fund toward repayment of the funding and release of the lien.

(e) At such time as the community center has paid to the Department the amount specified under the terms of the renovation funding agreement, the Department is authorized to and shall release the lien against the community center's buildings or facilities. If a payment is not made to the Department by the due date established in the renovation funding agreement, the community center is considered in default. On default by the community center, the Department shall send to the community center a written notice of default and a statement that the center must make the overdue payments before the expiration of sixty (60) days after the day on which the center receives the notice. If the community center does not make the overdue payments within the allotted time, the Department may withhold state *contract funds* ~~[grant-in-aid]~~ in the amount of the

overdue payments or may terminate the renovation funding agreement and sue to foreclose on the lien.

(f) The community center may utilize state funds, including but not limited to state *contract funds* [~~grant-in-aid~~], for the operation of the facility, provided that the total amount of all state funds used in the actual operation of the facility may not exceed sixty (60) percent of the total operating budget of that facility. State funds received by the community center may not be used to pay leasing payment obligations or repayments of renovation funding under this section. Leasing payments and repayments of renovation funding do not qualify as operating expenses for determining the total operating budget of the facility. Construction, renovation, and operation of a facility under the provisions of this section are not grounds for receipt by a community center of additional *contract funds* [~~grant-in-aid~~] in excess of the amount of *contract funds* [~~grant-in-aid~~] the center would otherwise receive pursuant to the rules and regulations of the Department governing the distribution of such funds.

SECTION 3.03. (a) Article 3, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-203, Vernon's Texas Civil Statutes), is amended by adding Sections 3.12A and 3.12B to read as follows:

Sec. 3.12A. LIMITATION ON DEPARTMENT CONTROL AND REVIEW. (a) Except as provided by Subsection (b) of this section, it is the intent of the legislature that the Department limit its control over and routine reviews of community center programs to those programs that:

- (1) use state funds or use required local funds that are matched with state funds;*
- (2) provide core or required services;*
- (3) provide services to former clients or patients of a departmental facility; or*
- (4) are affected by litigation in which the Department is a defendant.*

(b) The Department may review any community center program if the Department has reason to suspect that a violation of a departmental rule has occurred or if the Department receives an allegation of patient or client abuse.

(c) The Department may determine if a program is subject to the Department's review if there is a question as to whether a particular program uses state funds or uses required local matching funds.

Sec. 3.12B. MEMORANDUM OF UNDERSTANDING ON PROGRAM REVIEWS. (a) The Department shall identify each state agency that reviews the services or programs of a community center.

(b) The Department, the Texas Department of Human Services, the Texas Rehabilitation Commission, the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Health, the Central Education Agency, the Texas State Board of Pharmacy, and any other agency identified by the Department under Subsection (a) of this section shall adopt a joint memorandum of understanding to maximize the use of each agency's reviews by eliminating duplication of program reviews unless duplicative reviews are necessary to comply with federal funding requirements.

(c) The joint memorandum may not reduce the degree of a community center's accountability to a state agency for the expenditure of funds that the community center received from that agency.

(d) Not later than the last month of each fiscal year, the Department and the other agencies shall review and update the joint memorandum.

(e) Each agency shall adopt the joint memorandum by rule. All revisions to the memorandum must be adopted by rule.

(b) Not later than December 31, 1987, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Rehabilitation Commission, the Texas Commission on Alcohol and Drug Abuse, the Texas Department of Health, the Central Education Agency, the Texas State Board of Pharmacy, and each agency identified under Subsection (a), Section 3.12B, Texas Mental Health and Mental

Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), as added by this section, shall adopt a joint memorandum of understanding as prescribed by Section 3.12B.

ARTICLE 4

SECTION 4.01. Article 4, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-204, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 4. ~~[CONTRACTS FOR]~~ COMMUNITY-BASED SERVICES

Sec. 4.01. RULES AND REGULATIONS OF THE DEPARTMENT. (a) The Department shall prescribe such rules, regulations and standards, not inconsistent with the Constitution and laws of this State, as it considers necessary and appropriate to insure adequate provision of community-based mental health and mental retardation services by *departmental facility outreach programs* or by community centers and other providers receiving contract funds as designated providers pursuant to Section 4.03 of this Act. Each *designated provider* ~~[such]~~ contract shall contain a provision authorizing the Department to have unrestricted access to all facilities, records, data, and other information under the control of the designated provider or subcontractor of the designated provider as necessary to enable the Department to audit, monitor, and review all financial and programmatic activities and services associated with the contract.

(b) Before any rule, regulation or standard is adopted the Department shall give notice and opportunity to interested persons to participate in the rule making.

(c) The rules, regulations and standards adopted by the Department under this Section shall be filed with the Secretary of State and shall be published and available on request from the Secretary of State.

(d) A copy of these rules shall be sent to each *departmental facility outreach program* and each community center or other provider receiving contract funds as a designated provider pursuant to Section 4.03 of this Act.

Sec. 4.02. PLAN. As soon as possible after its establishment the board of trustees of a community center shall submit to the Department:

- (1) a copy of the contract between the participating local agencies, if applicable;
- (2) a plan within the projected financial, physical and personnel resources of the region to be served to develop and make available to the residents of the region an effective mental health or mental retardation services program, or both, through a community center or centers.

Sec. 4.03. *PROVISION OF* ~~[ELIGIBILITY FOR]~~ COMMUNITY-BASED SERVICES ~~[CONTRACTS]~~. (a) The Department shall insure that at a minimum the following services are available in each service area:

- (1) 24-hour emergency screening and rapid crisis stabilization services;
- (2) community-based crisis residential service or hospitalization;
- (3) community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation services;
- (4) family support services, including respite care, *as provided by Section 4.03A of this Act*; ~~[and]~~
- (5) case management services;
- (6) *medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and*
- (7) *psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.*

In addition, the Department shall arrange for appropriate community-based services to be available in each service area, including the assignment of a case manager, for all persons discharged from departmental facilities or institutions in need of aftercare services or continuum of care.

(b) The Department shall identify and contract with one or more designated providers for each service area. Each designated provider shall provide, either directly or by subcontract, specific performance outcomes or services to address the needs of priority client populations as required by the Department and shall comply with the rules, regulations and standards established by the Department pursuant to Section 4.01 of this Act. Each designated provider shall coordinate its activities with those of other appropriate agencies providing care and treatment for individuals with drug or alcohol problems. In identifying a designated provider, the Department shall give preference to a community center located in a given service area established pursuant to Section 3.01 of this Act. If the Department is unable to negotiate a contract with a center to insure that specific required services for priority client populations are available in that service area, or if the Department determines that a center does not have the capacity to insure the availability of such services, the Department may contract with other local agencies or private providers or organizations to act as a designated provider for that service area. *If the Department is unable to identify and contract with a designated provider in a service area, the Department shall provide the services required under this article directly through a departmental facility outreach program.*

(c) The Department shall develop standards of care and mechanisms for monitoring the services provided by *departmental facility outreach programs* or by designated providers and their subcontractors. These standards shall be designated to insure that the quality of community-based services be consistent with the quality of care available in other departmental facilities and institutions. *The Department shall biennially review these standards in conjunction with designated providers to determine if each standard is necessary to ensure the quality of care.* The Department shall specify performance standards including outcome measures for evaluating the compliance of a *departmental facility outreach program* or designated provider with the provisions of its obligation or contract to provide specific services to priority client populations. The Department shall *review the program quality and program performance results of each departmental facility outreach program and each designated provider at least once each fiscal year.* *The Department may determine the scope of each review on a case-by-case basis. In addition, to supplement departmental reviews, the Department shall assist designated providers in developing a peer review organization to provide self-assessments of programs* ~~[evaluate the performance of each designated provider prior to any contract renewal].~~ The Commissioner shall refuse to renew a contract with a designated provider and select other agencies, providers, or organizations to be the designated provider if an evaluation of the original provider's performance by the Department indicates an inability to insure the availability of the specific services to priority client populations required by the Department and the provisions of this Act.

(d) The Department may include in the terms of its contract with a designated provider a requirement that some or all of the state funds be matched by local support. ~~[If such match is specified, it shall be uniformly required of all providers or contractors in the service area.]~~ Local support shall be in such proportions and amounts as may be determined by the Department. If such match is specified, it shall be uniformly required of all providers or contractors in the service area. *The Department shall also establish a local match requirement for departmental facility outreach programs that provide community-based services required under this article. The requirement must be consistent with the requirements applied to designated providers.* For the purpose of calculating the local share of the operating costs of a community center, *departmental facility outreach program*, or other designated provider, patient fee income, services, and facilities contributed by the designated provider *and contributions by a county or city or other locally generated contributions* may be counted as local support.

(e) The Department shall establish a uniform fee collection policy which is the same for community centers and other designated providers which is equitable, provides for collections, and maximizes contributions to local revenue.

Sec. 4.03A. RESPITE CARE. (a) The Department shall adopt rules relating to the provision of respite care and shall develop a system to reimburse providers of in-home respite care.

- (b) *The rules must:*
- (1) *encourage the use of existing local providers;*
 - (2) *encourage family participation in the choice of a qualified provider;*
 - (3) *establish procedures for:*
 - (A) *determining the amount and type of in-home respite care to be authorized;*
 - (B) *reimbursing providers;*
 - (C) *handling appeals from providers;*
 - (D) *handling complaints from recipients of in-home respite care;*
 - (E) *providing emergency backup for in-home respite care providers; and*
 - (F) *advertising for, selecting, and training in-home respite care providers;*
 - (4) *specify the conditions and provisions under which a provider's participation in the program can be canceled; and*
 - (5) *regulate or prescribe any other procedure necessary to administer this section.*
- (c) *The Department shall establish service and performance standards for departmental facilities and designated providers to use in operating the in-home respite care program. The Department shall establish the standards from information obtained from the families of patients and clients receiving in-home respite care and from providers of in-home respite care. The Department may obtain the information through the use of public hearings or from an advisory group.*
- (d) *The service and performance standards established by the Department under Subsection (c) of this section must:*
- (1) *prescribe minimum personnel qualifications the Department determines are necessary to protect health and safety;*
 - (2) *establish various levels of personnel qualifications that are dependent on the needs of the patient or client; and*
 - (3) *permit a health professional with a valid Texas practitioner's license to provide care that is consistent with the professional's training and license without requiring additional training unless the Department determines that additional training is necessary.*

Sec. 4.04. **AUDITING PROCEDURES.** The board of trustees of a community center or the administrative authority of a designated provider other than a community center, as a condition precedent to its receiving contract funds under this Act, shall annually have its accounts audited by a Texas certified or public accountant licensed by the Texas State Board of Public Accountancy. Such audit shall meet at least the minimum requirements as shall be, and in such form as may be, prescribed by the Department and approved by the State Auditor. A copy of each such annual audit, approved by the board of trustees of the community center or the administrative authority of the designated provider, shall be filed by the community center or designated provider with the Department on such date as the Department may specify. Where the board of trustees or administrative authority declines or refuses to approve the audit report, it shall nevertheless file with the said Department a copy of the audit report with its statement detailing its reasons for failure to approve the report. In addition to the copy furnished the Department, copies of each audit report shall be submitted to the Governor, the Legislative Budget Board and the Legislative Audit Committee. The Commissioner and the State Auditor, on behalf of the Department and the Legislative Audit Committee, respectively, shall have access to all vouchers, receipts, journals and other records as either may deem needed and appropriate for the review and analysis of audit reports.

Sec. 4.05. **WITHHOLDING CONTRACT FUNDS [~~GRANT-IN-AID~~].** In accordance with a renovation funding agreement between the Department and a community center executed as prescribed by Section 3.11 of this Act, the Department may withhold *contract funds* [~~grant-in-aid~~] in the amount of the overdue payments from any center that fails to make timely repayments of funding provided to renovate a community center building or facility.

Sec. 4.06. REVIEW OF CRISIS RESIDENTIAL AND HOSPITALIZATION SERVICES. (a) As a condition precedent to receiving contract funds under this Act, the board of trustees of a community center shall review the method by which the center provides the crisis residential or hospitalization services, or both, required under Subdivision (2) of Subsection (a) of Section 4.03 of this Act.

(b) The board of trustees shall conduct the review every two years before a contract is due for renewal. The community center shall submit information to the Department describing the review process and the results of the review before a contract is due for renewal.

(c) The board of trustees shall conduct the review in accordance with Department rules. The review must include at least the following:

(1) an efficiency and performance review to identify the quantity and quality of services that are necessary in the next contract period;

(2) bid specifications for the quantity and quality of services identified under Subdivision (1) of this subsection;

(3) an estimate of the total cost to the community center to provide or to contract for the identified services in accordance with the bid specifications and using the most efficient means identified;

(4) a solicitation of bids from qualified providers based on the developed bid specifications; and

(5) an analysis of the submitted bids and a comparison of those bids with the center's estimate of the total cost for providing or contracting for the service required by Subdivision (3) of this subsection.

(d) In determining the estimate of the total cost to the community center required by Subdivision (3) of Subsection (c) of this section and the analysis of submitted bids required by Subdivision (5) of Subsection (c) of this section, the community center shall base the estimate and analysis on the method of service delivery that the community center is using in the current contract period. However, in determining the estimate of the total cost as required by Subdivision (3) of Subsection (c) of this section, the center may include modifications to the existing operations.

(e) The Department shall adopt rules establishing procedures and standards for the community centers to use in conducting the review required by this section. The rules must establish consistent standards for:

(1) the development of bid specifications;

(2) the center's estimate of the total cost to continue the existing method of service delivery; and

(3) the analysis of the bids submitted and the comparison of those bids with the center's estimate.

(f) Before the Department may renew a contract with a community center, the Department shall require the center to demonstrate that the center is providing crisis residential or hospitalization services, or both, using the method or provider that provides the services in compliance with departmental contracts and standards and at the lowest cost. The demonstration must be based on the review required by this section.

ARTICLE 5

SECTION 5.01. (a) The Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 5 to read as follows:

Art. 5. DEPARTMENTAL FACILITIES

Sec. 5.01. BUDGETS. (a) The Department shall develop budgets for its facilities that are based on uniform costs for specific types of services provided by a facility.

(b) *The Department may deviate from the requirement of Subsection (a) of this section only if the Department documents that a legitimate reason exists for the deviation.*

Sec. 5.02. CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION. *The Department shall establish objective criteria for determining when a new facility may be needed and when a facility may be expanded, closed, or consolidated.*

Sec. 5.03. MANAGEMENT OF SURPLUS PROPERTY. (a) *To the extent provided by this Act, the Department may lease, transfer, or otherwise dispose of any surplus real property including any improvements under its control and management or authorize the lease, transfer, or disposal of the property. Surplus property shall be defined as property designated by the Board to have minimal value to the present service delivery system and projected to have minimal value to the service delivery system as described in the Department's long-range plan required by Section 2.12B of this Act.*

(b) *The proceeds resulting from the lease, transfer, or disposal of real property including any improvements under this section shall be deposited to the credit of the Department in the Texas capital trust fund established under Article 601e, Revised Statutes. The proceeds and any interest from the proceeds may be appropriated only to fund improvements to the departmental system of facilities and to fund the special community centers facilities construction and renovation fund for improvements and renovations authorized under Subsection (c), Section 3.11, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes).*

(c) *All lease proposals shall be advertised once a week for four consecutive weeks in at least two newspapers, one of which shall be published in the city where the property is located or the nearest daily paper thereto and the other in some paper with statewide circulation. Each lease shall be subject to the approval of the Attorney General of Texas, both as to substance and as to form. The Board shall adopt proper forms and regulations, rules, and contracts, as will, in the best judgment, protect the interest of the state. The Department may reject any and all bids.*

(d) *This section does not authorize the Department to close or consolidate a facility used to provide mental health or mental retardation services without first obtaining legislative approval.*

Sec. 5.04. USE OF DEPARTMENTAL FACILITIES BY SUBSTANCE ABUSERS. (a) *The Department shall annually provide the Texas Commission on Alcohol and Drug Abuse with an analysis by county of the hospitalization rates of persons with substance abuse problems. The analysis must include information indicating which admissions were for persons who had only substance abuse problems and which admissions were for persons who had substance abuse problems but whose primary diagnoses were other types of mental health problems.*

(b) *Not later than September 1 of each even-numbered year, the Department and the Texas Commission on Alcohol and Drug Abuse shall jointly estimate the number of facility beds that should be maintained for persons who have substance abuse problems and who cannot be treated in the community.*

Sec. 5.05. SERVICES FOR EMOTIONALLY DISTURBED CHILDREN AND YOUTH. (a) *When evaluation and diagnostic services for emotionally disturbed children and youth are not immediately available through a local mental health authority, the Department shall, at each state mental health facility, make short-term evaluation and diagnostic services available for the emotionally disturbed children and youth who are referred to the Department by the Texas Department of Human Services.*

(b) *The Texas Department of Human Services is authorized to make payments for such services. Payments shall be based on fees jointly agreed to by both agencies. Any payments received per this agreement may be used by the Department to contract for community-based residential placements for emotionally disturbed children and youth.*

(c) *The Department shall maintain computerized data on emotionally disturbed children and youth. The data to be maintained shall contain individual and aggregate information on emotionally disturbed children and youth. The purpose of the information is to allow the Department to track services and placements and to conduct research on the treatment of emotionally disturbed children and youth. The Department is authorized to coordinate with the Texas Department of Human Services in developing the information. The Department shall make the information available to the state mental health facilities and the community mental health and mental retardation centers.*

Sec. 5.06. REPORT ON APPLICATION FOR SERVICES. (a) The Department shall collect information on applications for residential and nonresidential services provided by the Department and a mental retardation authority and the actions of the Department and the mental retardation authority in response to each application. The information shall include the age, diagnosis, and legal status of the applicant; the date the application was received; and the date on which the Department or the mental retardation authority acted on the application.

(b) *The Department shall use the information to prepare an annual report to the board on applications received and the disposition of the applications. The report shall not contain any information that would disclose the identity of any applicant for services.*

(c) *The Board shall submit copies of the report to the legislature by October 1 of each year. The report shall be subject to the provisions of the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).*

Sec. 5.07. STUDY ON FEASIBILITY OF CONSOLIDATING ADMINISTRATION OR OPERATION OF STATE CENTERS. (a) The Department shall conduct a study to determine the feasibility of consolidating by contract or management agreement the administration or operation of the El Paso, Rio Grande, Laredo, Beaumont, and Amarillo state centers and the community centers located in the respective state center's service area.

(b) *The Department shall determine if consolidation would result in the patients and clients receiving the same quality and quantity of services and would be more cost-effective than the current system of administration or operation.*

(c) *Not later than August 1, 1988, the Department shall prepare and submit to the Texas Sunset Commission, Legislative Budget Board, and the Governor's budget office a report that contains the results of the Department's efforts.*

(d) *The report required by Subsection (c) of this section must contain a specific plan to implement the consolidation of each state center and community center located in the same service area. The plan may provide that a state center shall contract to administer or operate the community center or that a community center shall contract to administer or operate the state center. The report must also contain an analysis of the positive and negative aspects of consolidating all or part of the administration or operation of the state centers and the appropriate community centers.*

(e) *In conducting the study and preparing the plan and report prescribed by this section, the Department shall include as a participant from each state center's service area:*

(1) *at least one parent who has a child with a mental handicap and who is currently using affected services in the area; and*

(2) *the state senators and representatives who represent the areas served by the state centers and community centers in that service area.*

(f) *This section expires September 1, 1988.*

(b) *Beginning with the 1990-1991 fiscal biennium, the Texas Department of Mental Health and Mental Retardation shall develop the budgets for departmental facilities in*

accordance with Section 5.01, Texas Mental Health and Mental Retardation Act (Article 5547-201 et seq., Vernon's Texas Civil Statutes), as added by this section.

(c) Not later than October 1, 1988, the Texas Board of Mental Health and Mental Retardation shall submit to the legislature the first report required by Section 5.06, Texas Mental Health and Mental Retardation Act (Article 5547-201 et seq., Vernon's Texas Civil Statutes), as added by this section.

SECTION 5.02. Section 1.11, Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes), is amended by adding Subsection (g) to read as follows:

(g) In allocating grant funds, the commission shall consider the state facility hospitalization rate of substance abusers who are from the service area of the entity requesting the grant. In addition to the requirements of Subsection (f) of this section, an organization or other entity is not eligible for a grant of state funds for a treatment or rehabilitation program unless the program for which the funds are requested will, at a minimum, reduce state facility hospitalization of substance abusers by a percentage established by the commission.

ARTICLE 6

SECTION 6.01. (a) Article 2, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), is amended by adding Sections 2.31 and 2.31A to read as follows:

Sec. 2.31. DESIGNATION OF SINGLE PORTAL AUTHORITIES. (a) The Board shall adopt rules relating to the designation of local mental health authorities as single portal authorities. The Board shall also adopt rules governing commitments to a single portal authority and transfers of patients that involve a single portal authority. The rules must be based on the advice and recommendations of the single portal review committee established under Section 2.31A of this article.

(b) The Board shall also adopt rules that provide for emergency admission to a departmental mental health facility if obtaining approval from the authority could result in a delay that might endanger the patient or others.

(c) In developing rules under this section, the Board's first consideration must be satisfying individual patient treatment needs in the most appropriate setting. The Board shall also give consideration to reducing patient inconvenience resulting from admissions and transfers between providers.

(d) The Board may designate a local mental health authority as a single portal authority for a service area if:

(1) the Board determines that the authority operates or contracts for the licensed in-patient mental health facilities determined necessary by the Board;

(2) the Board determines that all core services required by Section 4.03 of this Act are available in the service area; and

(3) the single portal review committee:

(A) determined that the core services in the service area are of sufficient quality and quantity as measured by criteria established by the single portal review committee;

(B) determined that the local mental health authority meets the criteria set by the single portal review committee;

(C) received endorsement of the application from the county judges and police chiefs who have jurisdiction in the applicant's service area and from the superintendent of the departmental mental health facility serving the area; and

(D) approved the authority's application.

(e) If the Board designates a local mental health authority as a single portal authority, the Department shall notify each judge who has probate jurisdiction in the service area and any other person the single portal authority considers necessary of the designation and the new procedures required in the area.

Sec. 2.31A. SINGLE PORTAL REVIEW COMMITTEE. (a) The Board shall appoint a nine-member single portal review committee. The Board shall appoint:

(1) two persons who are representatives of consumers of mental health services;
(2) one person who is a representative of superintendents of departmental mental health facilities;

(3) one person who is a representative of directors of community centers;

(4) one person who is a representative of county judges;

(5) one person who is a representative of police chiefs;

(6) one person who is a representative of private psychiatric hospitals;

(7) one person who is a representative of licensed substance abuse facilities; and

(8) one person who is a representative of practicing private psychiatrists.

(b) Members serve staggered two-year terms with the terms of four members expiring every even-numbered year and the terms of five members expiring every odd-numbered year.

(c) The members receive no compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing official duties.

(d) The committee shall:

(1) develop criteria for the types, quantity, and quality of services that must be provided in an area for a local mental health authority to be designated as a single portal authority; and

(2) develop criteria for evaluating applications for designation as a single portal authority.

(e) The criteria shall include a requirement that the applicant obtain endorsements from the county judges, police chiefs, and superintendent of the departmental mental health facility in the applicant's service area.

(f) In developing all criteria, the committee shall attempt to reduce duplication by using existing departmental standards for quality of services, to the extent possible, and permitting the use of existing inspection reports as evidence of performance. The committee may establish additional criteria or require additional inspections or reports as needed.

(g) The Board shall adopt by rule the criteria developed by the committee.

(h) The Department shall provide the committee with necessary staff support and shall provide the committee with funds to hire any necessary additional staff. The committee may either contract with consultants to conduct site visits or use Department staff.

(i) The committee shall evaluate applications for designation as a single portal authority. The committee shall determine if:

(1) the applicant meets the criteria for designation; and

(2) the necessary core services are available in sufficient quality and quantity in the service area, as measured by criteria established by the single portal review committee.

(j) The committee shall make a recommendation to the Board on each application the committee reviews.

(b) On the effective date of this Act, the Texas Department of Mental Health and Mental Retardation shall appoint the members of the single portal review committee required by Section 2.31A, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), as added by this section. The department shall designate four members to serve terms ending in 1988 and five members to serve terms ending in 1989. The single portal review committee shall recommend criteria and procedures for reviewing applications for designation as a single portal authority to the Texas Board of Mental Health and Mental Retardation not later than May 1, 1988.

(c) The Texas Board of Mental Health and Mental Retardation must adopt the rules required by Sections 2.31 and 2.31A, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), as added by this section, not later than September 1, 1988. Beginning September 1, 1988, the board may designate local mental health authorities as single portal authorities. During the period from September 1, 1988, through August 31, 1989, the board may not designate more than six local mental health authorities as single portal authorities.

(d) By January 1, 1989, the single portal review committee shall prepare and submit a report to the Texas Board of Mental Health and Mental Retardation that describes any problems the committee encountered in carrying out its responsibilities under Sections 2.31 and 2.31A, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes), as added by this section. The report shall also include recommendations to the board and the 71st Legislature on how to improve the single portal review process. The board shall submit the committee's report to the appropriate committees of the house and senate by February 1, 1989.

SECTION 6.02. Section 4, Texas Mental Health Code, as amended (Article 5547-4, Vernon's Texas Civil Statutes), is amended by amending Subdivision (18) and by adding Subdivisions (23) and (24) to read as follows:

(18) "In-patient mental health facility" means a mental health facility which can provide 24-hour residential and psychiatric services that is operated by the department, is a private mental hospital licensed by the department, is a community center as defined in Subdivision (22) of this section or a facility operated by a community center or other entity designated by the department to provide mental health services, is that identifiable part of a general hospital that provides diagnosis, treatment, and care for mentally ill persons and which is licensed either by the department or the Texas Department of Health, or is a hospital operated by an agency of the United States.

(23) "Board" means the Texas Board of Mental Health and Mental Retardation.

(24) "Single portal authority" means a mental health authority designated as a single portal authority by the department.

SECTION 6.03. Section 25, Texas Mental Health Code (Article 5547-25, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 25. RIGHTS OF VOLUNTARY PATIENTS ADMITTED FOR IN-PATIENT CARE. (a) Every voluntary patient in an in-patient mental health facility has the following rights:

(1) the right to leave the mental health facility within 96 hours, after filing with the head of the mental health facility or his designee a written request for release, signed by the patient or someone on his behalf and with his consent, unless prior to the expiration of the 96-hour period:

(A) written withdrawal of the request for release is filed; or

(B) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with the provisions of this code;

(2) the right of habeas corpus, which is not affected by admission to a mental health facility as a voluntary patient;

(3) the right to retain civil rights and legal capacity, which are not affected by admission to a mental health facility as a voluntary patient;

(4) the right to periodic review of his need for continued in-patient treatment;

(5) the right not to have an application for court-ordered mental health services filed while he is a voluntary patient unless in the opinion of the head of the facility he meets the criteria for court-ordered services and he is either absent without authorization or he refuses or is unable to consent to appropriate and necessary psychiatric treatment;

(6) the rights of patients set forth in Sections 80 and 81 of this code; and

(7) the right, within 24 hours of admission, to be informed orally in simple, nontechnical terms of these above-listed rights. In addition, the person shall be informed in writing of these same above-listed rights, in his primary language if possible. The above-listed

rights shall be communicated to a hearing and/or visually impaired person through any means reasonably calculated to communicate these rights. The same explanation shall be given to the parent, guardian, or managing conservator of a minor.

(b) In addition to the rights provided by Subsection (a) of this section, the department shall notify each adult patient of the patient's right to have the department notify his family prior to discharge or release if the patient grants permission. If the patient grants permission for notification, the department or facility shall make a reasonable attempt to give the patient's family prior notice of the patient's release or discharge.

SECTION 6.04. Subsection (f), Section 26, Texas Mental Health Code (Article 5547-26, Vernon's Texas Civil Statutes), is amended to read as follows:

(f) Such persons so apprehended may be detained in custody for a period which shall not exceed 24 hours from the time the person is presented to the facility, unless a written order for further detention is obtained; provided, however, that *if the 24-hour period ends on a Saturday or Sunday or a legal holiday or before 4 p.m. on the first succeeding business day, then the period of detention shall end at 4 p.m. on the first succeeding business day* ~~[should the person be taken into custody after 12 noon on Friday or on a Saturday or Sunday or a legal holiday, then the 24-hour period allowed for obtaining the order permitting further detention shall begin at 9 a.m. on the first succeeding business day].~~

SECTION 6.05. Subsection (a), Section 28, Texas Mental Health Code (Article 5547-28, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Any adult person may execute an application for emergency detention of another. The application shall be in writing and shall state:

(1) that the applicant has reason to believe and does believe that the person evidences mental illness;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others, which risk of harm shall be specified and described;

(3) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(4) that the applicant's beliefs are based on specific recent behavior, overt acts, attempts, or threats, which behavior, acts, attempts, or threats shall be described in specific detail; and

(5) the relationship, *set forth in detail* ~~[if any]~~, of the applicant to the person sought to be detained.

SECTION 6.06. Section 34, Texas Mental Health Code, as amended (Article 5547-34, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 34. RECOMMENDATION FOR TREATMENT. (a) The Commissioner of Mental Health and Mental Retardation shall designate a facility or provider in the county in which an Application for Court-Ordered Mental Health Services is filed to file with the court a recommendation for the most appropriate treatment alternative for the proposed patient. *If the county is served by a single portal authority, the commissioner shall designate the authority to make the recommendation. If the county is not served by a single portal authority, the [The] commissioner may designate a community mental health and mental retardation center established pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547-203, Vernon's Texas Civil Statutes), or any other appropriate facility or provider in the county to make the recommendation.*

(b) The court shall direct the *single portal authority or the* designated facility or provider to file its recommendation with the court before the date set for the hearing.

(c) Except in an emergency as determined by the court, a hearing on an application may not be held before the recommendation required by this section is filed.

(d) This section does not relieve a county of any of its responsibilities under other provisions of this code for the diagnosis, care, or treatment of the mentally ill.

(e) ~~[The extent to which a designated facility must comply with the provisions of this section shall be based on the commissioner's determination that the facility has sufficient resources to perform the necessary services.~~

~~[(4)]~~ This section does not apply to a person for whom treatment in a private mental health facility is proposed.

SECTION 6.07. Section 36, Texas Mental Health Code (Article 5547-36, Vernon's Texas Civil Statutes), is amended by amending Subsection (d) and by adding Subsection (e) to read as follows:

(d) *If the department has designated a single portal authority for the area, the [The] Order of Protective Custody shall direct a peace officer or other designated person to take the person into protective custody and immediately transport him to a facility of the single portal authority. If the department has not designated a single portal authority, the order shall direct the peace officer or other designated person to take the person to an appropriate in-patient mental health facility or other suitable place and detain him pending a probable cause hearing. If there is no appropriate in-patient mental health facility available, the person shall be transported to a facility deemed suitable by the mental health authority for that county. The extent to which a designated mental health facility must comply with the provisions of this section shall be based on a determination by the commissioner of the department that the facility has sufficient resources to perform the necessary services. No person may be detained in a private mental health facility without first obtaining the consent of the head of the facility.*

(e) If a single portal authority lacks the local resources to care for a person, the authority may transfer the person to a state hospital or, at the request of the authority, the judge may order the person detained in a state hospital.

SECTION 6.08. Subsection (b), Section 39, Texas Mental Health Code, as amended (Article 5547-39, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Except as provided by Subsection (e) of Section 36 of this code, if the department has designated a single portal authority for the area, the [The] person detained in protective custody shall be detained in a facility of the single portal authority. If the department has not designated a single portal authority, the person shall be detained in an appropriate in-patient mental health facility. If there is no appropriate in-patient mental health facility available, the person shall be detained in a facility deemed suitable by the mental health authority for that county. No person may be detained in protective custody in a nonmedical facility used for the detention of persons charged with or convicted of a crime except because of and during an extreme emergency and in no case for a period of more than 72 hours, excepting weekends, legal holidays, and extreme weather emergencies declared pursuant to Subsection (a) of Section 38 of this code. Persons detained in a nonmedical facility shall be kept separate from those persons charged with or convicted of a crime.

SECTION 6.09. Subsections (c) and (d), Section 49, Texas Mental Health Code (Article 5547-49, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) Waiver of trial by jury shall be in writing under oath and shall be signed and sworn to by the proposed patient and by his attorney. However, the proposed patient or his attorney may orally waive the right to a jury trial if the oral waiver is made in the presence of the court.

(d) Upon good cause shown, the court may permit an oral or written [a] waiver of jury trial properly made [and filed] to be withdrawn if the waiver is withdrawn at least seven days prior to the scheduled time of the hearing, in order to permit a hearing before a jury.

SECTION 6.10. Sections 50 and 51, Texas Mental Health Code, as amended (Articles 5547-50 and 5547-51, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 50. ORDER UPON HEARING ON APPLICATION FOR TEMPORARY MENTAL HEALTH SERVICES. (a) If upon the hearing on an Application for Court-Ordered

Temporary Mental Health Services the judge or jury fails to find, on the basis of clear and convincing evidence, that the person is mentally ill and meets the criteria for court-ordered mental health services, the court shall enter its order denying the application and shall order the immediate release of the person if he is not at liberty.

(b) Upon the hearing, the judge or the jury, if one has been requested, shall determine that the person requires court-ordered mental health services only if it finds, on the basis of clear and convincing evidence, that:

(1) the person is mentally ill; and

(2) as a result of that mental illness the person meets at least one of the following additional criteria:

(i) is likely to cause serious harm to himself; or

(ii) is likely to cause serious harm to others; or

(iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed decision as to whether or not to submit to treatment. If the judge or jury finds that the proposed patient meets at least one of these criteria, the judge or jury shall specify which of the three alternative criteria formed the basis of that decision.

(c) The clear and convincing evidence must include expert testimony and, unless waived, evidence of either a recent overt act or a continuing pattern of behavior in either case tending to confirm the likelihood of serious harm to the person or others or the person's distress and deterioration of ability to function.

(d) If upon the hearing the jury or judge determines that the person is mentally ill and meets the criteria for court-ordered mental health services, the judge shall then dismiss the jury, if any. The judge may hear additional evidence regarding alternative settings for care and shall enter an order providing for one of the following:

(1) The judge may enter an order committing the person to a mental health facility for in-patient care. *Except as provided by Subsection (g) of this section, if the department has designated a single portal authority for the area, the judge shall commit the person to a facility of the single portal authority, to a private mental hospital, or to a hospital operated by an agency of the United States.*

(2) The judge may enter an order requiring the person to participate in mental health services other than in-patient care, including but not limited to programs of community mental health and mental retardation centers and services provided by a private psychiatrist or psychologist.

(e) In determining the setting for care, the judge shall consider the recommendation for the most appropriate treatment alternative filed pursuant to Section 34 of this code. Mental health services shall be ordered in the least restrictive appropriate setting available.

(f) An order entered pursuant to this section shall specify a period not to exceed 90 days but shall not specify any shorter period of time.

(g) If a single portal authority lacks the local resources to care for a patient, the authority may transfer the patient to a state mental hospital or, at the request of the authority, the judge may commit the patient directly to a state mental hospital.

Sec. 51. ORDER UPON HEARING ON APPLICATION FOR EXTENDED MENTAL HEALTH SERVICES. (a) If upon the hearing on an Application for Court-Ordered Extended Mental Health Services the judge or jury fails to find, on the basis of clear and convincing evidence, that the person is mentally ill and meets the criteria for court-ordered mental health services, the court shall enter its order denying the application and shall order the immediate release of the person if he is not at liberty.

(b) Upon the hearing, the jury or the judge, if jury trial has been waived, shall determine that the person requires court-ordered mental health services only if it finds, on the basis of clear and convincing evidence, that:

(1) the person is mentally ill; and

(2) as a result of that mental illness the person meets at least one of the following additional criteria:

- (i) is likely to cause serious harm to himself; or
- (ii) is likely to cause serious harm to others; or
- (iii) will, if not treated, continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration of his ability to function independently and is unable to make a rational and informed choice as to whether or not to submit to treatment; if the judge or jury finds that the proposed patient meets at least one of these criteria, the judge or jury shall specify which of the three alternative criteria formed the basis of that decision; and,

(3) the condition of the person is expected to continue for more than 90 days; and, except where the person has already been subject to an Order for Extended Mental Health Services;^[7]

(4) the person has either:

(i) received in-patient mental health services under court order pursuant to this code for at least 60 consecutive days within the 12 months immediately preceding the hearing; or

(ii) received in-patient mental health services under court order pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, ~~[1965, as amended,]~~ for at least 60 consecutive days within the 12 months immediately preceding the hearing.

(c) The clear and convincing evidence must include expert testimony and evidence of either a recent overt act or a continuing pattern of behavior in either case tending to confirm the likelihood of serious harm to the person or others or the person's distress and deterioration of ability to function.

(d) If upon the hearing the judge or jury determines that the person is mentally ill and meets the criteria for court-ordered mental health services for an extended period, the judge shall then dismiss the jury, if any. The judge may hear additional evidence regarding alternative settings for care and shall enter an order providing for one of the following:

(1) The judge may enter an order committing the person to a mental health facility for in-patient care. *Except as provided by Subsection (g) of this section, if the department has designated a single portal authority for the area, the judge shall commit the person to a facility of the single portal authority, to a private mental hospital, or to a hospital operated by an agency of the United States.*

(2) The judge may enter an order requiring the person to participate in mental health services other than in-patient care, including but not limited to programs of community mental health and mental retardation centers and services provided by a private psychiatrist or psychologist.

(e) In determining the setting for care, the judge shall consider the recommendation for the most appropriate treatment alternative filed pursuant to Section 34 of this code. Mental health services shall be ordered in the least restrictive appropriate setting available.

(f) An order entered pursuant to this section shall specify a period not to exceed 12 months but shall not specify any shorter period of time.

(g) *If a single portal authority lacks the local resources to care for a patient, the authority may transfer the patient to a state mental hospital or, at the request of the authority, the judge may commit the patient directly to a state mental hospital.*

SECTION 6.11. Section 58, Texas Mental Health Code, as amended (Article 5547-58, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 58. DESIGNATION OF IN-PATIENT MENTAL HEALTH FACILITY. (a) In the Order for Temporary Mental Health Services or Order for Extended Mental Health Services specifying in-patient care, the court shall commit the patient to a designated mental health facility. *Except as provided by Subsection (b) of this section, if the department has designated a single portal authority for the area, the court shall*

commit the patient to a facility of the single portal authority, to a private mental hospital, or to a hospital operated by an agency of the United States.

(b) If a single portal authority lacks the local resources to care for a patient, the court, at the request of the authority, shall commit the person to a mental health facility designated by the authority.

(c) A court may not commit a patient to an in-patient mental health facility operated by a community center or other entity designated by the department to provide mental health services unless the facility is licensed under Chapter 6 of this code.

SECTION 6.12. Subsections (a) and (c), Section 67, Texas Mental Health Code, as amended (Article 5547-67, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Before the furlough or discharge of a patient, the head of the mental health facility shall, in consultation with the patient and the mental health authority in the area in which the patient will live after discharge, and in accordance with department rules, develop a plan for continuing care for a patient for whom he determines the care is required. The plan will address the mental health and physical needs of the client. A patient to be discharged may refuse the services provided for by this section. *Involvement of the mental health authority in discharge planning shall not apply to the furlough or discharge of a patient from a private mental health facility.*

~~[(c) A community mental health and mental retardation center's involvement in discharge planning and continuing care services shall be to the extent that the center's resources have been determined by the commissioner to be available for those purposes.]~~

SECTION 6.13. Subsections (a) and (b), Section 73, Texas Mental Health Code, as amended (Article 5547-73, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) *Except as provided by Subsection (b) of this section, the [The] head of a mental health facility is authorized to admit and detain any patient in accordance with the following procedures provided in this code:*

- (1) Voluntary Admission
- (2) Emergency Detention, Temporary Detention, or Protective Custody
- (3) Court-Ordered Temporary Mental Health Services
- (4) Court-Ordered Extended Mental Health Services

(b) *The head of an in-patient mental health facility operated by a community center or other entity designated by the department to provide mental health services may not admit or detain a patient under an order for temporary or extended court-ordered mental health services unless the facility is licensed under Chapter 6 of this code.* Nothing in this code prohibits the admission of voluntary patients to private mental hospitals in any lawful manner.

SECTION 6.14. Section 75, Texas Mental Health Code, as amended (Article 5547-75, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 75. **TRANSFER TO STATE MENTAL HOSPITAL OR SINGLE PORTAL AUTHORITY FACILITY.** (a) The department may transfer a patient from one state mental hospital to another or, with the consent of the authority, to a facility of a single portal authority, whenever such transfer is deemed advisable, except that a voluntary patient may not be transferred without his consent.

(b) *If the department has designated a single portal authority for an area, the [The] head of an in-patient mental health facility, upon notice to the committing court and to the authority, may for any reason transfer an involuntary patient to a facility of the single portal authority. If the department has not designated a single portal authority for the area, the head of an in-patient mental health facility, upon notice to the committing court and to the department, may for any reason transfer an involuntary patient to a state mental hospital designated by the department; provided, however, that if the person suffers from mental retardation as well as mental illness, the facility may not transfer the person to a mental health facility operated by the Texas Department of Mental Health and Mental Retardation unless the commissioner of the department has*

determined that space is available in a unit of a departmental facility specifically designed to serve such persons. The head of the in-patient mental health facility shall obtain such determination prior to initiating the transfer.

(c) *A single portal authority may transfer a patient from one authority facility to another whenever the transfer is deemed advisable, except that a voluntary patient may not be transferred without his consent.*

(d) *The department shall maintain an appropriate number of hospital-level beds for mentally retarded persons who are committed for court-ordered mental health services to meet the needs of the single portal authorities. The number of beds maintained must be based on the previous year's need.*

SECTION 6.15. Section 81, Texas Mental Health Code (Article 5547-81, Vernon's Texas Civil Statutes), is amended by adding Subsection (c) to read as follows:

(c) *In addition to the rights provided by Subsection (a) of this section, the department shall notify each adult patient of the patient's right to have the department notify his family prior to discharge or release if the patient grants permission. If the patient grants permission for notification, the department or facility shall make a reasonable attempt to give the patient's family prior notice of the patient's release or discharge.*

SECTION 6.16. Sections 88 and 90, Texas Mental Health Code, as amended (Articles 5547-88 and 5547-90, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 88. LICENSE REQUIRED. (a) *Except as provided by Subsection (b) of this section, 90 [Ninety] days after the effective date of this code, no person or political subdivision may operate a mental hospital and no community center or other entity designated by the department to provide mental health services may operate a mental health facility that provides court-ordered mental health services unless licensed to do so by the department or the Texas Department of Health.*

(b) *A mental health facility operated by the department or by an agency of the United States is not required to obtain a license under this chapter.*

(c) *If a mental hospital licensed under this chapter is designated by the department to provide mental health services, the hospital is not required to obtain an additional license to provide court-ordered mental health services.*

Sec. 90. APPLICATION FOR LICENSE. (a) Application for license to operate a private mental hospital or for a community center or other entity designated by the department to provide mental health services to operate a mental health facility that provides court-ordered in-patient mental health services shall be made on forms prescribed by the department. The department shall prepare the application forms and make them available upon request. The application shall be sworn to and shall set forth:

- (1) the name and location of the mental hospital or mental health facility;
- (2) the name and address of the physician to be in charge of hospital care and treatment of mental patients;
- (3) the names and addresses of the owners of the hospital, including the officers, directors, and principal stockholders if the owner is a corporation or other association;
- (4) *the names and addresses of the members of the board of trustees of the community center or the names and addresses of the directors of the entity designated by the department to provide mental health services;*
- (5) the bed capacity to be authorized by the license;
- (6) [(5)] the number, duties, and qualifications of the professional staff;
- (7) [(6)] a description of the equipment and facilities of the hospital or mental health facility; and
- (8) [(7)] such other information as the department may require, which may include affirmative evidence of ability to comply with such standards, rules, and regulations as the department may prescribe.

(b) The applicant shall submit a plan of the premises to be occupied as a mental hospital or mental health facility, describing the buildings and grounds and the uses

intended to be made of the various portions of the premises. *The board shall adopt by rule a fee schedule for the review of the plan of the premises. The board shall also adopt by rule a fee schedule for field surveys of construction plans reviewed under this section. The fee adopted by the board for a plan review or a field survey shall not exceed \$650.*

SECTION 6.17. Chapter 6, Texas Mental Health Code, as amended (Article 5547–88 et seq., Vernon's Texas Civil Statutes), is amended by adding Section 88A to read as follows:

Sec. 88A. LIMITATION ON CONTRACTS. A community center or other entity designated by the department to provide mental health services may not contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the department or the Texas Department of Health.

SECTION 6.18. Subsections (a) and (b), Section 91, Texas Mental Health Code, as amended (Article 5547–91, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) After receipt of proper application for license and the required fees, the department shall make such investigation as it deems desirable. If the department finds that the premises are suitable and that the applicant is qualified to operate a mental hospital, *or that the community center or other entity designated by the department to provide mental health services is qualified to operate a mental health facility that provides court-ordered in-patient mental health services*, in accordance with the requirements and standards established by law and by the department, the department shall issue a license authorizing the designated licensee to operate a mental hospital *or in-patient mental health facility* on the premises described and for the bed capacity specified in the license. ~~[However, if operation of the mental hospital involves acquisition, construction, or modification of a facility, a change in bed capacity, provision of new services, or expansion of existing services for which a certificate of need or an exemption certificate is required under the Texas Health Planning and Development Act, the department shall not issue the license unless and until the certificate of need or the exemption certificate has been granted to the applicant under that Act.]~~

(b) ~~The [Subject to the applicable provisions of the Texas Health Planning and Development Act, the]~~ authorized bed capacity may be increased at any time upon the approval of the department and may be reduced at any time by notifying the department.

SECTION 6.19. Section 92, Texas Mental Health Code, as amended (Article 5547–92, Vernon's Texas Civil Statutes), is amended to read as follows:

~~Sec. 92. [APPLICATION AND LICENSE] FEES. (a) The board shall adopt by rule an [An] application fee and a license fee that shall accompany the application for a license to operate a mental hospital or for a community center or other entity designated by the department to provide mental health services to operate a mental health facility that provides court-ordered in-patient mental health services. If the department denies the license, only the license fee shall be returned. The department may establish staggered renewal dates and dates on which fees are due [The application fee is One Thousand Dollars (\$1,000) plus Ten Dollars (\$10) per bed. The annual license fee payable on August 31 of each year is Two Hundred Dollars (\$200)].~~

(b) *Fees adopted under this chapter must be based on the estimated cost to and the level of effort expended by the department to conduct the activity associated with the fee. The fees should be designed to recover 100 percent of the department's cost in granting the initial license and subsequent renewals but shall not exceed \$250. The department shall annually review the fee schedules adopted under this chapter to ensure that fees charged continue to be based on the estimated costs to and the level of effort expended by the department.*

(c) All ~~[application fees and license]~~ fees received by the department ~~[State Health Department]~~ under this chapter shall be deposited in the State Treasury and there set apart, subject to appropriations by the legislature, for the uses and purposes prescribed by this Act, including salaries, maintenance, travel expense, repairs, printing, and postage.

SECTION 6.20. Subsection (b), Section 93, Texas Mental Health Code (Article 5547–93, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If, after investigation, the department finds that there is immediate threat to health or safety of patients or employees of a private mental hospital *or a facility operated by a community center or other entity designated by the department to provide mental health services that is licensed under this chapter*, the department may temporarily suspend a license for 10 days pending a hearing on the suspension order and may issue orders necessary for the welfare of the patients.

SECTION 6.21. Section 95, Texas Mental Health Code, as amended (Article 5547-95, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) and (d) and by adding Subsection (e) to read as follows:

(a) The department may prescribe such rules, regulations, and standards, not inconsistent with the constitution and the laws of this state, as it considers necessary and appropriate to ensure proper care and treatment of patients in private mental hospitals *or mental health facilities operated by community centers or other entities designated by the department that provide court-ordered in-patient mental health services. The standards for community-based crisis stabilization and crisis residential services must be less restrictive than the standards for mental hospitals.*

(d) A copy of these rules shall be sent to each licensed private mental hospital *and each facility operated by a community center or other entity designated by the department to provide mental health services that is licensed under this chapter.*

(e) *The department rules must encourage mental health facilities licensed under this chapter to provide in-patient mental health services in ways that are appropriate for the diversity of the state.*

SECTION 6.22. Subsection (b), Section 97, Texas Mental Health Code, as amended (Article 5547-97, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Any duly authorized agent of the department may at any reasonable time enter upon the premises of any private mental hospital *or a facility operated by a community center or other entity designated by the department to provide mental health services that is licensed under this chapter* to inspect the facilities and conditions, to observe the program for care and treatment, and to question employees of the hospital *or facility* and may have access for the purpose of examination and transcription to such records and documents as are relevant to the investigation.

SECTION 6.23. Subsection (b), Section 99, Texas Mental Health Code, as amended (Article 5547-99, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The department may maintain an action in the name of the State of Texas for injunction or other process against any person or political subdivision to restrain the unlicensed operation of a mental hospital *or a facility operated by a community center or other entity designated by the department to provide mental health services that is required to be licensed under this chapter.*

SECTION 6.24. Section 44, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 44. ALTERNATIVE, FOLLOW-UP SUPPORTIVE SERVICES. The department shall provide appropriate alternative or follow-up supportive services consistent with available resources. Provision of alternative or follow-up supportive services shall be made by agreement between the department, *the mental retardation authority in the area in which the client will reside*, and the client, parent of a minor, or guardian of the person, and shall be consistent with the rights guaranteed in Subchapters C, D, and E of this Act. Placement in a residential care facility, under the provisions of this Act, other than by transfer from another residential care facility shall be made only pursuant to Sections 34 and 37 of this Act.

SECTION 6.25. Subsection (b), Section 1, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 5561c-1, Vernon's Texas Civil Statutes), is amended by amending Subdivision (6) and by adding Subdivision (8) to read as follows:

(6) "Mental health facility" includes:

(A) an inpatient or outpatient mental health facility operated by the Texas Department of Mental Health and Mental Retardation *or by an entity designated by the Texas*

Department of Mental Health and Mental Retardation to provide mental health services, a political subdivision of the state, or any other legal entity;

(B) a community mental health and mental retardation center established under Section 3.01, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), that provides mental health services; and

(C) the identifiable part of a general hospital that provides diagnosis, treatment, and care for mentally ill or drug-dependent persons.

(8) *"Single portal authority" means a mental health authority designated as a single portal authority by the Texas Department of Mental Health and Mental Retardation.*

SECTION 6.26. Section 10, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 5561c-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. (a) In the order of commitment, the court shall commit the patient to a designated:

(1) state mental health facility *if the Texas Department of Mental Health and Mental Retardation has not designated a single portal authority for the area;*

(2) *single portal authority facility if the Texas Department of Mental Health and Mental Retardation has designated an authority for the area;*

(3) private mental health facility; or

(4) [(3)] agency of the United States operating a mental health facility.

(b) *If a single portal authority lacks the local resources to care for a patient, the authority may transfer the patient to a state mental health facility, or at the request of the authority, the court may commit the patient directly to a state mental health facility.*

SECTION 6.27. Section 3.02, Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes), is amended by adding Subsection (h) to read as follows:

(h) *Except as provided by this subsection, if the Texas Department of Mental Health and Mental Retardation has designated a single portal authority for the area, the court may not directly commit a person to a state mental health facility, but instead may order the person committed to a program licensed by the commission, to a federal hospital, or to a facility operated by the single portal authority. If the single portal authority lacks the local resources to care for a patient, the authority may transfer the patient to a state mental health facility or, at the request of the authority, the court may commit the patient directly to a state mental health facility.*

ARTICLE 7

SECTION 7.01. The Texas Mental Health and Mental Retardation Act, as amended (Article 5547-201 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 6 to read as follows:

Art. 6. REGISTRATION OF BOARDING HOMES

Sec. 6.01. DEFINITIONS. *In this article:*

(1) *"Boarding home" means a residence or establishment that, in addition to food and shelter, provides services that meet some need beyond the basic provision of food and shelter to four or more persons who are not related to the owner or operator of the residence or establishment.*

(2) *"Registered boarding home" means a boarding home registered by a local mental health or mental retardation authority under this article.*

(3) *"Financial services" means any assistance in managing a resident's personal financial matters that the local mental health or mental retardation authority requires or permits the owner or operator of a registered boarding home to provide to the resident, including:*

- (A) cashing checks;
- (B) holding funds for safekeeping in any manner; and
- (C) assisting the resident in purchasing goods or services with the resident's personal funds.

(4) "Personal services" means any service other than shelter that the local mental health or mental retardation authority requires or permits the owner or operator of a registered boarding home to provide to a resident.

Sec. 6.02. APPLICATION TO BOARDING HOMES OPERATED BY DEPARTMENT OR AUTHORITY. A boarding home operated by the Department or a local mental health or mental retardation authority is not required to be registered under this article. However, each boarding home shall meet the standards prescribed by the appropriate authority under this article.

Sec. 6.03. POWERS AND DUTIES OF LOCAL MENTAL HEALTH OR MENTAL RETARDATION AUTHORITY. (a) Each local mental health or mental retardation authority shall:

- (1) adopt guidelines relating to the registration of boarding homes;
- (2) submit the guidelines to the Department for approval as provided by Section 6.04 of this article;
- (3) adopt local standards for personal and financial services;
- (4) register boarding homes as required by this article; and
- (5) visit and inspect each registered boarding home to which the authority refers a patient or client at least annually to ensure that the home has been inspected, is in good standing with the local health and safety authorities, and is providing the personal and financial services that are appropriate for the residents' needs.

(b) The guidelines established by the local mental health or mental retardation authority must:

- (1) require annual inspections of each registered boarding home to which the authority refers a patient or client as provided by Subsection (a)(5) of this section;
- (2) require each registered boarding home to submit to the required annual inspection; and
- (3) require each registered boarding home to comply with all applicable local health, sanitation, fire, and safety requirements.

(c) If the local mental health and mental retardation authorities in a service area are separate entities, the authorities shall adopt a memorandum of understanding to reduce duplication and clarify responsibilities in registering boarding homes in the service area.

(d) Each local mental health and mental retardation authority shall involve existing local authorities in the registration and inspection of boarding homes to the extent possible.

Sec. 6.04. SUBMISSION OF GUIDELINES TO DEPARTMENT. (a) Each local mental health or mental retardation authority shall submit the guidelines adopted under Subsection (a)(1) of Section 6.03 of this article to the Department for approval.

(b) The Department shall approve the guidelines if the guidelines:

- (1) require annual inspections of each registered boarding home to which the authority refers a patient or client as provided by Section 6.03(a)(5) of this article;
- (2) require each registered boarding home to submit to the required annual inspection; and
- (3) require each registered boarding home to comply with all applicable local health, sanitation, fire, and safety requirements.

Sec. 6.05. WITHHOLDING FUNDS. The Department may withhold funds from a local mental health or mental retardation authority if the authority refers patients or clients to a boarding home that is not registered by the authority.

Sec. 6.06. PROVISION OF SERVICES BY LOCAL AUTHORITY. (a) If a local mental health or mental retardation authority registers a boarding home, the authority shall make the services required by Section 4.03 of this Act available to the residents who are otherwise eligible for mental health and mental retardation services.

(b) The authority shall notify the residents and owner or operator of the registered boarding home that the required services are available. The authority shall also:

(1) require the home to post the 24-hour emergency crisis number in a conspicuous place in the home; and

(2) allow boarding home staff and owners to participate in the training provided to the staff of the local authority if the training is applicable to the care of the residents in the boarding home or to the operation of the boarding home.

(c) A local mental health or mental retardation authority may not:

(1) charge a fee for providing training services to the staff of a boarding home; or

(2) charge a boarding home a fee for providing services to the residents of the home.

ARTICLE 8

SECTION 8.01. Title 9, Human Resources Code, as amended, is amended by adding Chapter 134 to read as follows:

CHAPTER 134. INTERAGENCY COUNCIL FOR GENETIC SERVICES

Sec. 134.001. (a) The Interagency Council for Genetic Services is established.

(b) The council consists of:

(1) a representative of the Texas Department of Mental Health and Mental Retardation, appointed by the commissioner of mental health and mental retardation;

(2) a representative of the Texas Department of Health, appointed by the commissioner of health;

(3) a representative of the Texas Department of Human Services, appointed by the commissioner of human services;

(4) a representative of The University of Texas health science centers, appointed by the chancellor of The University of Texas System;

(5) a representative of the public and private entities that contract with the Texas Department of Health to provide genetic services, elected from their membership; and

(6) two consumers of genetic services, family members of consumers of genetic services, or representatives of consumer groups related to the provision of genetic services, appointed by the governor.

(c) The members provided for by Subdivisions (5) and (6) of Subsection (b) of this section serve two-year terms and may be reappointed or reelected for subsequent terms. A representative of the Texas Department of Mental Health and Mental Retardation, Texas Department of Health, Texas Department of Human Services, or The University of Texas health science centers serves at the pleasure of his respective commissioner or chancellor or until termination of his employment with the entity he represents.

(d) The members of the council shall annually elect one member to serve as chairperson.

(e) The council shall meet at least quarterly. Any actions taken by the council must be approved by a majority vote of the members present.

Sec. 134.002. APPLICATION OF SUNSET ACT. The Interagency Council for Genetic Services is subject to the Texas Sunset Act (Chapter 325, Government Code).

Unless continued in existence as provided by that Act, the council is abolished and this chapter expires September 1, 1989.

Sec. 134.003. STAFF. (a) The council may select and use lay and professional advisors as necessary.

(b) The Texas Department of Health, Texas Department of Mental Health and Mental Retardation, Texas Department of Human Services, and The University of Texas health science centers shall share the cost of providing clerical and advisory support staff to the council.

Sec. 134.004. DUTIES. The council shall:

- (1) survey current resources for genetic services in the state;*
- (2) initiate a scientific evaluation of the current and future needs for the services;*
- (3) develop a comparable data base among providers that will permit the evaluation of cost-effectiveness and the value of different genetic services and methods of service delivery;*
- (4) promote a common statewide data base to study the epidemiology of genetic disorders;*
- (5) assist in coordinating statewide genetic services for all state residents;*
- (6) increase the flow of information among separate providers and appropriation authorities; and*
- (7) develop guidelines to monitor the provision of genetic services, including laboratory testing.*

Sec. 134.005. USE OF FEDERAL FUNDS. If the Texas Department of Health, Texas Department of Mental Health and Mental Retardation, Texas Department of Human Services, or The University of Texas health science centers receive federal funds to be used only to coordinate and plan statewide genetic services, the department or system shall transfer the funds to the council to be used for the purposes for which the funds were received.

Sec. 134.006. ANNUAL REPORTS. The council shall annually submit a progress report to the boards of the Texas Department of Health, Texas Department of Mental Health and Mental Retardation, and Texas Department of Human Services and to the board of regents of The University of Texas System.

Sec. 134.007. REPORT TO 71ST LEGISLATURE. (a) Not later than February 1, 1989, the council shall submit a report to the 71st Legislature recommending improvements to the present system of providing genetic services. The report must also detail any actions taken by the council to improve the provision of genetic services. The report may include recommendations to improve the operation of the council.

(b) This section expires September 1, 1989.

SECTION 8.02. Section 26, Mentally Retarded Persons Act of 1977, as amended (Article 5547-300, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. RULES AND REGULATIONS. (a) The department shall promulgate rules and regulations to ensure the implementation of the rights guaranteed in Subchapters C, D, and E of this Act.

(b) The department shall promulgate rules and regulations to ensure that a client, parent of a minor, or guardian of the person has the opportunity to participate in planning with regard to the client's treatment and habilitation, including any decision to recommend or effect placement of the client in an alternative treatment setting. The rules and regulations shall include procedures for informing clients, parents, and guardians of the due process provisions in Section 43 of this Act, including the right to an administrative hearing and judicial review in county court of proposed transfers or discharges.

SECTION 8.03. Subchapter G, Mentally Retarded Persons Act of 1977, as amended (Article 5547-300, Vernon's Texas Civil Statutes), is amended by adding Section 27A to read as follows:

Sec. 27A. REQUIREMENT TO OBTAIN CONSENT. The department or a community center shall obtain legally adequate consent before providing mental retardation services. However, if the department or a community center has made all reasonable efforts to obtain legally adequate consent and cannot do so, nonresidential mental retardation services, including a comprehensive diagnosis and evaluation, can be provided. The department shall promulgate rules to define what shall constitute all reasonable efforts to obtain legally adequate consent and how these efforts shall be documented.

SECTION 8.04. Section 39, Mentally Retarded Persons Act of 1977, as amended (Article 5547-300, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 39. BY SERVICE PROVIDER. The service provider shall transfer, furlough the client to alternate placement, or discharge the client pursuant to this subchapter if the service provider determines:

(1) the placement of the client in the facility is no longer appropriate to the person's individual needs; or

(2) ~~When a service provider finds that placement of a client in a facility is no longer appropriate to the person's individual needs or that~~ the client can be better treated and habilitated in another setting ~~[facility]; and~~

(3) placement in another setting, that can better treat and habilitate the client, has been secured~~], the service provider shall transfer or discharge the client pursuant to this subchapter].~~

SECTION 8.05. (a) Section 57, Mentally Retarded Persons Act of 1977, as amended (Article 5547-300, Vernon's Texas Civil Statutes), is amended by adding Subsection (j) to read as follows:

(j) Notwithstanding the provisions of Subsections (a) through (i) of this section, the department may disclose a person's educational records to a school district that is or will be providing educational services to the person without first obtaining that person's written consent.

(b) Subsection (j), Section 57, Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), as added by this section, takes effect September 1, 1988.

SECTION 8.06. Subchapter F, Chapter 23, Title 110B, Revised Statutes, is amended by adding Section 23.508 to read as follows:

Sec. 23.508. SERVICE OF CERTAIN MENTAL HEALTH AND MENTAL RETARDATION EMPLOYEES. (a) Except as provided by Subsection (i) of this section, the retirement system shall grant to each member eligible as provided by this section service credit in the retirement system for all service covered by credit in the Teacher Retirement System of Texas for which deposits are maintained in an active member account immediately before the person became a member of the retirement system.

(b) A member eligible to receive credit under this section is one who:

(1) was a member of the Teacher Retirement System of Texas as an employee of the Texas Department of Mental Health and Mental Retardation on August 31, 1985, and on that date had normal duties requiring the person to provide educational services to school-age residents of state schools;

(2) became or becomes a member of this retirement system after August 31, 1985, and before September 2, 1988, as an employee of the Texas Department of Mental Health and Mental Retardation;

(3) is not a retiree of the Teacher Retirement System of Texas; and

(4) has no intervening employment between the member's previous position included in the coverage of the Teacher Retirement System of Texas and the member's employment by the Texas Department of Mental Health and Mental Retardation.

(c) The Texas Department of Mental Health and Mental Retardation shall certify employees who may be eligible to receive credit under this section and shall provide

copies of the certifications to the retirement system and the Teacher Retirement System of Texas.

(d) Except as provided by Subsection (i) of this section, as soon as practicable after receipt of a certification of eligibility under Subsection (c) of this section, the Employees Retirement System of Texas shall determine eligibility and notify the Teacher Retirement System of Texas. On notification, the Teacher Retirement System of Texas shall transfer to the retirement system:

(1) a statement of the certified person's service credit in and compensation subject to contributions to the Teacher Retirement System of Texas;

(2) the person's accumulated contributions; and

(3) an amount from the state contribution account determined by the actuary of the Teacher Retirement System of Texas to be the amount required neither to increase nor to diminish the period required to amortize the unfunded liability of that system.

(e) A transfer under Subsection (d) of this section cancels the service credit and terminates the membership in the Teacher Retirement System of Texas of the person for whom the amounts are transferred.

(f) As soon as practicable after receipt of a transfer under Subsection (d) of this section, the retirement system shall grant the member for whom the amounts were transferred the credit provided by this section.

(g) Service for which credit is established under this section will be considered as if it were performed as a member of this retirement system and credit for the service may not be reestablished in the Teacher Retirement System of Texas.

(h) The legislature may appropriate to the Employees Retirement System of Texas amounts that are determined necessary to finance additional actuarial liabilities created by this section and not financed by the transfers provided by Subsection (d) of this section.

(i) The retirement system may not grant the eligible member the credit authorized by this section if:

(1) the actuary for this retirement system determines that an amount proposed to be transferred under Subsection (d) of this section, together with any appropriation made available as provided by Subsection (h) of this section, is not sufficient to finance the actuarial liabilities that would be created by the transfer; or

(2) the actuary for the Teacher Retirement System of Texas makes the determination provided by Subdivision (1) of Subsection (i) of Section 33.404 of this title.

SECTION 8.07. Subchapter E, Chapter 33, Title 110B, Revised Statutes, is amended by adding Section 33.404 to read as follows:

Sec. 33.404. CERTAIN MENTAL HEALTH AND MENTAL RETARDATION SERVICE. (a) Except as provided by Subsection (i) of this section, the retirement system shall grant to each member eligible as provided by this section service credit in the retirement system for all service covered by credit in the Employees Retirement System of Texas for which deposits are maintained in an active member account, immediately before the person became a member of the retirement system.

(b) A member eligible to receive credit under this section is one who:

(1) was a member of the Employees Retirement System of Texas as an employee of the Texas Department of Mental Health and Mental Retardation on August 31, 1985, and on that date and on the date of termination with the department had normal duties requiring the person to provide educational services to school-age residents of state schools;

(2) became or becomes a member of this retirement system after August 31, 1985, and before September 2, 1988, as an employee of a school district;

(3) has normal duties requiring the member to provide educational services to school-age students;

(4) is not a retiree of the Employees Retirement System of Texas; and

(5) *has no intervening employment between the member's previous employment by the Texas Department of Mental Health and Mental Retardation and the member's employment by a school district.*

(c) *The Texas Department of Mental Health and Mental Retardation shall certify the employees who may be eligible to receive credit under this section and shall provide copies of the certifications to the retirement system and the Employees Retirement System of Texas.*

(d) *Except as provided by Subsection (i) of this section, as soon as practicable after receipt of a certification of eligibility under Subsection (c) of this section, the Teacher Retirement System of Texas shall determine eligibility and notify the Employees Retirement System of Texas. On notification, the Employees Retirement System of Texas shall transfer to the retirement system:*

(1) *a statement of the certified person's credit in and compensation subject to contributions to the Employees Retirement System of Texas;*

(2) *the person's accumulated contributions; and*

(3) *an amount from the state accumulation account determined by the actuary of the Employees Retirement System of Texas to be the amount required neither to increase nor to diminish the period required to amortize the unfunded liability of that system.*

(e) *A transfer under Subsection (d) of this section cancels the service credit and terminates the membership in the Employees Retirement System of Texas of the person for whom the amounts are transferred.*

(f) *As soon as practicable after receipt of a transfer under Subsection (d) of this section, the retirement system shall grant the member for whom the amounts were transferred the credit authorized by this section.*

(g) *Service for which credit is established under this section will be considered as if it were performed as a member of this retirement system and credit for the service may not be reestablished in the Employees Retirement System of Texas.*

(h) *The legislature may appropriate to the Teacher Retirement System of Texas amounts that are determined necessary to finance additional actuarial liabilities created by this section and not financed by the transfers provided by Subsection (d) of this section.*

(i) *The retirement system may not grant the eligible member the credit authorized by this section if:*

(1) *the actuary for this retirement system determines that an amount proposed to be transferred under Subsection (d) of this section, together with any appropriation made available as provided by Subsection (h) of this section, is not sufficient to finance the actuarial liabilities that would be created by the transfer; or*

(2) *the actuary for the Employees Retirement System of Texas makes the determination provided by Subdivision (1) of Subsection (i) of Section 23.508 of this title.*

SECTION 8.08. Subdivision (6), Subsection (a), Section 9.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(6) "Political subdivision" means a county, municipality, school district, ~~or~~ junior college district, or community center established or operating under Article 3, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes).

SECTION 8.09. Section 4, Chapter 270, Acts of the 69th Legislature, Regular Session, 1985, is amended to read as follows:

Sec. 4. DISPOSITION OF PROCEEDS. (a) The proceeds of the sale authorized by Section 1 of this Act are allocated as provided by this section.

(b) *Fifty percent* ~~[The first \$40 million]~~ shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(c) *Fifty percent* [~~The next \$18,500,000~~] is appropriated to the Texas Department of Mental Health and Mental Retardation for the biennium ending August 31, 1989 [1987]. That *portion of the proceeds* [~~amount~~] shall first be used for community center construction and renovation as provided in Section 3.11, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), necessary life safety code improvements, and the purchase of land and construction of facilities for a rehabilitation center to replace the one authorized for sale in Section 1 of this Act. Any balance may be used for other construction and improvements as approved by the Texas Board of Mental Health and Mental Retardation, or for residential contract services for juveniles.

~~[(d) Any balance remaining after the preceding allocations are satisfied shall be deposited in the State Treasury to the credit of the General Revenue Fund.]~~

SECTION 8.10. Section 3, Chapter 324, Acts of the 68th Legislature, Regular Session, 1983, is amended to read as follows:

Sec. 3. Notwithstanding the provisions in Section 3.11, Texas Mental Health and Mental Retardation Act, as amended, regarding lease-purchase agreements, the Tarrant County mental health and mental retardation community center is not required to enter into a lease-purchase agreement with the department for the construction of the psychiatric treatment facility authorized by Section 2 of this Act and for which funds have been appropriated by the 68th Legislature, Regular Session. As prescribed by Section 2.13, Texas Mental Health and Mental Retardation Act, the department may contract with the Tarrant County mental health and mental retardation community center to lease to the community center the facility authorized to be constructed under Section 2 of this Act for the purpose of operating a psychiatric treatment facility. *Notwithstanding Section 3.11(f), Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), appropriations of state funds for the actual operation of the facility may not exceed 85 percent of the total operating budget of the facility* [~~Subsection (d) of Section 3.11, Texas Mental Health and Mental Retardation Act, as amended, applies to the use of state funds by the community center for the operation of the psychiatric treatment facility.~~]

SECTION 8.11. Subsection (c), Section 21, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is repealed.

SECTION 8.12. Chapter 61, Education Code, as amended, is amended by adding a new Subchapter K to read as follows:

SUBCHAPTER K. REPAYMENT OF CERTAIN STUDENT LOANS

Sec. 61.601. DEFINITIONS. In this subchapter:

(1) *"Physical therapist" means a person licensed under Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes).*

(2) *"Residential care facility" means a facility operated by the Texas Department of Mental Health and Mental Retardation that provides 24-hour services, including domiciliary services, directed toward enhancing the health, welfare, and development of persons with mental retardation.*

Sec. 61.602. REPAYMENT AUTHORIZED. The coordinating board may provide, using funds appropriated for that purpose and in accordance with this subchapter and rules of the board, assistance in repayment of student loans for physical therapists who apply and qualify for the assistance.

Sec. 61.603. ELIGIBILITY. (a) To be eligible to receive repayment assistance, a physical therapist must apply to the coordinating board and have completed at least one year of practice as a physical therapist in a residential care facility.

(b) The coordinating board may by rule provide for repayment assistance on a pro rata basis for physical therapists practicing at least part-time in a residential care facility.

Sec. 61.604. LIMITATION. Upon qualifying for such assistance, a physical therapist may receive repayment assistance grants for each year of practice in a residential care facility, up to a maximum of five years.

Sec. 61.605. ELIGIBLE LOANS. (a) The coordinating board may provide repayment assistance for the repayment of any student loan for education at an institution of higher education, including loans for undergraduate education, received by a physical therapist through a lender in Texas.

(b) The coordinating board may not provide repayment assistance for a student loan that is in default at the time of the physical therapist's application.

Sec. 61.606. REPAYMENT. (a) The coordinating board shall deliver any repayment made under this subchapter in a lump sum directly to the lender.

(b) A repayment made under this subchapter may be applied only to the principal amount of the loan.

Sec. 61.607. ADVISORY COMMITTEE. The coordinating board may appoint an advisory committee from outside the board's membership to assist the board in performing its duties under this subchapter.

Sec. 61.608. ACCEPTANCE OF FUNDS. The coordinating board may accept gifts, grants, and donations for the purposes of this subchapter.

Sec. 61.609. RULES. (a) The coordinating board shall adopt rules necessary for the administration of this subchapter, including a rule that sets a maximum amount of repayment assistance that may be received by a physical therapist in one year.

(b) The coordinating board shall distribute to each institution of higher education, the Texas Department of Mental Health and Mental Retardation, and appropriate professional associations copies of the rules adopted under this section and pertinent information in this subchapter.

ARTICLE 9

SECTION 9.01. Title 7, Human Resources Code, as amended, is amended by adding Chapter 114 to read as follows:

CHAPTER 114. INTERAGENCY COUNCIL ON AUTISM AND PERVASIVE DEVELOPMENTAL DISORDERS

Sec. 114.001. SHORT TITLE. This chapter may be cited as the Interagency Council on Autism and Pervasive Developmental Disorders Act of 1987.

Sec. 114.002. DEFINITIONS. In this chapter:

(1) "Autism and other pervasive developmental disorders" means a subclass of mental disorders characterized by distortions in the development of multiple basic psychological functions that are involved in the development of social skills and language, as defined by the Diagnostic and Statistical Manual, 3rd Edition.

(2) "Council" means the Interagency Council on Autism and Pervasive Developmental Disorders.

Sec. 114.003. INTERAGENCY COUNCIL. (a) The Interagency Council on Autism and Pervasive Developmental Disorders is established.

(b) The council is composed of:

(1) two public members who are family members of a person with autism or some other pervasive developmental disorder, appointed by the governor with the advice and consent of the senate; and

(2) one representative from each of the following state agencies, appointed by the commissioner of the respective agency:

- (A) Texas Department of Mental Health and Mental Retardation;*
- (B) Texas Department of Health;*
- (C) Texas Department of Human Services;*
- (D) Central Education Agency; and*
- (E) Texas Rehabilitation Commission.*

(c) *The commissioner of each state agency shall appoint as that agency's representative the person in the agency who is most familiar with and best informed about autism and other pervasive developmental disorders.*

(d) *The public members appointed by the governor serve two-year terms that expire on February 1 of each odd-numbered year. The public members may be reappointed. A representative of a state agency serves at the pleasure of the commissioner of that agency. The members may not receive compensation or reimbursement for expenses.*

(e) *The members of the council shall annually elect one member to serve as chairperson.*

(f) *The council shall meet at least quarterly and shall adopt rules for the conduct of its meetings.*

(g) *Any actions taken by the council must be approved by a majority vote of the members present.*

(h) *The council shall establish policies and adopt rules to carry out its duties under this chapter.*

Sec. 114.004. STAFF SUPPORT. The agencies represented on the council shall provide staff support to the council from among the agency staff who are responsible for coordinating services to persons with autism or other pervasive developmental disorders or to those persons' families. The council is not authorized to expend any funds on staff salaries.

Sec. 114.005. ADVISORY TASK FORCE. (a) The council shall establish an advisory task force composed of professionals, advocacy groups, and family members of persons with autism or other pervasive developmental disorders. The council shall appoint as many members to the task force as the council considers necessary to assist the council in performing its duties.

(b) The task force shall elect its own chairperson and shall meet and serve in accordance with council rules. The council may divide the task force into regional committees to assist the council in community level program planning and implementation.

Sec. 114.006. STATE PLAN. (a) The council shall develop a state plan to provide services to persons with autism or other pervasive developmental disorders to ensure that:

(1) the needs of those persons and their families are addressed statewide and that all available resources are coordinated to meet those needs;

(2) within existing resources, the full range of services that are available through existing state agencies is offered to those persons throughout their lives to the maximum extent possible;

(3) personnel training needs are assessed statewide and strategies are developed to meet those needs;

(4) incentives are offered to private sources to encourage the sources to maintain present commitments and to assist in developing new programs; and

(5) a procedure for reviewing individual complaints about services provided under this chapter is implemented.

(b) The council shall make written recommendations on the implementation of this chapter. If the council considers a recommendation that will affect an agency not represented on the council, the council shall seek the advice and assistance of the agency before taking action on the recommendation. On approval of the governing body of the agency, each agency affected by a council recommendation shall implement the recommendation. If an agency does not have sufficient funds to implement a recommendation, the agency shall request funds for that purpose in its next budget proposal.

(c) The council may not expend funds to implement the plan.

Sec. 114.007. DUTIES. (a) The council shall provide recommendations to the Texas Department of Mental Health and Mental Retardation as the state agency primarily

responsible for implementing this chapter, including recommendations relating to the use of funds appropriated to the department to provide services to persons with autism or other pervasive developmental disorders.

(b) The council with the advice of the advisory task force shall address contemporary issues affecting services available to persons with autism or other pervasive developmental disorders in this state, including:

- (1) successful intervention and treatment strategies, including transitioning;
- (2) personnel preparation and continuing education;
- (3) referral, screening, and evaluation services;
- (4) day care, respite care, or residential care services;
- (5) vocational and adult training programs;
- (6) public awareness strategies;
- (7) contemporary research;
- (8) early identification strategies;
- (9) family counseling and case management; and
- (10) recommendations for monitoring autism service programs.

(c) The council with the advice of the advisory task force shall advise the legislature on legislation that is needed to develop further and to maintain a statewide system of quality intervention and treatment services for all persons with autism or other pervasive developmental disorders. The council may develop and recommend legislation to the legislature or comment on pending legislation that affects those persons.

(d) The council shall identify and monitor apparent gaps in services currently available from various state agencies for persons with autism or other pervasive developmental disorders and shall advocate improvements on behalf of those persons.

Sec. 114.008. **REPORT.** (a) The agencies represented on the council and the public members shall report to the council any requirements identified by the agency or person to provide additional or improved services to persons with autism or other pervasive developmental disorders.

(b) The council shall develop a strategy for establishing new programs to meet the requirements identified by the agencies and the public members.

Sec. 114.009. **PROGRAM GUIDELINES.** The council shall develop specific program guidelines for:

- (1) instructional or treatment options;
- (2) frequency and duration of services;
- (3) ratio of staff to affected persons;
- (4) staff composition and qualifications;
- (5) eligibility determination; and
- (6) other program features designed to ensure the provision of quality services.

Sec. 114.010. **FUNDING REQUESTS FOR PROGRAMS.** (a) A public or private service provider may apply for available funds to provide a program of intervention services for eligible persons with autism or other pervasive developmental disorders in areas of identified needs.

(b) To apply for funds, a person must submit a grant request to the council.

(c) The council shall adopt rules governing the submission and processing of funding requests.

Sec. 114.011. **APPROVAL CRITERIA.** (a) The council shall review each request for program funding on a competitive basis and shall consider:

- (1) the extent to which the program would meet identified needs;
- (2) the cost of initiating the program, if applicable;

- (3) whether other funding sources are available;
- (4) the proposed cost of the services to the client or the client's family; and
- (5) the assurance of quality services.

(b) The council may not approve a funding request for a new program unless the service provider agrees to:

- (1) operate and maintain the program within the guidelines established by the council;
- (2) develop for each person with autism or other pervasive developmental disorders an individualized developmental plan that:
 - (A) includes family participation and periodic review and reevaluation; and
 - (B) is based on a comprehensive developmental evaluation conducted by an interdisciplinary team;
- (3) provide services to meet the unique needs of each person with autism or other pervasive developmental disorders as indicated by the person's individualized developmental plan; and
- (4) develop a method in accordance with rules adopted by the council and approved by the council to respond to individual complaints relating to services provided by the program.

(c) The council shall develop with the Texas Department of Mental Health and Mental Retardation procedures for allocating available funds to programs approved under this section.

(d) This chapter does not affect the existing authority of a state agency to provide services to a person with autism or other pervasive developmental disorders if the person meets the eligibility criteria established by this chapter. The council may modify the program standards if the council considers the modifications necessary for a particular program.

Sec. 114.012. FEES FOR SERVICES. (a) A service provider may charge a fee for services that is based on the client's or family's ability to pay. The fee must be used to offset the cost of providing or securing the services. If a service provider charges a fee, the provider must charge a separate fee for each type of service. In determining a client's or family's ability to pay for services, the provider must consider the availability of financial assistance or other benefits for which the client or family may be eligible.

(b) A state agency may charge a fee for services provided by the agency under this chapter that is based on the client's or family's ability to pay.

Sec. 114.013. APPLICATION OF SUNSET ACT. The Interagency Council on Autism and Pervasive Developmental Disorders is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the council is abolished and this chapter expires on the date established by law for the abolishment of the Texas Department of Mental Health and Mental Retardation.

ARTICLE 10

SECTION 10.01. The Alcohol and Substance Abuse Services Oversight Act is adopted to read as follows:

Sec. 1.01. SHORT TITLE. This Act may be cited as the Alcohol and Substance Abuse Services Oversight Act.

Sec. 1.02. DEFINITIONS. In this Act:

- (1) "Commission" means the Texas Commission on Alcohol and Drug Abuse.
- (2) "Committee" means the Alcohol and Substance Abuse Services Oversight Committee.
- (3) "Alcohol or substance abuse services" means treatment, prevention, and education services.

(4) "State agency" means a public entity in the executive branch of state government eligible under law to receive an appropriation, but does not include the office of the governor.

Sec. 1.03. COMMITTEE. (a) The Alcohol and Substance Abuse Services Oversight Committee is established. The committee consists of:

(1) three members of the senate, appointed by the lieutenant governor;

(2) three members of the house of representatives, appointed by the speaker of the house; and

(3) three persons appointed by the governor.

(b) Committee members serve two-year terms.

(c) The governor shall select the chairman and vice chairman of the committee. The committee shall meet at the call of the chairman or at the request of a majority of the members.

(d) The committee shall be staffed by existing legislative and governor's office staff. The committee may require the commission to provide clerical support and any other assistance to the committee.

Sec. 1.04. POWERS AND DUTIES OF COMMITTEE. The committee shall:

(1) adopt necessary rules, including rules relating to:

(A) the minimum information each plan required under Section 1.06 of this Act must contain;

(B) deadlines for submitting each plan;

(C) procedures and deadlines for reviewing and evaluating each plan;

(2) set out the duties of the commission in implementing this Act; and

(3) evaluate and approve, disapprove, or amend each plan submitted under Section 1.06 of this Act.

Sec. 1.05. POWERS AND DUTIES OF COMMITTEE. (a) The committee is designated as the state authority for coordinating services and assuring financial accountability for all alcohol and substance abuse service funds expended by state agencies.

(b) The commission shall provide assistance to each state agency required to submit a plan under Section 1.06 of this Act. After each plan has been submitted, the committee shall prepare a separate plan that consolidates and coordinates the other plans in an effort to limit duplication and to maximize the effective use of funds. The commission shall submit to the committee separate reports on each agency's plan and on the consolidated plan prepared by the committee.

(c) The committee shall develop, with the assistance of the affected state agencies, a plan for the use of federal funds for alcohol or substance abuse services received by the commission, the Central Education Agency, and the criminal justice agencies.

(d) The committee may require a state agency that is required to submit a plan under Section 1.06 of this Act to submit to the committee financial reports, audit results, service criteria, and other necessary data. Except for overall spending patterns, expenditures for criminal law enforcement shall be excluded. The committee may require the commission to collect and evaluate any such data, and the committee may authorize or require the commission to perform site visits.

Sec. 1.06. PREPARATION AND SUBMISSION OF PLAN. (a) Each state agency that provides alcohol or substance abuse services or expends state or federal funds for alcohol or substance abuse services shall prepare and submit to the committee a strategic plan detailing how the agency intends to provide the services or expend the funds during the next fiscal biennium.

(b) Each plan submitted by the Texas Department of Mental Health and Mental Retardation must include a designation of core services and accountability measures for community mental health or mental retardation centers.

(c) In preparing its plan for each biennium, each agency shall conduct public meetings and take public testimony.

(d) Each agency shall submit the plan required by this section in accordance with committee rules relating to the information the plan must contain, the date on which the plan must be submitted, and any other relevant requirements.

Sec. 1.07. REVIEW OF PLANS. (a) The committee shall review and evaluate the plan submitted by each state agency and the consolidated plan prepared by the committee. In reviewing and evaluating a plan, the committee shall consider whether or not the plan meets the goals of:

- (1) providing accountability for funds expended;
- (2) maximizing funds spent for services and minimizing funds spent on administrative costs;
- (3) providing community-based services; and
- (4) coordinating and planning for improved and cost-effective state services for all types of clients.

(b) The committee may approve, amend, or disapprove any plan submitted to the committee or may prepare a new plan or plans if necessary to accomplish the goals prescribed by Subsection (a) of this section. Once the committee has designated the manner in which a state agency may expend funds, the agency may not expend state or federal funds for alcohol or substance abuse services in a manner not approved by the committee.

(c) Agencies that receive funds for substance abuse services from the office of the governor shall include those funds in the plans prescribed by this Act, but the committee's authority to designate the manner in which an agency may expend funds does not apply to federal substance abuse funds received and distributed by the office of the governor.

(d) The office of the governor shall submit to the committee a report on all federal funds received for alcohol and substance abuse services and plans for their expenditure. The report shall include all federal funds received by the governor's office for alcohol and substance abuse services. The committee may review and comment on the governor's office's plans for expenditures for alcohol and substance abuse services.

(e) The oversight committee is the legislative review body for federal substance abuse service funds if the legislature is not in session when legislative review of those funds is required.

Sec. 1.08. APPLICATION OF SUNSET ACT. The Alcohol and Substance Abuse Services Oversight Committee is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the council is abolished and this Act expires on the date established by law for the abolishment of the Texas Commission on Alcohol and Drug Abuse.

SECTION 10.02. Not later than September 15, 1987, the lieutenant governor, speaker of the house of representatives, and governor shall appoint the members of the Alcohol and Substance Abuse Services Oversight Committee.

SECTION 10.03. (a) Not later than October 1, 1987, each state agency required to submit a plan under Section 1.06, Alcohol and Substance Abuse Services Oversight Act, must submit its initial plan to the committee. The plan must cover the fiscal biennium that begins September 1, 1987.

(b) Not later than November 1, 1987, the committee shall prepare the consolidated plan prescribed by Section 1.05, Alcohol and Substance Abuse Services Oversight Act, prepare the reports on the plan submitted by each agency, and submit each report and plan to the Alcohol and Substance Abuse Services Oversight Committee.

(c) Not later than December 1, 1987, the Alcohol and Substance Abuse Services Oversight Committee shall make its final determinations on the plans submitted by the Texas Commission on Alcohol and Drug Abuse.

(d) Prior to expenditure of federal funds received for alcohol and substance abuse services the office of the governor shall submit to the committee the report required by Subsection (d) of Section 1.07 of this Act.

(e) If necessary, the Alcohol and Substance Abuse Services Oversight Committee may alter or waive any deadlines prescribed by this section.

SECTION 10.04. The Alcohol and Substance Abuse Services Oversight Committee shall evaluate the system established by the Alcohol and Substance Abuse Services Oversight Act and the general alcohol and substance abuse services system in this state. Not later than February 1, 1989, the committee shall submit a report to the legislature evaluating the systems and recommending any necessary changes.

ARTICLE 11

SECTION 11.01. Except as otherwise provided by this Act, this Act takes effect September 1, 1987.

SECTION 11.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 14, 1987, by a viva-voce vote; May 28, 1987, Senate refused to concur in House amendments and requested appointment of Conference Committee; June 1, 1987, Senate adopted Conference Committee Report by a viva-voce vote. Passed the House, with amendments, on May 28, 1987, by a non-record vote; June 1, 1987, House adopted Conference Committee Report by a non-record vote.

Approved June 20, 1987.

Effective Sept. 1, 1987.