

## CHAPTER 1052

S.B. No. 298

AN ACT

relating to the continuation, composition, powers, and duties of the Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, and Texas Department of Corrections and to the administration of programs for and provision of services to children, the disabled, the indigent, and the elderly; providing penalties.

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

## ARTICLE 1

SECTION 1.01. (a) Sections 21.002 and 21.003, Human Resources Code, are amended to read as follows:

Sec. 21.002. APPLICATION OF SUNSET ACT. The Texas Department of Human Services is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the department is abolished and this title expires September 1, 1999 [1987].

Sec. 21.003. BOARD OF HUMAN SERVICES. (a) The Texas Board of Human Services is responsible for the adoption of policies and rules for the government of the department.

(b) The board is composed of *six* [~~three~~] members appointed by the governor with the advice and consent of the senate and representing all geographic regions of the state. To qualify for an appointment to the board, a person must have demonstrated an interest in and knowledge of *human services* [~~public welfare and must have had experience as an executive or administrator~~].

(c) Members of the board serve for staggered terms of six years with the term of *two members* [~~one member~~] expiring on January 20 of each odd-numbered year.

(d) After the biennial appointment of [~~a~~] new *members* [~~member~~], the board shall elect a presiding officer who shall preside over meetings of the board.

(e) *Four* [~~Two~~] members of the board constitute a quorum for the transaction of business.

(f) The board's office is in Austin in a building designated by the State Purchasing and General Services Commission.

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

(h) *A person is not eligible for appointment to the board 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*

(2) *receives more than 25 percent of the person's or the spouse's professional income in funds from the department, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.*

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

(j) *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 board, may not serve as a member of the board or act as general counsel to the board.*

(b) This Act does not affect the term of office for which a member of the Board of Human Services was originally appointed. A board member serving on August 31, 1987, is not required to have, during that term or during any subsequent and consecutive term, the qualifications required by Section 21.003, Human Resources Code, as amended by this Act, and is not subject to removal for the failure to have the qualifications.

(c) The amendments to Subsections (b) through (e) of Section 21.003, Human Resources Code, made by this Act, expanding the Texas Board of Human Resources to six members take effect January 20, 1989. On or after that date, the governor shall appoint three additional members to the Texas Board of Human Services. The governor shall appoint one member for a term expiring January 20, 1991, one member for a term expiring January 20, 1993, and one member for a term expiring January 20, 1995.

SECTION 1.02. Chapter 21, Human Resources Code, is amended by adding Sections 21.0031 and 21.0032 to read as follows:

*Sec. 21.0031. RESTRICTIONS ON BOARD MEMBERSHIP AND EMPLOYMENT. An officer, employee, or paid consultant of a trade association in the field of human services may not be a member or employee of the board or department. A person who is the spouse of any officer, employee, or paid consultant of a trade association in the field of human services 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. For the purposes of this section, a trade association is a nonprofit, cooperative, and 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. 21.0032. 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 Section 21.003 of this code for appointment to the board;*

*(2) does not maintain during the member's service on the board the qualifications required by Section 21.003 of this code for appointment to the board;*

*(3) violates a prohibition established by Subsection (j) of Section 21.003 or by Section 21.0031 of this code;*

*(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.*

SECTION 1.03. Subsection (b), Section 21.004, Human Resources Code, is amended to read as follows:

*(b) The commissioner is appointed by the board [~~with the advice and consent of two-thirds of the membership of the senate~~] and serves at the pleasure of the board.*

SECTION 1.04. Chapter 21, Human Resources Code, is amended by adding Sections 21.0051 and 21.0052 to read as follows:

*Sec. 21.0051. PERSONNEL POLICIES. (a) The board shall adopt policies that clearly define the respective responsibilities of the board and the staff of the department.*

*(b) 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.*

*(c) 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 must 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 work force of all persons of whom federal or state guidelines encourage a more equitable balance; and

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

(d) The policy statements 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.

(e) The board and department shall inform their members and employees as often as is necessary of:

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

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

Sec. 21.0052. *MERIT PAY.* 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 section.

SECTION 1.05. Section 21.011, Human Resources Code, is amended to read as follows:

Sec. 21.011. *REPORTS.* (a) On or before December 31 of each year the commissioner shall prepare and submit to the board a full report on the operation and administration of the department together with his recommendations for changes. The board shall submit the report to the governor and the legislature.

(b) The department 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 during the preceding fiscal year. The form of the annual report and the reporting time are as provided in the General Appropriations Act.

SECTION 1.06. (a) Chapter 21, Human Resources Code, is amended by adding Sections 21.014 through 21.017 to read as follows:

Sec. 21.014. *AUDITS.* (a) The State Auditor shall audit the financial transactions of the department at least once during each biennium.

(b) The person employed by the department as inspector general shall make reports to and consult with the chairman of the board regarding:

(1) the selection of internal audit topics;

(2) the establishment of internal audit priorities; and

(3) the findings of each regular or special internal audit initiative.

Sec. 21.015. *PUBLIC INFORMATION; COMPLAINTS.* (a) The department shall prepare information of public interest describing the functions of the board and department and describing the procedures by which complaints are filed with and resolved by the board or 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 department may provide for the notification through inclusion of the information:

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

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

(3) *in a bill for service provided by an individual or entity regulated by the department under this code or by an entity the creation of which is authorized by this title of this code.*

(c) *If a written complaint is filed with the department that relates to an individual or entity regulated by the department or to a service provided by the department, the department, at least as frequently as quarterly and until final disposition of the complaint, shall notify the complainant, the service provider, and the individual or entity regulated by the department of the status of the complaint unless the notice would jeopardize an undercover investigation or potential criminal prosecution.*

(d) *The department shall keep an information file about each complaint filed with the department that relates to an individual or entity regulated by the department or to a service provided by the department.*

(e) *For the purpose of rules to be promulgated by the board under Subsection (b) of this section the board may not require persons licensed to practice medicine who provide professional services to persons covered by Title XVIII or Title XIX of the Social Security Act to comply with the notification requirements of Subsection (b) of this section.*

*Sec. 21.016. PUBLIC TESTIMONY. The board shall adopt policies that provide the public with a reasonable opportunity to appear before the board and to speak on an issue under the jurisdiction of the board.*

*Sec. 21.017. INDEMNIFICATION FOR LEGAL EXPENSES. If a present or former employee of the department who is or was involved in activities relating to the protection of children and elderly or disabled persons is criminally prosecuted for conduct involving the person's misfeasance or nonfeasance in the course and scope of the person's employment and is found not guilty after a trial or appeal or if the complaint or indictment is dismissed without a plea of guilty or nolo contendere being entered, the department may indemnify the person or the person's estate for the reasonable attorney's fees incurred in defense of the prosecution up to a maximum of \$10,000.*

(b) Section 21.017, Human Resources Code, as added by this Act, applies only to attorney's fees for legal services performed on or after the effective date of this Act.

SECTION 1.07. Subsection (b), Section 22.001, Human Resources Code, is amended to read as follows:

(b) The department shall administer assistance to needy persons who are aged, blind or disabled and to needy families with dependent children. The department shall also administer or supervise general relief and child welfare services. *The department may administer state child day-care services.*

SECTION 1.08. Section 22.001, Human Resources Code, is amended by adding Subsection (e) to read as follows:

(e) *The department shall make all reasonable efforts to expand services to truant and runaways that available funds allow in an effort to reduce juvenile delinquency.*

SECTION 1.09. Subsections (a) and (b), Section 22.005, Human Resources Code, are amended to read as follows:

(a) The children's assistance fund, ~~and~~ the medical assistance fund, *and the commodity distribution fund* are separate accounts in the Texas Department of Human Services fund. Money in the separate accounts may be expended only for the purposes for which the accounts were created or as otherwise provided by law.

(b) The comptroller shall maintain a department of human services administration operating fund and a department of human services assistance operating fund as funds in the state treasury. ~~[The commodity distribution fund may not be included in these operating funds.]~~

SECTION 1.10. Section 22.006, Human Resources Code, is amended by amending Subsection (a) and by adding Subsection (i) to read as follows:

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

(1) owners and employees of, and applicants for employment at, a child-care facility licensed, registered, or certified or applying for a license, registration, or certification under Chapter 42 of this code;

(2) residents of a registered family home, excluding children in the home's care and the parents of the children;

(3) a person providing or applying to provide adoptive or foster care for children in the care of the department;

(4) a department employee who is engaged in the direct delivery of protective services to children on the date the department implements this section;

(5) a person applying for a position with the department, the duties of which include direct delivery of protective services to children; [or]

(6) a volunteer or person applying as a volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;

(7) a person employed by a business entity which provides in-home respite care of children with temporary illnesses; or

(8) a person employed by a home health agency.

(i) The department may charge a reasonable fee sufficient to recover the costs of obtaining criminal history information records authorized by Subsection (a)(7) or (a)(8) of this section.

SECTION 1.11. (a) Chapter 22, Human Resources Code, is amended by adding Sections 22.007 through 22.018 to read as follows:

*Sec. 22.007. PUBLIC INFORMATION CONTRACT REQUIREMENT. (a) Each contract between the department and a provider of services must contain a provision that authorizes the department to display at the service provider's place of business public awareness information on services provided by the department.*

*(b) Notwithstanding Subsection (a) of this section, the department may not require a physician to display in the physician's private offices public awareness information on services provided by the department.*

*Sec. 22.008. ENFORCEMENT AND ALTERATION OF SERVICE DELIVERY STANDARDS. (a) The department shall develop enforcement guidelines for its community care program that relate to the service delivery standards required of persons who contract with the department to carry out its community care program. The department shall apply the guidelines consistently across the state.*

*(b) At the same time the department sends written notice to a regional department office of a change or interpretation of a service delivery standard relating to the community care program, the department shall send a copy of the notice to each community care program contractor affected by the change or interpretation.*

*(c) Each decision on whether to enter into a contract in the community care program that results from a department request for bids or proposals must be made by one or more persons employed at the department's state headquarters.*

*Sec. 22.009. ADVISORY COMMITTEES. (a) The board shall appoint advisory committees on the recommendation of the commissioner to assist the board in performing its duties.*

*(b) The board shall appoint each advisory committee to provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.*

*(c) The board shall specify each advisory committee's purpose, powers, and duties and shall require each committee to report to the board in a manner specified by the board concerning the committee's activities and the results of its work.*

(d) The board shall establish procedures for receiving reports concerning activities and accomplishments of advisory committees established to advise the board or department. The board on the recommendation of the commissioner may appoint additional members to those committees and establish additional duties of those committees as the board determines to be necessary.

(e) The board shall adopt rules to implement this section. Those rules must provide that during the development of rules relating to an area in which an advisory committee exists the committee must be allowed to assist in the development of and to comment on the rules before the rules are finally adopted. The rules may allow the department to bypass this procedure only in an emergency situation. However, the department shall submit emergency rules to the appropriate advisory committee for review at the first committee meeting that occurs after the rules are adopted.

(f) A member of an advisory committee receives no compensation but is entitled to reimbursement for transportation expenses and the per diem allowance for state employees in accordance with the General Appropriations Act.

(g) Subsections (c) through (f) of this section apply to each department advisory committee created under this section or under other law.

**Sec. 22.010. ADVISORY COMMITTEE FOR SERVICES TO AGED AND DISABLED PERSONS.** (a) The Advisory Committee for Services to Aged and Disabled Persons shall examine and review issues related to the delivery of departmental services to disabled persons, including:

(1) the scope and range of services that the department should provide to disabled persons, including the coordination of a continuum of community-based services;

(2) how the department may improve the data and information it collects and maintains relating to services to disabled persons;

(3) how the department may improve the processes used to receive and refer requests for services from disabled persons; and

(4) how the department may improve its organizational structure to administer the delivery of services to disabled persons.

(b) The staff of the department's office responsible for strategic planning shall assist the committee in the examination and review of the issues.

(c) The department shall consider the long-range recommendations of the committee in the department's planning efforts and in the budget requests submitted after the 1990-1991 fiscal biennium.

**Sec. 22.011. MEMORANDUM OF UNDERSTANDING ON SERVICES TO DISABLED PERSONS.** (a) The department, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Texas Commission for the Deaf, and the Central Education Agency shall adopt a joint memorandum of understanding to facilitate the coordination of services to disabled persons. The memorandum shall:

(1) clarify the financial and service responsibilities of each agency in relation to disabled persons; and

(2) address how the agency will share data relating to services delivered to disabled persons by each agency.

(b) These agencies in the formulation of this memorandum of understanding shall consult with and solicit input from advocacy and consumer groups.

(c) Not later than the last month of each state fiscal year, the department and the other agencies shall review and update the memorandum.

(d) Each agency by rule shall adopt the memorandum of understanding and all revisions to the memorandum.

**Sec. 22.012. MEMORANDUM OF UNDERSTANDING ON FAMILY PLANNING SERVICES.** (a) The department and the Texas Department of Health shall adopt a

memorandum of understanding that clearly defines the responsibilities of each agency in providing family planning services and defines the procedures and standards each agency will use to provide and fund the services.

(b) The memorandum must provide for:

- (1) a coordinated means for allocating funds;
- (2) a means for developing, monitoring, and maintaining provider service standards that are consistent between agencies and funding sources, to the extent permitted by federal law; and
- (3) a means for collecting data that is consistent between agencies and funding sources.

(c) Not later than the last month of each state fiscal year, the department and the Texas Department of Health shall review and update the memorandum.

(d) Each agency by rule shall adopt the memorandum of understanding and all revisions to the memorandum.

**Sec. 22.013. MEMORANDUM OF UNDERSTANDING ON PUBLIC AWARENESS INFORMATION.** (a) The department, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, and the Texas Rehabilitation Commission shall adopt a joint memorandum of understanding that authorizes and requires the exchange and distribution among the agencies of public awareness information relating to services provided by or through the agencies.

(b) Not later than the last month of each state fiscal year, the department and the other agencies shall review and update the memorandum.

(c) Each agency by rule shall adopt the memorandum of understanding and all revisions to the memorandum.

**Sec. 22.014. MEMORANDUM OF UNDERSTANDING ON HOSPITAL AND LONG-TERM CARE SERVICES.** (a) The department, the Texas Department of Health, and the Texas Department of Mental Health and Mental Retardation shall adopt a memorandum of understanding that:

(1) clearly defines the responsibilities of each agency in providing, regulating, and funding hospital or long-term care services; and

(2) defines the procedures and standards that each agency will use to provide, regulate, and fund hospital or long-term care services.

(b) The memorandum must provide that no new rules or regulations that would increase the costs of providing the required services or would increase the number of personnel in hospital or long-term care facilities may be promulgated by either the department, the Department of Health, or the Department of Mental Health and Mental Retardation unless the commissioner of health certifies that the new rules or regulations are urgent as well as necessary to protect the health or safety of recipients of hospital or long-term care services.

(c) The memorandum must provide that any rules or regulations proposed by the department, the Department of Health, or the Department of Mental Health and Mental Retardation which would increase the costs of providing the required services or which would increase the number of personnel in hospital or long-term care facilities must be accompanied by a fiscal note prepared by the agency proposing said rules and submitted to the department. The fiscal note should set forth the expected impact which the proposed rule or regulation will have on the cost of providing the required service and the anticipated impact of the proposed rule or regulation on the number of personnel in hospital or long-term care facilities. The memorandum must provide that in order for a rule to be finally adopted the department must provide written verification that funds are available to adequately reimburse hospital or long-term care service providers for any increased costs resulting from the rule or regulation. The department is not required to provide written verification if the commissioner of health certifies that a new rule or regulation is urgent as well as necessary to protect the health or safety of recipients of hospital or long-term care services.

(d) *The memorandum must provide that upon final adoption of any rule increasing the cost of providing the required services, the department must establish reimbursement rates sufficient to cover the increased costs related to the rule. The department is not required to establish reimbursement rates sufficient to cover the increased cost related to a rule or regulation if the commissioner of health certifies that the rule or regulation is urgent as well as necessary to protect the health or safety of recipients of hospital or long-term care services.*

(e) *The memorandum must provide that Subsections (b) through (d) of this section do not apply if the rules are required by state or federal law or federal regulations.*

(f) *These agencies in the formulation of this memorandum of understanding shall consult with and solicit input from advocacy and consumer groups.*

(g) *Not later than the last month of each state fiscal year, the department and the other agencies shall review and update the memorandum.*

(h) *Each agency by rule shall adopt the memorandum of understanding and all revisions to the memorandum.*

**Sec. 22.015. REPORTING OF PHYSICIAN MISCONDUCT OR MALPRACTICE.**

(a) *If the department receives an allegation that a physician employed by 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 information 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.*

**Sec. 22.016. SPECIAL PURCHASING PROCEDURES.** *The department shall comply with any special purchasing procedures requiring competitive review under the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).*

**Sec. 22.017. PROGRAM ACCESSIBILITY.** *The department shall prepare and maintain a written plan that describes how persons who do not speak English or who have physical, mental, or developmental disabilities can be provided reasonable access to the department's programs.*

**Sec. 22.018. HEARINGS DIVISION.** (a) *The department shall establish and maintain a hearings division that is separate from the legal division to administer each hearing held under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

(b) *Neither the department nor the department's legal division may directly or indirectly influence a decision or the decision-making process of the hearings division.*

(b) *Not later than January 1, 1988, the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Texas Commission for the Deaf, and the Central Education Agency shall adopt a joint memorandum of understanding as prescribed by Section 22.011, Human Resources Code, as added by this Act.*

(c) *Not later than January 1, 1988, the Texas Department of Human Services and the Texas Department of Health shall adopt a memorandum of understanding as prescribed by Section 22.012, Human Resources Code, as added by this Act.*

(d) *Not later than January 1, 1988, the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, and the Texas Rehabilitation Commission shall adopt a joint memorandum of understanding as prescribed by Section 22.013, Human Resources Code, as added by this Act.*

(e) *Not later than January 1, 1988, the Texas Department of Human Services, the Texas Department of Health, and the Texas Department of Mental Health and Mental*



Retardation shall adopt a memorandum of understanding as prescribed by Section 22.014, Human Resources Code, as added by this Act.

(f) Not later than June 1, 1988, the Texas Department of Human Services Advisory Committee for Services to Aged and Disabled Persons shall complete the review and examination of issues prescribed by Section 22.010, Human Resources Code, as added by this Act, and submit a report on the results to the commissioner and board of the Texas Department of Human Services for appropriate action in the department's budget request for the 1990-1991 fiscal biennium and in the department's continuing strategic planning process and other operations. The committee shall also submit a copy of the report to the Texas Health and Human Services Coordinating Council and to the senate health and human resources and the house human services committees of the 71st Legislature not later than February 1, 1989.

(g) The Texas Department of Human Services shall prepare the written plan prescribed by Section 22.017, Human Resources Code, as added by this Act, not later than February 1, 1988.

SECTION 1.12. (a) Chapter 22, Human Resources Code, is amended by adding Sections 22.019, 22.020, 22.021, and 22.022 to read as follows:

*Sec. 22.019. DUE PROCESS PROCEDURES. (a) The department may not retroactively apply a rule, standard, guideline, or policy interpretation.*

*(b) The department shall adopt any changes in departmental policy in accordance with the rule-making provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The department shall use periodic bulletins and indexes to notify contractors of changes in policy and to explain the changes. The department may not adopt a change in departmental policy that takes effect before the date on which the department notifies contractors as prescribed by this subsection.*

*(c) The board shall adopt a rule requiring the department to respond in writing to each written inquiry from a contractor not later than the 14th day after the date on which the department receives the inquiry.*

*Sec. 22.020. AUDIT PROCEDURE. At any time during an audit, the department shall permit a contractor to submit additional or alternative documentation to prove that services were delivered to an eligible client. Any recovery of costs by the department from the contractor for using additional or alternative documentation may not exceed the amount the contractor would otherwise be entitled to receive under the contract as administrative costs.*

*Sec. 22.021. DISTRIBUTION OF FUNDS. (a) If funds are appropriated to the department for the general support or development of a service that is needed throughout the state, the department shall allocate those funds equitably across the state.*

*(b) This section does not apply to funds appropriated for a research or demonstration program or for the purchase of direct services.*

*Sec. 22.022. RESIDENCY REQUIREMENTS. To the extent permitted by law the department shall only provide services to legal residents of the United States or the State of Texas.*

(b) Section 22.021, Human Resources Code, as added by this Act, providing for the distribution of funds by the department, takes effect September 1, 1991.

SECTION 1.13. Subsection (b), Section 34.003, Human Resources Code, is amended to read as follows:

*(b) The department shall establish the emergency nutrition program as part of the temporary emergency relief program established under this chapter. The emergency nutrition program may allocate funds from the temporary emergency relief fund to meet the unmet need for emergency food assistance. The funds shall be used as a grant to local communities to match local funds on a 50 percent state and 50 percent local ratio basis. The department shall administer the emergency nutrition program in the same fashion and by the same rules and procedures as govern the administra-*

*tion of the temporary emergency relief program* [~~The temporary emergency relief fund may not exceed \$1 million.~~]

SECTION 1.14. Section 34.004, Human Resources Code, is amended by adding Subsection (f) to read as follows:

*(f) The department shall develop standards and procedures for the program that permit all counties in the state to participate.*

SECTION 1.15. Sections 45.026 and 45.027, Human Resources Code, are amended to read as follows:

Sec. 45.026. COMPACT ADMINISTRATOR. The governor shall appoint the commissioner as compact administrator. *If the commissioner is unable to attend a compact meeting, the commissioner may designate a department employee to attend the meeting as the commissioner's representative.*

Sec. 45.027. APPLICATION OF SUNSET ACT. The office of administrator of the Interstate Compact on the Placement of Children is subject to the Texas Sunset Act (Chapter 325, Government Code) [~~(Article 5429k, Vernon's Texas Civil Statutes)~~]. Unless continued in existence as provided by that Act, the office is abolished and this subchapter expires September 1, 1999 [~~1987~~].

SECTION 1.16. Subchapter B, Chapter 45, Human Resources Code, is amended by adding Section 45.028 to read as follows:

*Sec. 45.028. NOTICE OF MEETINGS. For informational purposes, the department shall file with the secretary of state notice of compact meetings for publication in the Texas Register.*

SECTION 1.17. (a) The Council on Disabilities shall conduct a review of the services currently available to disabled persons and develop recommendations relating to the duties of the Texas Department of Human Services in providing state services to disabled persons.

(b) In conducting the review, the council should use its own resources and any appropriate work by or resources of other committees or organizations that focus on services to disabled persons.

(c) Not later than February 1, 1989, the council shall submit a report to the 71st Legislature that contains the recommendations made by the council.

(d) This section expires September 1, 1989.

SECTION 1.18. Subsection (b), Section 9a, Article 8307, Revised Statutes, is amended to read as follows:

(b) If there is a workers' compensation claim for the named claimant open or pending before the Industrial Accident Board or on appeal to a court of competent jurisdiction from the Board or which is the subject matter of a subsequent suit where the carrier is subrogated to the rights of the named claimant at the time a record search or request for information is presented to the Board, the information shall be furnished as provided in this section. The first, middle, and last name of the claimant, age and social security number, and, if possible, dates of injury and the names of prior employers must be given in the request for information by the requesting party. The Board will furnish the requested information or a record check only to the following:

- (1) the claimant;
- (2) the attorney for the claimant;
- (3) the carrier;
- (4) the employer at the time of the current injury;
- (5) third-party litigants; [~~or~~]
- (6) the State Board of Insurance; *or*
- (7) *the Texas Department of Human Services.*

A third-party litigant in a suit arising out of an occurrence with respect to which a workers' compensation claim was filed is entitled to the information without regard to whether or not the compensation claim is still pending.

SECTION 1.19. Chapter 52 is added to Title 2 of the Human Resources Code to read as follows:

CHAPTER 52.

*Sec. 52.001. SCHOOL AGE PREGNANCY PREVENTION. (a) The department is designated as the state agency to collect statistical information on school age pregnancy and disburse such statistics to the proper state agencies.*

*(b) Consistent with the provisions of the Memorandum of Understanding on Family Planning Services required by Section 22.012, Human Resources Code, the department shall:*

*(1) set guidelines for keeping statistical information on school age pregnancy and parenthood by agencies, organizations, and individuals so that the information may be evaluated and compared;*

*(2) collect information relating to school age pregnancy as considered necessary by the department, including information on educational programs provided in the public school system relating to family life education, abstinence from sex, and sexually transmitted diseases;*

*(3) serve as a statewide clearinghouse on information relating to school age pregnancy and education on abstinence from sex and make it available to the legislature, other state agencies, and private entities that are involved in preventing school age pregnancy, addressing the problems caused by school age pregnancy, or encouraging abstinence from sex;*

*(4) analyze and evaluate the data collected on and studies relating to school age pregnancy and make the analysis and information readily available to the legislature, relevant agencies, and the public;*

*(5) make recommendations to the relevant state agencies or the legislature to prevent duplication of services; and*

*(6) submit a report each regular session to the legislature on the status of school age pregnancy programs in the state and the department's progress in meeting the requirements of this section.*

*(c) The department shall submit each report required by Subsection (b)(6) of this section to the legislature not later than January 31 of each odd-numbered year.*

*Sec. 52.002. SCHOOL AGE PREGNANCY INTERAGENCY ADVISORY COMMITTEE. (a) The board, on recommendation of the commissioner, may establish a school age pregnancy interagency advisory committee to advise the board and department on school age pregnancy issues. If established, the committee consists of:*

*(1) a representative of the Texas Health and Human Services Coordinating Council, designated by the council; and*

*(2) the administrative head of any state agency that the department identifies as providing services relating to school age pregnancy, or that person's designee.*

*(b) The department shall be represented on the committee and its representative serves as presiding officer of the school age pregnancy interagency advisory committee.*

SECTION 1.20. (a) Section 34.009, Human Resources Code, is repealed.

(b) Section 3 of Title IV, Omnibus Hunger Act of 1985 (Section 1, Chapter 150, Acts of the 69th Legislature, Regular Session, 1985), is repealed.

ARTICLE 2

SECTION 2.01. Section 32.022, Human Resources Code, is amended to read as follows:

*Sec. 32.022. MEDICAL CARE ADVISORY COMMITTEE. (a) The board, on the recommendation of the commissioner, shall appoint a medical care advisory committee to advise the board and the department in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's*

goal of providing high quality, comprehensive medical and health care services to needy persons in the state.

(b) The *board* [~~commissioner~~] shall appoint the committee [~~of the size, membership, and experience the commissioner determines essential for the implementation of the program and~~] in compliance with the *requirements of the federal agency administering medical assistance. The appointments shall provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.*

(c) The department shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, and continuity [~~and representation of the various professions and disciplines authorized to provide medical assistance~~].

(d) [~~Members of the committee receive no compensation for their services but are entitled to reimbursement for actual expenses incurred in performing committee duties.~~

[(e)] The *board, on the recommendation of the commissioner, may appoint regional and local medical care advisory committees and other advisory committees as considered [he considers] necessary.*

SECTION 2.02. Subsection (b), Section 32.034, Human Resources Code, is amended to read as follows:

(b) The department may not terminate a contract during the pendency of a hearing under this section. The department may withhold payments during the pendency of a hearing, but the department shall pay the withheld payments and resume contract payments if the final determination is favorable to the contractor. *The department's authority to withhold payments shall be established by contract.*

SECTION 2.03. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.038 to read as follows:

*Sec. 32.038. COLLECTION OF INSURANCE PAYMENTS. (a) The department may receive directly from an insurance company any payments to which the department is entitled under Article 3.76, Insurance Code.*

*(b) The department shall adopt rules to implement this section, including rules establishing procedures relating to:*

*(1) notification to the department that a child receiving benefits under Chapter 31 or Chapter 32 of this code is covered by an insurance policy under which the department is eligible to receive direct payments;*

*(2) claims made by the department to receive payments under Subsection (a) of this section;*

*(3) notification to the department of any change in the status of the child or the parent; and*

*(4) notification to the insurance company that the department is to receive payments under Subsection (a) of this section.*

*(c) Department rules relating to the notice prescribed by Subsection (b)(4) of this section must require the notice to be attached to the claim for insurance benefits when the claim is first submitted to the insurance company.*

SECTION 2.04. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.039 to read as follows:

*Sec. 32.039. CIVIL DAMAGES AND PENALTIES. (a) In this section, "claim" means an application for payment of health care services under Title XIX of the federal Social Security Act that is submitted by a person who is under a contract or provider agreement with the department.*

*(b) A person who presents or causes to be presented to the department a claim that contains a statement or representation the person knows to be false is liable to the department for:*

*(1) the amount paid because of the false claim and interest on that amount determined at the rate provided by law for legal judgments and accruing from the date on which the payment was made;*

(2) *payment of a civil penalty not to exceed twice the amount paid because of the false claim; and*

(3) *payment of a civil penalty of not more than \$2,000 for each item or service for which payment was claimed.*

(c) *Unless the provider submitted information to the department for use in preparing a voucher that the provider knew was false or failed to correct information that the provider knew was false when provided an opportunity to do so, this section does not apply to a claim based on the voucher if the department calculated and printed the amount of the claim on the voucher and then submitted the voucher to the provider for the provider's signature. In addition, the provider's signature on the voucher does not constitute fraud. The department shall adopt rules that establish a grace period during which errors contained in a voucher prepared by the department may be corrected without penalty to the provider.*

(d) *In determining the amount of the penalty to be assessed under Subdivision (3) of Subsection (b) of this section, the department shall consider:*

(1) *the seriousness of the violation;*

(2) *whether the person had previously submitted false claims; and*

(3) *the amount necessary to deter the person from submitting future false claims.*

(e) *If after an examination of the facts the department concludes that the person did submit a false claim, the department may issue a preliminary report stating the facts on which it based its conclusion, recommending that a civil penalty under this section be imposed and recommending the amount of the proposed penalty.*

(f) *The department shall give written notice of the report to the person charged with submitting the false claim. The notice must include a brief summary of the facts, a statement of the amount of the recommended penalty, and a statement of the person's right to an informal review of the false claim, the amount of the penalty, or both the false claim and the amount of the penalty.*

(g) *Not later than the 10th day after the date on which the person charged with submitting the false claim receives the notice, the person may either give the department written consent to the report, including the recommended penalty, or make a written request for an informal review by the department.*

(h) *If the person charged with submitting the false claim consents to the penalty recommended by the department or fails to timely request an informal review, the department shall assess the penalty. The department shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.*

(i) *If the person charged with submitting a false claim requests an informal review as provided by Subsection (g) of this section, the department shall conduct the review. The department shall give the person written notice of the results of the review.*

(j) *Not later than the 10th day after the date on which the person charged with submitting the false claim receives the notice prescribed by Subsection (i) of this section, the person may make to the department a written request for a hearing. The hearing must be conducted in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

(k) *If, after informal review, a person who has been ordered to pay a penalty fails to request a formal hearing in a timely manner, the department shall assess the penalty. The department shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.*

(l) *Except as provided by Subsection (m) of this section, not later than 30 days after the date on which the department issues a final decision after a hearing under Subsection (j) of this section, a person who has been ordered to pay a penalty under this section shall pay the penalty in full.*

(m) *If the person seeks judicial review of either the fact of the submission of a false claim or the amount of the penalty or of both the fact of the submission and the amount of the penalty, the person shall forward the amount of the penalty to the department for placement in an escrow account or, instead of payment into an escrow account, post with the department a supersedeas bond in a form approved by the department for the amount of the penalty. The bond must be effective until all judicial review of the order or decision is final.*

(n) *Failure to forward the money to or to post the bond with the department within the period provided by Subsection (l) or (m) of this section results in a waiver of all legal rights to judicial review. If the person charged fails to forward the money or post the bond within the period provided by Subsection (h), (k), (l), or (m) of this section, the department may forward the matter to the attorney general for enforcement of the penalty and interest as provided by law for legal judgments. An action to enforce a penalty order under this section must be initiated in a court of competent jurisdiction in Travis County or in the county from which the false claim was submitted.*

(o) *Judicial review of a department order or review under this section assessing a penalty is under the substantial evidence rule. A suit may be initiated by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

(p) *If a penalty is reduced or not assessed, the department shall remit to the person the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the department under this subsection shall be paid at a rate equal to the rate provided by law for legal judgments and shall be paid for the period beginning on the date the penalty is paid to the department under this section and ending on the date the penalty is remitted.*

(q) *A damage, cost, or penalty collected under this section is not an allowable expense in a claim or cost report that is or could be used to determine a rate or payment under the medical assistance program.*

(r) *All funds collected under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.*

SECTION 2.05. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0331 to read as follows:

*Sec. 32.0331. MEDICAL ASSISTANCE LIENS. (a) Medical assistance payments made under this chapter constitute a claim and lien against the property and estate belonging to the recipient of the medical assistance.*

*(b) The department may enforce the claim or lien established under this section only on the death of the recipient of medical assistance. However, the department may not enforce the claim or lien if the recipient has a surviving spouse or a surviving dependent or disabled child.*

*(c) The department shall adopt rules governing the recovery of medical assistance payments through the enforcement of the claims or liens established under this section.*

SECTION 2.06. (a) Chapter 3, Insurance Code, is amended by adding Article 3.76 to read as follows:

**Art. 3.76. PAYMENTS TO TEXAS DEPARTMENT OF HUMAN SERVICES UNDER ACCIDENT AND HEALTH INSURANCE**

*Sec. 1. REQUIRED PROVISION. Each individual or group policy of accident and sickness insurance, including a policy issued by a company subject to Chapter 20 of this code, that is delivered, issued for delivery, or renewed in this state and that provides coverage for one or more children whose parent purchased the policy or whose parent is a member of the group shall include a requirement that benefits paid on behalf of the child or children under the policy must be paid to the Texas*

*Department of Human Services after written notice to the insurer at the insurer's home office, if:*

- (1) *the parent who purchased the policy or who is a member of the group is:*
- (A) *a possessory conservator of the child under an order issued by a court in this state or is not entitled to possession of or access to the child; and*
- (B) *is required by court order or court-approved agreement to pay child support;*
- (2) *the Texas Department of Human Services is paying benefits on behalf of the child under Chapter 31 or Chapter 32, Human Resources Code; and*
- (3) *the insurer or group hospital service company is notified through an attachment to the claim for insurance benefits when the claim is first submitted to the insurer or company that the benefits must be paid directly to the Texas Department of Human Services.*

*Sec. 2. CONSULTATION. The State Board of Insurance and the Texas Department of Human Services may consult with regard to the implementation of this article.*

*Sec. 3. UNIFORM PROVISION. The State Board of Insurance shall prescribe uniform policy provisions, riders, and endorsements for the policy requirement provided by Section 1 of this article. Before the board prescribes any provisions, riders, or endorsements or any changes in provisions, riders, or endorsements, the State Board of Insurance shall submit the provisions, riders, or endorsements or amendments to them to the Texas Department of Human Services for comment.*

(b) Article 3.76, Insurance Code, as added by this Act, applies only to insurance policies delivered, issued for delivery, or renewed on or after January 1, 1988. Insurance policies delivered, issued for delivery, or renewed before January 1, 1988, are governed by the law that existed at the time the policy was delivered, issued for delivery, or renewed, and that law is continued in effect for that purpose.

SECTION 2.07. Section 322, Texas Probate Code, is amended to read as follows:

Sec. 322. CLASSIFICATION OF CLAIMS AGAINST ESTATES OF DECEDENT. Claims against an estate of a decedent shall be classed and have priority of payment, as follows:

Class 1. Funeral expenses and expenses of last sickness for a reasonable amount to be approved by the court, not to exceed Five Thousand Dollars, any excess to be classified and paid as other unsecured claims.

Class 2. Expenses of administration and expenses incurred in the preservation, safekeeping, and management of the estate.

Class 3. Claims secured by mortgage or other liens, including tax liens, so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage or lien shall exist upon the same property, the oldest shall be first paid; but no preference shall be given to such mortgage or lien.

Class 4. Claims for taxes, penalties, and interest due under Title 2, Tax Code; Chapter 8, Title 132, Revised Civil Statutes of Texas, 1925, as amended; Section 81.111, Natural Resources Code; the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes); Section 11B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes); or Section 16, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes).

Class 5. *Claims for repayment of medical assistance payments made by the state under Chapter 32, Human Resources Code, to or for the benefit of the decedent.*

Class 6. All other claims legally exhibited within six months after the original grant of letters testamentary or of administration.

Class 7. [~~Class 6.~~] All claims legally exhibited after the lapse of six months from the original grant of letters testamentary or of administration.

SECTION 2.08. Subsections (b) and (c), Section 22.01, Penal Code, are amended to read as follows:

(b) An offense under Subsection (a)(1) of this section is a Class A misdemeanor unless:

(1) the offense is committed by the owner or an employee of an institution described in Subsection (a), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), or a person providing medical or psychiatric treatment at an institution described in that subsection, and the offense is committed by causing bodily injury to a patient or resident of an institution described in that subsection, in which event the offense is a felony of the third degree;

or

(2) the offense is committed by the owner or employee of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in Subsection (a)(6), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), or a person providing medical or psychiatric treatment at a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that subsection, and the offense is committed by causing bodily injury to a patient or resident of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that subsection, in which event the offense is a felony of the third degree.

(c) An offense under Subsection (a)(2) of this section is a Class C misdemeanor unless:

(1) the offense is committed by the owner or an employee of an institution described in Subsection (a), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), or a person providing medical or psychiatric treatment at an institution described in that subsection, and the offense is committed by threatening a patient or resident of an institution described in that subsection with bodily injury, in which event the offense is a Class B misdemeanor;

or

(2) the offense is committed by the owner or an employee of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in Subsection (a)(6), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), or a person providing medical or psychiatric treatment at a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that subsection, and the offense is committed by threatening a patient or resident of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that subsection with bodily injury, in which event the offense is a Class B misdemeanor;

or

(3) the offense is committed against a classroom teacher, counselor, principal, or other similar instructional or administrative employee of a primary or secondary school accredited by the Texas Education Agency while engaged in performing his educational duties, in which event the offense is a Class B misdemeanor.

SECTION 2.09. Section 111.002, Human Resources Code, is amended by amending Subdivisions (3) and (4) and by adding Subdivision (8) to read as follows:

(3) "Handicapped individual" means any individual, except one whose disability is of a visual nature, who has a physical, [or] mental, or learning disability which constitutes a substantial handicap to employment, or to achieving maximum personal independence, but which is of a nature that rehabilitation services may reasonably be expected to enable the individual to engage in a gainful occupation or enable the individual to achieve a greater level of self-care and independent living.

(4) "Substantial handicap to employment" means a physical, [or] mental, or learning disability in light of attendant medical, psychological, vocational, educational, or other related factors that impedes an individual's occupational performance by preventing the individual from obtaining, retaining, or preparing for a gainful occupation consistent with the individual's capacities and abilities.

(8) "Learning disability" means a disability in one or more areas of oral expression, listening comprehension, written expression, basic reading skills, read-



ing comprehension, mathematics calculation, mathematics reasoning, or spelling that is not primarily the result of a visual handicap, hearing impairment, mental retardation, emotional disturbance, or an environmental, cultural, or economic disadvantage.

SECTION 2.10. Chapter 111, Human Resources Code, is amended by adding a new Section 111.052A to read as follows:

*Sec. 111.052A. COORDINATION WITH STATE AGENCIES. The commission shall coordinate with the Texas Department of Human Services and other health and human service agencies, as necessary, to ensure that clients with learning disabilities receive appropriate services.*

SECTION 2.11. Section 32.037, Human Resources Code, is repealed.

### ARTICLE 3

SECTION 3.01. (a) Subchapter A, Chapter 41, Human Resources Code, is amended by adding Sections 41.0011 and 41.0012 to read as follows:

*Sec. 41.0011. MEMORANDUM OF UNDERSTANDING ON SERVICES FOR MULTIPROBLEM CHILDREN AND YOUTH. (a) The department, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Health, the Texas Youth Commission, the Texas Juvenile Probation Commission, the Texas Rehabilitation Commission, the Texas Commission for the Blind, and the Central Education Agency shall adopt a joint memorandum of understanding to implement a system of local level interagency staffing groups to coordinate services for multiproblem children and youth.*

*(b) The memorandum must:*

*(1) clarify the financial and statutory responsibilities of each agency in relation to multiproblem children and youth, including subcategories of funding for different services such as prevention, family preservation and strengthening, emergency shelter, diagnosis and evaluation, residential care, after-care, information and referral, and investigation services;*

*(2) include a functional definition of "multiproblem children and youth";*

*(3) define procedures for interagency cost sharing;*

*(4) define procedures aimed at eliminating duplication of services relating to assessment and diagnosis, treatment, residential placement and care, and case management of multiproblem children and youth;*

*(5) define procedures for addressing disputes between the agencies that relate to the agencies' areas of service responsibilities;*

*(6) provide that each local level interagency staffing group will include a local representative of the department and each agency and not more than five representatives of local private sector youth agencies;*

*(7) provide that if an agency is not able to provide all the services a child requires, the agency may submit the child's case history to the local level interagency staffing group for consideration;*

*(8) provide that a local level interagency staffing group may be called together by a representative of any member agency;*

*(9) provide that an agency may be excused from attending a meeting if the staffing group determines that the age or needs of the children or youth to be considered are clearly not within the agency's service responsibilities;*

*(10) provide that records that are used or developed by the department and other agencies and that relate to a particular child are confidential and may not be released to any other person or agency except as provided under this section or by other law; and*

*(11) provide a procedure that permits the department and other agencies to share confidential information while preserving the confidential nature of the information.*

(c) *These agencies in the formulation of this memorandum of understanding shall consult with and solicit input from advocacy and consumer groups.*

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

(e) *Each agency by rule shall adopt the memorandum of understanding and all revisions to the memorandum.*

*Sec. 41.0012. ALLOCATION OF STATE FUNDS. (a) The department shall establish a method of allocating state funds for children's protective services programs that encourages and rewards the contribution of funds or services from all persons, including local governmental entities.*

(b) *Except as provided by this subsection, if a contribution of funds or services is made to support a children's protective services program in a particular county, the department shall use the contribution to benefit that program. The department may use the contribution for another purpose only if the commissioners court of the county gives the department written permission.*

(b) Not later than September 1, 1988, the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Health, the Texas Youth Commission, the Texas Juvenile Probation Commission, the Texas Rehabilitation Commission, the Texas Commission for the Blind, and the Central Education Agency shall adopt a joint memorandum of understanding as prescribed by Section 41.0011, Human Resources Code, as added by this Act. If the Texas Health and Human Services Coordinating Council develops a model for initiating local level inter-agency staffing groups, the agencies shall use the model in developing the memorandum of understanding.

SECTION 3.02. Subchapter B, Chapter 41, Human Resources Code, is amended by adding Section 41.026 to read as follows:

*Sec. 41.026. CONTRACT RESIDENTIAL CARE. (a) The department shall make reasonable efforts to ensure that any expenditure of appropriated funds to purchase contract residential care for children is allocated to providers on a fixed monthly basis if:*

(1) *the allocation is cost-effective; and*

(2) *the number, type, needs, and conditions of the children served are reasonably constant.*

(b) *This section does not apply to the purchase of care in a foster family home.*

SECTION 3.03. (a) Subchapter B, Chapter 41, Human Resources Code, is amended by adding Section 41.027 to read as follows:

*Sec. 41.027. PLACEMENT OF CHILDREN. (a) The department shall use a system for the placement of children in contract residential care, including foster care, that conforms to the levels of care developed and adopted by the Texas Health and Human Services Coordinating Council.*

(b) *The department shall use the standard application for the placement of children in contract residential care, as developed and adopted by the Texas Health and Human Services Coordinating Council.*

(b) Not later than December 1, 1987, the department shall develop and submit for review to the Texas Health and Human Services Coordinating Council a methodology for determining levels of care for children placed by the department. By January 1, 1988, the department shall implement the provisions established by Section 41.027, as added by this Act, as they relate to children placed by the department after January 1, 1988. By January 1, 1989, the department shall implement the provisions established by Section 41.027, as added by this Act, as they relate to children in placement who were placed on or before January 1, 1988.

SECTION 3.04. (a) Chapter 131, Human Resources Code, is amended by adding Section 131.009 to read as follows:

*Sec. 131.009. CHILDREN AND YOUTH SERVICES STATE COORDINATING COMMITTEE. (a) The Children and Youth Services State Coordinating Committee is created in the council.*

*(b) The committee consists of:*

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

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

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

*(4) a representative of the Texas Youth Commission, appointed by the executive director of the commission;*

*(5) a representative of the Texas Juvenile Probation Commission, appointed by the executive director of the commission;*

*(6) a representative of the Texas Rehabilitation Commission, appointed by the commissioner;*

*(7) a representative of the Texas Commission for the Blind, appointed by the executive director of the commission;*

*(8) a representative of the Central Education Agency, appointed by the commissioner of education;*

*(9) three representatives from youth related consumer and advocacy groups, appointed by the council;*

*(10) three representatives of private sector youth agencies, appointed by the council; and*

*(11) a judge involved in the placement of children, appointed by the council.*

*(c) The committee shall:*

*(1) analyze the capabilities and authority of each agency represented on the committee in the area of services to children and youth;*

*(2) identify gaps in services to children and youth;*

*(3) facilitate cost-effective use of existing resources by developing means for agencies to jointly fund services for multiproblem children and youth; and*

*(4) develop a model for initiating local level interagency staffing groups to coordinate services for multiproblem children and youth.*

*(d) The model for the local level staffing groups must recommend specific geographical service areas for each group.*

*(e) Members of the committee receive no compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing their duties.*

*(b) On the effective date of this Act, the Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Department of Health, Texas Youth Commission, Texas Juvenile Probation Commission, Texas Rehabilitation Commission, Texas Commission for the Blind, Central Education Agency, and Texas Health and Human Services Coordinating Council shall appoint the members of the Children and Youth Services State Coordinating Committee established by Section 131.009, Human Resources Code, as added by this Act. The committee shall conduct its initial meeting not later than October 1, 1987. The committee shall develop a model for initiating local level interagency staffing groups for agencies serving multiproblem children and youth not later than January 1, 1988, including a procedure for the appointment of state agency and private sector youth agency representatives. Not later than November 1, 1988, the committee shall submit a report to the Texas Health and Human Services Coordinating Council on the implementation and activities of the local staffing groups. The council shall include the committee's report in the annual report the council is required to file under Subdivision (9), Subsection (a), Section 131.004, Human*

Resources Code. The committee shall also develop a model for tracking children and youth in contract residential care through the Central Education Agency, and submit a report detailing the projected costs for statewide implementation of the model to the council not later than January 1, 1989.

SECTION 3.05. (a) The Texas Health and Human Services Coordinating Council shall conduct a study of the costs and benefits of combining services to children and youth in the state. The study shall focus on the possibility of creating a single children and youth services agency to provide coordinated services to children and youth.

(b) The council shall also study alternative means of financing contract residential care for children and youth.

(c) In conducting the study, the council shall solicit the opinions of persons from both the public and private sector who are involved in delivering services to children and youth.

(d) Not later than February 1, 1989, the council shall submit a report to the governor and the 71st Legislature that contains specific recommendations on the feasibility of creating a single children and youth services agency and, if creation is feasible, how the new system should be implemented.

(e) This section expires September 1, 1989.

#### ARTICLE 4

SECTION 4.01. Subdivisions (9) and (10), Section 42.002, Human Resources Code, are amended to read as follows:

(9) "*Family* [~~Registered family~~] home" means a *home* [facility] that regularly provides care in the caretaker's own residence for not more than six children under 14 years of age, excluding the caretaker's own children, and that provides care after school hours for not more than six additional elementary school siblings of the other children given care, but the total number of children, including the caretaker's own, does not exceed 12 at any given time.

(10) "*Agency group home*" means a facility that provides care for seven to 12 children for 24 hours a day and is used only by a licensed child-placing agency [~~"Family day home" means a facility that provides care for not more than six children under 14 years of age for less than 24 hours a day not in the caretaker's own residence nor in the residence of one or more of the children.~~].

SECTION 4.02. Section 42.022, Human Resources Code, is amended to read as follows:

Sec. 42.022. STATE ADVISORY COMMITTEE. (a) The State Advisory Committee on Child-Care Administrators and Facilities is [~~composed of 15 citizens of this state~~] appointed by the board on the recommendation of the commissioner.

(b) Members of the committee serve for terms of two years.

(c) ~~The board shall appoint the advisory committee to provide for balanced representation for [The members must represent the following groups]:~~

(1) parents, guardians, or custodians of children who use the facilities;

(2) child advocacy groups;

(3) operators of the facilities; [~~and~~]

(4) experts in various professional fields that are relevant to child care and development; and

(5) the general public.

(d) ~~The [At least three members of the division staff shall meet with the committee, and the] division shall provide staff necessary for the committee.~~

(e) The committee shall review rules and minimum standards for *child-care administrators*, child-care facilities, and child-placing agencies promulgated by state agencies, and shall advise the department, the division, the council, and state agencies on problems of *child-care administrators*, child-care facilities, and child-placing agencies.

(f) The committee shall receive and review the annual report of the division.

(g) The board, on the recommendation of the commissioner, shall appoint an advisory subcommittee on child-care administration from the membership of the Advisory Committee on Child-Care Administrators and Facilities. The subcommittee shall advise the board on licensing child-care administrators, including the content of the examination administered to license applicants under Section 43.004 of this code. The subcommittee on child-care administration shall meet at the same time the committee meets ~~[committee shall meet twice a year, and the members shall receive their actual travel expenses and the state per diem].~~

SECTION 4.03. Subsection (b), Section 42.041, Human Resources Code, is amended to read as follows:

(b) This section does not apply to:

- (1) a state-operated facility;
- (2) an agency home;
- (3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities on or near the premises, including but not limited to retreats or classes for religious instruction;
- (4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;
- (5) a youth camp licensed by the Texas Department of Health;
- (6) a hospital licensed by the Texas Department of Mental Health and Mental Retardation or the Texas Department of Health;
- (7) an educational facility accredited by the Central Education Agency or the Southern Association of Colleges and Schools that operates primarily for educational purposes in grades kindergarten and above;
- (8) an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;
- (9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Central Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day;
- (10) a ~~[registered]~~ family home, *whether registered or not*; ~~[or]~~
- (11) an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours maximum per day, and that offers educational programs for children age five and above in one or more of the following: kindergarten through at least grade three, elementary, or secondary grades; *or*
- (12) *an agency group home.*

SECTION 4.04. Section 42.042, Human Resources Code, is amended by adding Subsection (l) to read as follows:

(l) *The department shall adopt minimum standards regulating family homes that register with the division. The rules must address the minimum qualifications, education, and training required of a person who operates a family home registered with the division.*

SECTION 4.05. Subsection (c), Section 42.050, Human Resources Code, is amended to read as follows:

(c) The division shall evaluate the application for a new license to determine if all licensing requirements are met. The evaluation *may* ~~[must]~~ include a specified number of visits to the facility and *must include* a review of all required forms and records.

SECTION 4.06. Subsections (c), (d), and (f), Section 42.052, Human Resources Code, are amended to read as follows:

(c) A ~~[registered]~~ family home *that provides care for three or fewer children, excluding the caretaker's own children may register* ~~[must be registered]~~ with the division. *A family home that provides care for four or more children, excluding the caretaker's own children, must register with the division.* A ~~[The]~~ registration must be renewed every year ~~[two years]~~. The operator of a registered home must display the registration in a prominent place at the home.

(d) To *remain* ~~[be]~~ registered with the division, a ~~[registered]~~ family home must comply with the department's rules and standards and any provision of this chapter that applies to a registered family home.

(f) A ~~[Any advertisement for a registered]~~ family home *may not place a public advertisement that [which] uses the title "registered family home" or any variation of the phrase unless the home is registered with the division under this chapter. Any public advertisement for a registered family home which uses the title "registered family home" must contain a provision in bold type stating: "THIS HOME IS REGISTERED WITH THE TEXAS DEPARTMENT OF HUMAN SERVICES [RESOURCES] BUT IS NOT LICENSED OR [,] INSPECTED [, OR OTHERWISE REGULATED BY THE DEPARTMENT]."*

SECTION 4.07. Section 42.053, Human Resources Code, is amended to read as follows:

Sec. 42.053. **AGENCY HOMES AND AGENCY GROUP HOMES.** (a) An agency home *or agency group home* is considered part of the child-placing agency that operates the agency home *or agency group home* for purposes of licensing.

(b) The operator of a licensed agency shall display a copy of the license in a prominent place in the agency home *or agency group home* used by the agency.

(c) An agency home *or agency group home* shall comply with all provisions of this chapter and all department rules and standards that apply to a child-care facility caring for a similar number of children for a similar number of hours each day.

(d) The division shall revoke or suspend the license of a child-placing agency if an agency home *or agency group home* operated by the licensed agency fails to comply with Subsection (c) of this section.

SECTION 4.08. Subsection (e) Section 42.054, Human Resources Code, as added by Chapter 239, Acts of the 69th Legislature, Regular Session, 1985, is amended to read as follows:

(e) The division shall charge each ~~[registered]~~ family home *that is registered with the division* an annual registration fee of \$35 *to cover the department's cost in regulating family homes.* The fee is due on the date on which the division registers the home and on the anniversary of that date.

SECTION 4.09. Subsection (c), Section 42.074, Human Resources Code, is amended to read as follows:

(c) At the division's request, the attorney general *or the county or district attorney of the county in which the facility is located* shall conduct a suit in the name of the State of Texas for injunctive relief, to recover the civil penalty, or for both injunctive relief and civil penalties as authorized by Subsection (a) of this section.

SECTION 4.10. Section 43.003, Human Resources Code, is amended to read as follows:

Sec. 43.003. **LICENSE REQUIRED.** (a) *Except as provided by Subsection (b) of this section, a [A] person may not serve as a child-care administrator of a child-care institution without a license issued by the department under this chapter.*

(b) *A person who is not licensed under this chapter may serve as the child-care administrator of an emergency shelter located in a county with a population of less than 40,000 if the governing body of the shelter by resolution adopted by a majority vote of the membership of the governing body certifies that the shelter has made a reasonable effort to hire a licensed child-care administrator but is unable to hire a licensed child-care administrator.*

SECTION 4.11. Chapter 43, Human Resources Code, is amended by adding Section 43.0041 to read as follows:

*Sec. 43.0041. EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which a licensing examination is administered under this chapter, the department shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the department shall notify examinees of the results of the examination not later than the 14th day after the date on which the department receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before that 90th day.*

*(b) If requested in writing by a person who fails a licensing examination administered under this chapter, the department shall furnish the person with an analysis of the person's performance on the examination.*

SECTION 4.12. Section 43.009, Human Resources Code, is amended to read as follows:

*Sec. 43.009. LICENSE RENEWAL. (a) To be eligible for license renewal, a license holder shall present evidence to the department of participation in a program of continuing education approximating 15 actual hours of formal study during the two-year period before the renewal.*

*(b) The continuing education requirement may be fulfilled by studies in the areas of legal aspects of child care, concepts related to the field of social work, or other subjects approved by the department.*

*(c) A person may renew an unexpired license by paying to the department before the expiration date of the license the required renewal fee.*

*(d) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the department the required renewal fee and a fee that is one-half of the examination fee for the license.*

*(e) If a person's license has been expired for longer than 90 days but less than two years, the person may renew the license by paying to the department all unpaid renewal fees and a fee that is equal to the examination fee for the license.*

*(f) If a person's license has been expired for two years or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. However, the department may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the department a fee that is equal to the examination fee for the license.*

*(g) At least 30 days before the expiration of a person's license, the department shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the department.*

SECTION 4.13. Section 43.010, Human Resources Code, is amended to read as follows:

*Sec. 43.010. LICENSE REVOCATION OR SUSPENSION; REPRIMAND OR PROBATION. (a) The department may revoke a license if the license holder is:*

- (1) convicted of a felony;*
- (2) convicted of a misdemeanor involving fraud or deceit;*
- (3) addicted to a dangerous drug or intemperate in the use of alcohol; or*
- (4) grossly negligent in performing duties as a child-care administrator.*

*(b) The department shall suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of this chapter or a rule of the board. If a license suspension is probated, the department may require the license holder:*

- (1) to report regularly to the department on matters that are the basis of the probation;*

- (2) to limit practice to the areas prescribed by the department; or
- (3) to continue or renew professional education until the practitioner attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

SECTION 4.14. Section 43.002, Human Resources Code, is repealed.

#### ARTICLE 5

SECTION 5.01. (a) Subchapter B, Chapter 48, Human Resources Code, is amended by adding Section 48.022 to read as follows:

*Sec. 48.022. MEMORANDUM OF UNDERSTANDING. (a) The department shall adopt a memorandum of understanding with each state agency that operates, licenses, certifies, or registers a facility in which elderly or disabled persons are located that clarifies each agency's responsibility under this chapter.*

*(b) Not later than the last month of each state fiscal year, the department and the other agencies shall review and update the memorandum.*

*(c) Each agency by rule shall adopt the memorandum of understanding and all revisions to the memorandum.*

*(b) Not later than January 1, 1988, the Texas Department of Human Services and each state agency that operates, licenses, or regulates a facility in which elderly or disabled persons are located shall adopt a memorandum of understanding as prescribed by Section 48.022, Human Resources Code, as added by this Act.*

SECTION 5.02. Section 48.036, Human Resources Code, is amended to read as follows:

*Sec. 48.036. REPORT. (a) Except as prescribed by Subsection (c) of this section, a [A] person having reasonable cause to believe that an elderly or disabled person is in the state of abuse, exploitation, or neglect shall report the information to the department.*

*(b) The report may be made orally or in writing. It shall include:*

- (1) the name, age, and address of the elderly or disabled person;*
- (2) the name and address of any person responsible for the elderly or disabled person's care;*
- (3) the nature and extent of the elderly or disabled person's condition;*
- (4) the basis of the reporter's knowledge; and*
- (5) any other relevant information.*

*(c) If a person has reasonable cause to believe that an elderly or disabled person has been abused, exploited, or neglected in a facility operated, licensed, certified, or registered by a state agency, the person shall report the information to the state agency that operates, licenses, certifies, or registers the facility. If the abuse, exploitation, or neglect occurs in a facility licensed under Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), the person shall report the information as prescribed by Section 16 of that Act, and the Texas Department of Health shall investigate the report as prescribed by that section. If the abuse, exploitation, or neglect occurs in the Texas School for the Deaf or the Texas School for the Blind, the person shall report the information as prescribed by Chapter 34, Family Code, and the investigation shall be conducted in accordance with that law.*

*(d) If the department receives a report under this section relating to a person in a facility operated, licensed, certified, or registered by a state agency, the department shall refer the report to the agency.*

*(e) Each state agency that operates, licenses, certifies, or registers a facility in which elderly or disabled persons reside shall make a thorough investigation promptly after receiving a report that an elderly or disabled person has been or may be abused, exploited, or neglected in a facility operated, licensed, certified, or registered by the agency.*



*(f) Unless the state agency received the report from the department, the agency shall notify the department of each report it receives under this section relating to abuse, exploitation, or neglect in a facility operated by the agency.*

SECTION 5.03. Subchapter C, Chapter 48, Human Resources Code, is amended by adding Section 48.0361 to read as follows:

*Sec. 48.0361. FAILURE TO REPORT; PENALTY. (a) A person commits an offense if the person has cause to believe that an elderly or disabled person has been abused, exploited, or neglected or is in the state of abuse, exploitation, or neglect and knowingly fails to report in accordance with Section 48.036 of this code. An offense under this subsection is a Class B misdemeanor.*

*(b) This section does not apply if the alleged abuse, exploitation, or neglect occurred in a facility licensed under Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes). Failure to report abuse, exploitation, or neglect that occurs in a facility licensed under that Act is governed by that Act.*

SECTION 5.04. Section 48.037, Human Resources Code, is amended to read as follows:

*Sec. 48.037. ACTION ON REPORT. (a) Not later than 24 hours upon receipt of a report of suspected need for protective services, the department or state agency, as appropriate, shall initiate a prompt and thorough investigation to determine whether the elderly or disabled person is in need of protective services, unless the department or state agency, as appropriate, determines that the report is frivolous or patently without a factual basis.*

*(b) Each state agency that operates, licenses, certifies, or registers a facility in which elderly or disabled persons are located shall adopt rules relating to the investigation and resolution of reports received under Section 48.036 of this code. The department shall review and approve such rules to assure that all agencies implement appropriate standards for the conduct of investigations and that uniformity exists among agencies in the investigation and resolution of reports.*

SECTION 5.05. Subsections (a), (b), (c), and (e), Section 48.038, Human Resources Code, are amended to read as follows:

*(a) In an ~~the~~ investigation the department or state agency, as appropriate, shall determine:*

- (1) whether the person needs protective services from the department;*
- (2) what services are needed;*
- (3) whether services are available from the department, state agency, or in the community and how they can be provided;*
- (4) whether the person would be capable of obtaining services for himself and could bear the cost or would be eligible for services from the department or state agency;*
- (5) whether a caretaker would be willing to provide services or would agree to their provisions;*
- (6) whether the elderly or disabled person desires the services; and*
- (7) other pertinent data.*

*(b) An ~~The department's~~ investigation by the department or a state agency shall include a visit to the elderly or disabled person's place of residence ~~[home]~~ and consultation with persons thought to have knowledge of the circumstances.*

*(c) To implement an investigation of reported abuse, exploitation, or neglect, the probate court, or the county court when no probate court exists, may authorize entry of the place of residence ~~[premises]~~ of the elderly or disabled person.*

*(e) The department shall prepare and keep on file a complete written report of each investigation conducted by the department. Each state agency shall prepare and keep on file a complete written report of each investigation conducted by the state agency. Each state agency shall submit a copy of each report relating to abuse, exploitation, or neglect that occurred in a facility operated by the state agency to the department. The report shall include any recommendations that the department shall provide*

*protective services and shall be forwarded to the department within 24 hours of the state agency's determination that protective services are needed.*

SECTION 5.06. Subchapter C, Chapter 48, Human Resources Code, is amended by adding Section 48.041 to read as follows:

*Sec. 48.041. REVIEW OF INVESTIGATIONS. (a) The department shall review each report of an investigation conducted under Section 48.037 of this code of abuse, exploitation, or neglect in a facility operated by a state agency. The review shall determine whether or not the investigation was conducted according to applicable rules and the standards set forth in Subsection (a) of Section 48.038 of this code; if not, the department shall conduct its own investigation. The department shall conduct an investigation in any case where necessary to carry out the intent of this chapter and shall report any findings and recommendations to the governing body of the agency that conducted the investigation for any necessary corrective action.*

*(b) If any state agency, including the Texas Department of Health, receives a complaint relating to an investigation conducted by the agency, the agency shall refer the complaint to the department. The department shall review each complaint received by a state agency or by the department relating to an investigation conducted by a state agency. The department shall conduct an investigation where necessary to carry out the intent of this chapter and shall report any findings and recommendations to the governing body of the agency that conducted the original investigation for any necessary corrective action.*

*(c) On or before November 1 of each year, the department shall make a report to the governor, the legislature, and the state agencies that operate, license, certify, or register a facility in which elderly or disabled persons are located on the incidence of abuse or neglect of the elderly or disabled in those facilities. The report shall include an analysis of any trends or systemic problems the department identifies in those facilities and make recommendations for the resolution of those problems. The department shall also develop procedures to make the report available to aged- and disabled-related consumer and advocacy groups.*

SECTION 5.07. Subdivision (5), Subsection (e), Section 16, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

*(5) The agency designated by the court to be responsible for the protection of the institution resident or the Licensing Agency shall make a complete written report of the investigation. The report, together with its recommendations, shall be submitted to the district attorney, [and] the appropriate law enforcement agency, and, if requested by the Texas Department of Human Services, to that department.*

#### ARTICLE 6

SECTION 6.01. Subsection (b), Section 11.12, Family Code, is amended to read as follows:

*(b) The social study may be made by any state agency, including the Texas Department of Human Services or any person appointed by the court. In a suit in which adoption is sought or possession of or access to the child is an issue and in which the Texas Department of Human Services is not a party or has no interest, the court shall appoint a private agency or person to conduct the social study. The social study shall be made according to criteria established by the court.*

SECTION 6.02A. Section 18.01, Family Code, is amended by amending Subsection (b) and by adding Subsection (c) to read as follows:

*(b) The hearing shall be held not earlier than five and one-half months and not later than twelve [seven] months after the date of the last hearing in the suit unless, for good cause shown by any party, an earlier hearing is approved by the court.*

*(c) Not earlier than five and one-half months and not later than seven months after the date of the last hearing in the suit the department shall:*

*(1) petition the court for a hearing; or*

*(2) conduct an administrative review of the placement of the child and provide a written report concerning the results of the review to the court and all parties to the suit.*

SECTION 6.02B. Section 18.02, Family Code, is amended by amending Subsection (d) and by adding Subsection (e) to read as follows:

(d) The hearing shall be held not earlier than five and one-half months and not later than ~~twelve~~ *seven* months after the date that the department took possession of or exercised control over the child unless, for good cause shown by any party, an earlier hearing is approved by the court.

*(e) Not earlier than five and one-half months and not later than seven months after the date the department took possession of or exercised control over the child the department shall:*

*(1) petition the court for a hearing; or*

*(2) conduct an administrative review of the placement of the child and provide a written report concerning the results of the review to the court and all parties to the suit.*

SECTION 6.03. Sections 34.01 through 34.08, Family Code, are designated as *SUBCHAPTER A. GENERAL PROVISIONS.*

SECTION 6.04. Section 34.01, Family Code, is amended to read as follows:

Sec. 34.01. **PERSONS REQUIRED TO REPORT.** Any person having cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect *by a person responsible for the child's care, custody, or welfare* shall report in accordance with Section 34.02 of this code.

SECTION 6.05. Chapter 34, Family Code, is amended by adding Sections 34.012 and 34.013 to read as follows:

*Sec. 34.012. DEFINITIONS. In this chapter:*

*(1) "Abuse" includes the following acts or omissions by a person responsible for a child's care, custody, or welfare:*

*(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;*

*(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;*

*(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;*

*(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;*

*(E) sexual contact, sexual intercourse, or sexual conduct, as those terms are defined by Section 43.01, Penal Code, sexual penetration with a foreign object, incest, sexual assault, or sodomy inflicted on, shown to, or intentionally practiced in the presence of a child if the child is present only to arouse or gratify the sexual desires of any person;*

*(F) failure to make a reasonable effort to prevent sexual contact, sexual intercourse, or sexual conduct, as those terms are defined by Section 43.01, Penal Code, sexual penetration with a foreign object, incest, sexual assault, or sodomy being inflicted on or shown to a child by another person, or intentionally practiced in the presence of a child by another person if the child is present only to arouse or gratify the sexual desires of any person;*

(G) *compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code; or*

(H) *causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene (as defined by the Penal Code) or pornographic.*

(2) *"Neglect" includes:*

(A) *the leaving of a child in a situation where the child would be exposed to a substantial risk of harm, without arranging for necessary care for the child, and a demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child; or*

(B) *the following acts or omissions by a person responsible for a child's care, custody, or welfare:*

(i) *placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;*

(ii) *the failure to seek, obtain, or follow through with medical care for the child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child; or*

(iii) *the failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused.*

(3) *"Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:*

(A) *a parent, guardian, managing or possessory conservator, or foster parent of the child;*

(B) *a member of the child's family or household as defined by Section 71.01 of this code;*

(C) *a person with whom the child's parent cohabits;*

(D) *school personnel or volunteers at the child's school; or*

(E) *personnel or volunteers at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides.*

*Sec. 34.013. APPLICATION TO STUDENTS IN SCHOOL FOR DEAF OR BLIND. This chapter applies to a student in the Texas School for the Deaf or the Texas School for the Blind regardless of the student's age.*

SECTION 6.06. Subsections (a), (c), and (d), Section 34.02, Family Code, are amended to read as follows:

(a) Nonaccusatory reports reflecting the reporter's belief that a child has been or will be abused or neglected, or has died of abuse or neglect, has violated the compulsory school attendance laws on three or more occasions, or has, on three or more occasions, been voluntarily absent from his home without the consent of his parent or guardian for a substantial length of time or without the intent to return shall be made to any local or state law enforcement agency, and in addition shall be made to:

(1) the Texas Department of Human Services; ~~or~~

(2) the agency designated by the court to be responsible for the protection of children; *or*

(3) *the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred.*

(c) All reports received by any local or state law enforcement agency shall be referred to the Texas Department of Human Services or to the agency designated by the court to be responsible for the protection of children. The department or designated agency immediately shall notify the appropriate state or local law enforcement agency of any report it receives, other than from a law enforcement agency, that concerns the suspected abuse or neglect of a child or death of a child from abuse or neglect. *If the report relates to a child in a facility operated, licensed, certified, or registered by a state agency, the department shall also refer the report to the agency for investigation.*

(d) An oral report shall be made immediately on learning of the abuse or neglect, or likelihood of abuse or neglect, as prescribed in Subsection (a) of this section. If a professional has cause to believe that a child has been or may be abused or neglected, the professional shall make an oral report as prescribed by Subsection (a) of this section not later than the 48th hour after the hour the professional first suspects that the child has been or may be abused or neglected. In all instances a written report shall be made within five days to the same agency or department. Anonymous reports, while not encouraged, will be received and acted on *as prescribed by Section 34.053 of this code [in the same manner as acknowledged reports]*. In this subsection, "professional" means an individual who is licensed or certified by the state, or who is an employee of a facility licensed, certified, or operated by the state, and who in the normal course of official duties, or duties for which a license or certification is required, has direct contact with children. "Professional" includes teachers, nurses, doctors, and day-care employees.

SECTION 6.07. Sections 34.03 and 34.031, Family Code, are amended to read as follows:

Sec. 34.03. IMMUNITIES. Any person reporting *or assisting in the investigation of a report* pursuant to this chapter is immune from liability, civil or criminal, that might otherwise be incurred or imposed. Immunity extends to participation in any judicial proceeding resulting from the report. Persons reporting *or assisting in the investigation of a report* in bad faith or malice are not protected by this section.

Sec. 34.031. FALSE REPORT. (a) *A person commits an offense if the person knowingly or intentionally makes a report under this chapter that the person knows lacks factual foundation. An offense under this subsection is a Class B misdemeanor.*

(b) If, in connection with a pending suit affecting the parent-child relationship, one parent of a child makes a report alleging child abuse by the other parent that the parent making the report knows lacks factual foundation, the report shall be deemed a knowingly false report. Evidence of a false report shall be admissible in any suit between the parents involving terms of conservatorship.

SECTION 6.08. Subsections (a), (b), (c), and (e), Section 34.05, Family Code, are amended to read as follows:

(a) *Unless the report alleges that the abuse or neglect occurred in a facility operated, licensed, certified, or registered by another state agency, the [The] Texas Department of Human Services or the agency designated by the court to be responsible for the protection of children shall make a thorough investigation promptly after receiving either the oral or written report, or if the report is anonymous, after determining that there is some evidence to corroborate the report as prescribed by Section 34.053 of this code. If the report alleges that the abuse or neglect occurred in a facility operated, licensed, certified, or registered by another state agency, that agency shall investigate the report as prescribed by Subchapter B of this chapter. The department may assign priorities to investigations based on the severity and immediacy of the alleged harm to the child. If the department establishes a priority system, the department shall adopt the system by rule. The primary purpose of the investigation shall be the protection of the child.*

(b) *As necessary to complete a thorough [In the] investigation, the department or agency shall determine:*

- (1) the nature, extent, and cause of the abuse or neglect;
- (2) the identity of the person responsible for the abuse or neglect;

- (3) the names and conditions of the other children in the home;
- (4) an evaluation of the parents or persons responsible for the care of the child;
- (5) the adequacy of the home environment;
- (6) the relationship of the child to the parents or persons responsible for the care of the child;
- (7) all other pertinent data.

(c) The investigation shall include a visit to the child's home, *unless the alleged abuse or neglect can be confirmed or clearly ruled out without a home visit* [~~a physical examination of all the children in that home~~], and an interview with *and examination of* the subject child. The interview with *and examination of* the child may be conducted at any reasonable time and at any place, including the child's school. The investigation may include an interview with the child's parents *and an interview with and examination of any child in the home*. The investigation may include a *medical*, psychological, or psychiatric examination of *any child* [~~all the children~~] in that home. If admission to the home, school, or any place where the child may be [~~or permission of the parents or persons responsible for the child's care for the physical examinations~~] cannot be obtained, then the juvenile court, [~~or the~~] district court, *or other court having family law jurisdiction*, upon cause shown, shall order the parents or the persons responsible for the care of the children, or the person in charge of any place where the child may be, to allow entrance for the interview, the [~~physical~~] examination, and the investigation. If the parents or person responsible for the child's care does not consent to a *medical*, psychological, or psychiatric examination of the child that is requested by the department or agency, the juvenile court, [~~or~~] district court, *or other court having family law jurisdiction*, upon cause shown, shall order the examination to be made at the times and places designated by the court. A parent or person responsible for the child's care is entitled to notice and a hearing when the department or agency seeks a court order to allow a *medical*, psychological, or psychiatric examination.

(e) The agency designated by the court to be responsible for the protection of children or the department shall make a complete written report of the investigation. The report, together with its recommendations, shall be submitted to the juvenile court or the district court, the district attorney, and the appropriate law enforcement agency if sufficient grounds for the institution of a suit affecting the parent-child relationship are found. *If the investigation relates to an allegation of abuse or neglect in a facility operated, licensed, certified, or registered by a state agency, the agency shall report as prescribed by Subchapter B of this chapter. If the investigation relates to an allegation of abuse or neglect in a facility that is not operated, licensed, certified, or registered by a state agency, the department shall submit the report of the investigation to the policymaking body of the facility for any necessary corrective action.*

SECTION 6.09. Chapter 34, Family Code, is amended by adding Sections 34.051 through 34.053 to read as follows:

*Sec. 34.051. INFORMATION RELATING TO INVESTIGATION PROCEDURE. As soon as possible after initiating an investigation under this subchapter of a parent or other person having legal custody of a child, the Texas Department of Human Services shall provide to the person a brief and easily understood summary of:*

- (1) *the department's procedures for conducting an investigation of alleged child abuse or neglect, including:*
  - (A) *a description of the circumstances under which the department would seek to remove the child from the home through the judicial system; and*
  - (B) *an explanation that the law requires the department to refer all reports of alleged child abuse or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;*
- (2) *the person's right to file a complaint with the department or to request a review of the findings made by the department in the investigation;*
- (3) *the person's right to review all records of the investigation unless the review would jeopardize an ongoing criminal investigation;*

- (4) the person's right to seek legal counsel;
- (5) references to the statutory and regulatory provisions governing child abuse and neglect and how the person may obtain copies of those provisions; and
- (6) the process the person may use to acquire access to the child if the child is removed from the home.

*Sec. 34.052. REVIEW OF DEPARTMENT INVESTIGATIONS. (a) The Texas Department of Human Services shall establish policies and procedures as prescribed by this section to resolve complaints relating to and conduct reviews of child abuse or neglect investigations conducted by the department. The department shall adopt the policies and procedures by rule.*

*(b) If a person under investigation for allegedly abusing or neglecting a child requests clarification of the status of the person's case or files a complaint relating to the conduct of departmental staff or to departmental policy, the department shall conduct an informal review to clarify the person's status or resolve the complaint. The immediate supervisor of the employee who conducted the child abuse or neglect investigation or against whom the complaint was filed shall conduct the informal review as soon as possible but not later than the 14th day after the date on which the request or complaint is received.*

*(c) If after a departmental investigation the person who the department alleges has abused or neglected a child disputes the department's determination of whether child abuse or neglect occurred, the person may request an administrative review of the findings. A department employee in administration who was not involved in or did not directly supervise the investigation shall conduct the review. The review must sustain, alter, or reverse the department's original findings in the investigation.*

*(d) Unless court proceedings relating to the investigation are pending, the department employee shall conduct the review prescribed by Subsection (c) of this section as soon as possible but not later than the 45th day after the date on which the department receives the request. If court proceedings are pending, the department may postpone the review until the court proceedings have been completed.*

*(e) A person is not required to exhaust the remedies provided by this section before pursuing a judicial remedy provided by law.*

*(f) This section does not apply to a determination made by a court.*

*Sec. 34.053. INVESTIGATION OF ANONYMOUS REPORTS. (a) If the department receives an anonymous report of child abuse, the department shall conduct a preliminary investigation to determine if there is any evidence to corroborate the report.*

*(b) An investigation under this section may include a visit to the child's home and an interview with and examination of the child and an interview with the child's parents. In addition, the department may interview any other person the department believes may have relevant information.*

*(c) Unless the department determines that there is some evidence to corroborate the report of abuse, the department may not conduct the thorough investigation required by Section 34.05 of this code or take any action against the person accused of abuse.*

**SECTION 6.10.** (a) Chapter 34, Family Code, is amended by adding Subchapter B to read as follows:

**SUBCHAPTER B. INVESTIGATIONS OF ABUSE IN CERTAIN FACILITIES**

*Sec. 34.21. OFFICE OF YOUTH CARE INVESTIGATIONS. (a) The Office of Youth Care Investigations is established in the office of the attorney general.*

*(b) The office shall provide independent oversight of investigations of child abuse and neglect in facilities that are operated, licensed, certified, or registered by the state. The office shall review the complaints relating to investigations conducted by the*

*Texas Department of Human Services, as prescribed by Subsection (c) of Section 34.25 of this code.*

*(c) The office shall:*

*(1) adopt a memorandum of understanding with each state agency that operates, licenses, certifies, or registers a child-care facility that clarifies each agency's responsibilities under this chapter;*

*(2) establish guidelines relating to the investigation of child abuse and neglect in facilities operated, licensed, certified, or registered by a state agency;*

*(3) assist state agencies in developing rules, policies, and procedures to govern the investigation of child abuse and neglect in facilities operated, licensed, certified, or registered by the agency; and*

*(4) compile, maintain, and make available statistics on the incidence of child abuse and neglect in facilities operated, licensed, certified, or registered by a state agency.*

*(d) Not later than the last month of each state fiscal year, the office and the state agencies shall review and update the memorandum of understanding required by Subdivision (1) of Subsection (c) of this section. The office and each state agency by rule shall adopt the memorandum and all revisions to the memorandum.*

*(e) On or before November 1, of each year, the office shall make a report to the governor, the legislature, and the state agencies that operate, license, certify, or register child-care facilities on the incidence of child abuse and neglect in those facilities. The report shall include an analysis of any trends or systemic problems the office identifies in those facilities and make recommendations for the resolution of those problems. The office shall also develop procedures to make the report available to children and youth related consumer and advocacy groups.*

*Sec. 34.22. INVESTIGATION OF ABUSE IN CERTAIN FACILITIES. (a) Each state agency that operates, licenses, certifies, or registers a facility in which children are located shall make a thorough investigation promptly after receiving a report that a child has been or may be abused or neglected in a facility operated, licensed, certified, or registered by the agency. The primary purpose of the investigation shall be the protection of the child.*

*(b) Each state agency shall notify the Office of Youth Care Investigations of each report of abuse or neglect it receives under this subchapter relating to abuse or neglect in a facility operated by the agency.*

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

*Sec. 34.23. REPORTS. (a) Each state agency shall prepare and keep on file a complete written report of each investigation conducted by the agency under this subchapter.*

*(b) If the investigation relates to a report of abuse or neglect in a facility operated by a state agency, the agency shall submit a copy of the report to the Office of Youth Care Investigations.*

*(c) If the state agency finds that a child has been or may be abused or neglected, the agency shall submit a copy of the report to the appropriate law enforcement agency.*

*Sec. 34.24. COMPLAINTS. If a state agency receives a complaint relating to an investigation conducted by the agency, the agency shall refer the complaint to the Office of Youth Care Investigations.*

*Sec. 34.25. REVIEW OF INVESTIGATIONS AND COMPLAINTS. (a) The Office of Youth Care Investigations shall review each report and complaint received by a state agency or the office relating to an investigation of abuse or neglect in a facility operated by a state agency. The review shall determine whether or not the investiga-*



tion was conducted according to applicable rules and the standards set forth in Subsection (b) of Section 34.05 of this code; if not, the office shall conduct its own investigation. The office shall conduct an investigation in any case where necessary to carry out the intent of this chapter and shall report any findings and recommendations to the policymaking body of the agency that conducted the investigation for any necessary corrective action.

(b) The office shall review each complaint received by a state agency or the office relating to an investigation of abuse or neglect in a facility licensed, certified, or registered by a state agency. The office shall conduct an investigation in any case where necessary to carry out the intent of this chapter and shall report any findings and recommendations to the policymaking body of the agency that conducted the original investigation for any necessary corrective action.

(c) The office shall review complaints relating to an investigation of abuse or neglect conducted by the Texas Department of Human Services if the complaint could not be resolved through the department's review process established under Section 34.052 of this code. The office shall conduct an investigation in any case where necessary to carry out the intent of this chapter and shall report any findings and recommendations to the Texas Board of Human Services for any necessary corrective action.

(d) A person is not required to exhaust the remedies provided by this section before pursuing a judicial remedy provided by law.

(e) The office may not review an action or decision made by a court.

(b) Not later than January 1, 1988, the Office of Youth Care Investigations and each state agency that operates, licenses, certifies, or registers a child-care facility shall adopt a memorandum of understanding as prescribed by Section 34.21, Family Code, as added by this Act.

SECTION 6.11. Section 54.04, Family Code, is amended by adding Subsection (g) to read as follows:

(g) If the court places the child on probation outside his home or commits the child to the Texas Youth Commission, the court shall include in its order its determination whether:

- (1) it is in the child's best interests to be placed outside his home; and
- (2) reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible for the child to return to his home.

#### ARTICLE 7

SECTION 7.01. Subsection (e), Section 33.002, Human Resources Code, is amended to read as follows:

(e) The Texas Department of Human Services [~~Resources~~] shall screen all applicants for expedited issuance on a priority basis within one working day. Applicants who meet the federal criteria for expedited issuance and have an immediate need for food assistance shall receive either a manual Authorization-to-Purchase card or the immediate issuance of food stamp coupons within one working day.

SECTION 7.02. Subsection (c), Section 33.013, Human Resources Code, is amended to read as follows:

(c) Where emergency food programs do not exist, the Texas Department of Human Services [~~Resources~~] office shall assist community groups in establishing emergency food assistance programs.

SECTION 7.03. Subdivision (10), Section 74.001, Human Resources Code, is amended to read as follows:

(10) "City or state agency" means an employment commission, the Texas Department of Human Services [~~Resources~~], the State Department of Highways and Public Transportation, and any other agency that is funded or supported by the state or a city government.

SECTION 7.04. Sections 76.001 and 76.008, Human Resources Code, are amended to read as follows:

Sec. 76.001. ADMINISTRATION OF STATEWIDE PLAN FOR CHILD SUPPORT. The attorney general's office is the state agency designated to administer a statewide plan for child support to provide child support collection, parent locator, and paternity determination services that will enable it and the Texas Department of Human *Services* [Resources] to participate in programs established by federal law.

Sec. 76.008. PAYMENT OF PENALTIES. From funds appropriated for the attorney general's office or for the administration of the office of the attorney general, the attorney general shall reimburse the Texas Department of Human *Services* [Resources] for any penalty assessed under Title IV-A of the federal Social Security Act that is assessed because of the office's administration of this chapter.

SECTION 7.05. Subsections (a) and (d), Section 76.003, Human Resources Code, are amended to read as follows:

(a) The filing of an application for or the receipt of financial assistance under Chapter 31 of this code constitutes an assignment to the attorney general of any rights to support from any other person that the applicant or recipient may have in his own behalf or for a child for whom the applicant or recipient is claiming assistance, including the right to the amount accrued at the time the application is filed or the assistance is received. An applicant's assignment under this section is valid only if the Texas Department of Human *Services* [Resources] approves the application. The attorney general may distribute support payments or parts of payments received by it to the family for whom the payments are made or may use the payments to provide assistance and services to and on behalf of needy dependent children.

(d) The attorney general's office shall cooperate with the Texas Department of Human *Services* [Resources] in determining the distribution and use of child support payments received under this section.

SECTION 7.06. Subsection (b), Section 103.011, Human Resources Code, is amended to read as follows:

(b) The *Texas* Department of Human *Services* [Resources] and the *Texas* Department of Health shall require each adult day care or adult day health care facility to implement and enforce the applicable provisions of Chapter 102 of this code.

SECTION 7.07. Subsections (b) and (c), Section 11.171, Family Code, are amended to read as follows:

(b) The clerk shall send the fees collected under this section to the Texas Department of Human *Services* [Resources].

(c) The Texas Department of Human *Services* [Resources] shall deposit the fees received under this section to the credit of a special fund in the State Treasury.

SECTION 7.08. Subsection (i), Section 17.03, Family Code, is amended to read as follows:

(i) When a representative of the Texas Department of Human *Services* [Resources] or other agency takes possession of a child under Subsection (a)(3), (a)(4), (a)(5), or (a)(6) of this section, the department or other agency must give written notice as prescribed by this subsection to the child's parent or a legal guardian. The written notice must be given as soon as practicable, but in any event, prior to the hearing required by Subsection (c) of this section. The written notice may be waived by the court at the hearing held under Subsection (c) of this section on a showing by the Texas Department of Human *Services* [Resources] or other agency taking possession of the child that the parents or legal guardian of the child could not be located. The written notice must include:

(1) the reasons why the department or agency is taking possession of the child and the facts that led the department to believe that the child should be taken into custody;

(2) the name of the person at the department or agency that the parent or other custodian may contact for information relating to the child or any legal proceeding relating to the child;

- (3) a summary of legal rights of parents or other custodians under this chapter and an explanation of the probable legal procedures relating to the child; and
- (4) a statement that the parent or other custodian has the right to hire an attorney.

## ARTICLE 8

SECTION 8.01. Section 2, Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. PURPOSE; *STATE POLICY*. (a) The purpose of this Act is to facilitate the development and implementation of effective state and local systems for managing job-training, employment, and related programs in the State of Texas, as authorized by the Federal Job Training Partnership Act (Pub.L. No. 97-300, 96 Stat. 1322, Section 122).

(b) ~~[(2)—Policy.]~~ It is state policy to coordinate all available resources from federal, state, and local governments, business, labor, and community-based organizations to develop and promote a balanced, equitable, and cost-beneficial employment and training system. It is state policy that there be consultation between the governor and the state legislature in implementing the federal Job Training Partnership Act and this Act. *It is also state policy that the programs created under this Act emphasize service to AFDC recipients to reduce dependency on public assistance.*

SECTION 8.02. Subsection (d), Section 7, Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The appropriate chief elected officials in each service delivery area, as specified in the federal Act, shall select the members and the initial size of the PIC in accordance with the procedures specified in the federal Act. *Each PIC must include a representative of the local Texas Department of Human Services region.*

SECTION 8.03. Subsection (b), Section 8, Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The state hereby establishes a State Job Training Coordinating Council as required by the federal Act, hereinafter referred to as the "state council". The state council shall:

- (1) be appointed by the governor in accordance with the requirements of the federal Act;
- (2) have not more than 40 members including the chairperson;
- (3) meet not less than quarterly;
- (4) develop and recommend statewide goals and program objectives;
- (5) identify needs for training and employment services;
- (6) review operations of local programs and state agencies providing job-training, employment, and related programs identified in the federal Act;
- (7) establish criteria for coordinating program planning and operations;
- (8) evaluate the results of state and local training and employment services;
- (9) develop and recommend the state's coordination and special services plan to the governor;
- (10) perform the functions formerly conducted by the State Coordinating Committee for the work incentive program under Title IV of the Social Security Act, the advisory council established under the Wagner-Peyser Act (29 U.S.C. 49) and under the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes); ~~[and]~~
- (11) *assist each Private Industry Council in developing programs to serve AFDC recipients; and*
- (12) perform such functions and duties relating to job-training, employment, and related programs as required by the federal Act or as assigned by the governor.

## ARTICLE 9

SECTION 9.01. The State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) is amended by adding Article 13 to read as follows:

**Art. 13. COMPETITIVE COST REVIEW PROGRAM TO DETERMINE THE EFFICIENCY OF ACTIVITIES OF CERTAIN AGENCIES.**

**Sec. 13.01. APPLICATION; PURPOSE.** (a) *This article creates the competitive cost review program to assist in determining the efficiency of commercial activities performed by the state. A state agency that participates in this program shall apply the policies and requirements established under this article.*

(b) *This article is adopted to:*

- (1) *promote more efficient use of public funds; and*
- (2) *ensure periodic review of state agency management and support activities in order to improve agency operations, better determine costs, increase agency productivity, and remain competitive with the private sector.*

**Sec. 13.02. DEFINITIONS.** *In this article:*

(1) *"Agency in-house cost estimate" means a state agency report that contains the agency's computations of probable cost to the state to produce a desired quality and quantity of products or services by conducting an activity, using agency personnel and facilities, through the most efficient method available to the agency.*

(2) *"Commercial activity" means an activity that provides a product or service that is commonly available from a private source. The term includes, but is not limited to, activities such as laundry services, food services, data processing services, warehousing services, and property maintenance services.*

(3) *"Management study" means a state agency analysis of an activity conducted by that agency that is made to determine the essential products of an activity, the necessary quality and quantity of those products, and the most efficient method of obtaining a required result.*

(4) *"Cost comparison review" means a report by the commission that compares the cost of purchasing a service with the cost of providing the service by the state.*

(5) *"State agency" means a state agency subject to this article that is directed by law to participate in the competitive cost review program created under this article.*

**Sec. 13.03. DUTIES OF AFFECTED STATE AGENCIES.** (a) *Each biennium a state agency subject to this article shall conduct competitive cost reviews of the functions performed by that agency as provided by this article and shall adopt rules to implement this article. The agency shall conduct management studies, develop agency in-house cost estimates, and conduct other activities as necessary to implement this article.*

(b) *In conducting a competitive cost review of the functions performed by a state agency, the agency shall analyze all agency activities, shall identify by November 1 of each year all commercial activities performed by the agency, and shall develop a schedule for the analysis of the commercial activities identified. The agency shall report its determinations to its governing body and shall submit the schedule for approval by December 1 of each year.*

(c) *After approval of the schedule by the governing body, the state agency shall conduct a management study of the agency functions specified in the schedule. At the minimum, a management study must contain:*

- (1) *a description of the agency function;*
- (2) *an analysis of the quality and quantity of the work of the agency in relation to that function; and*
- (3) *a description of any efficiency initiatives that the agency could implement to perform the function more efficiently.*

(d) *The agency shall estimate the total cost to perform the function and submit each agency in-house cost estimate to the State Auditor for approval.*

*Sec. 13.04. DUTIES OF STATE AUDITOR. (a) The State Auditor shall assist the competitive cost review program by developing cost accounting procedures and instructions for state agencies relating to the development of agency in-house cost estimates. The State Auditor shall certify an agency in-house cost estimate as accurate and in compliance with the instructions and shall forward the cost estimate to the commission.*

*(b) The State Auditor shall provide any necessary technical expertise to a state agency official who is required to develop agency in-house cost estimates for that agency.*

*(c) The State Auditor shall notify the legislative audit committee of any cost comparison review that indicates state costs exceed the commission estimate of private costs by more than 10 percent.*

*Sec. 13.05. DUTIES OF STATE PURCHASING AND GENERAL SERVICES COMMISSION. (a) The commission shall conduct a cost comparison review. In conducting the cost comparison review, the commission shall:*

*(1) estimate the cost to purchase the service from the private sector. In developing the estimate, the commission may use specific area surveys, state average costs or current bid data;*

*(2) determine if the quality and quantity of service that could be provided through purchase is at least equal to the quality and quantity of service proposed in the agency management study and in-house cost estimate;*

*(3) determine the total state cost incurred in providing the service based on the approved agency in-house cost estimate; and*

*(4) based on estimates of the total cost, compare the total cost to the state to purchase the services with the total state cost of providing the service.*

*(b) After consultation with the agency and State Auditor, the commission shall determine if the total state cost of providing the service exceeds the cost of purchasing the service. If the commission finds that at least the same quality and quantity of service can be purchased at a savings of more than 10 percent, the commission shall notify the chairman of the governing body of the agency of the amount by which the agency's costs exceed the costs of purchasing the service. The commission may request any information from a state agency necessary to accomplish the purpose of this subsection.*

*Sec. 13.06. AGENCY EFFICIENCY INITIATIVE. (a) Upon notice by the commission that savings of more than 10 percent could be achieved through purchasing the service, the agency shall develop, not later than 60 days after notification, a proposal for reducing costs of the service so that the difference between agency costs and purchased costs does not exceed 10 percent. The proposal shall provide an estimate of the number of state employee positions, if any, that will be eliminated through the reduction.*

*(b) Within 10 days of completion of the proposal, the agency shall submit copies of the proposal to its governing body and shall submit copies to the governor for consideration under the Budget Execution Act. The chairman of the governing body shall schedule the proposal for discussion and action at the next regularly scheduled meeting of the governing body.*

*(c) Within 180 days of discussion by the governing body, the agency shall reduce the costs of providing the service so that the difference between agency costs and purchased costs does not exceed 10 percent.*

*(d) The agency shall submit necessary documents to the Comptroller of Public Accounts to allow the comptroller to control for the reduced expenditure level, and the agency shall not expend funds in excess of the reduced levels.*

*(e) When a new cost comparison between agency costs and purchased costs indicates a need for expenditures above the reduced levels, the agency may submit necessary documents to the comptroller for adjustment in expenditure levels.*

*Sec. 13.07. SAVINGS FROM EFFICIENCY INITIATIVE. Except for savings allocated to the productivity bonus program (Article 6252-29, Vernon's Texas Civil Statutes), and the state employee incentive program (Article 6252-28, Vernon's Texas Civil Statutes), all savings that result from reduced costs under the efficiency initiative shall be used by the agency for treatment, rehabilitation, or other direct services the agency provides to persons it serves.*

*Sec. 13.08. EXEMPTED ACTIVITIES. This article does not apply to an activity by a state agency subject to this article if the activity:*

- (a) is purchased through the provisions of Chapter 122, Human Resources Code; or*
- (b) is exempt from purchase through competitive bid under the Professional Services Procurement Act (Article 664-4, Vernon's Texas Civil Statutes).*

*Sec. 13.09. APPLICATION. The state agencies subject to this article are:*

- (1) the Texas Department of Mental Health and Mental Retardation;*
- (2) the Texas Department of Human Services; and*
- (3) the Texas Department of Corrections.*

SECTION 9.02. (a) Not later than August 31, 1988, the Texas Department of Mental Health and Mental Retardation shall conduct competitive cost reviews on its laundry services and on its building, grounds, and vehicle maintenance services.

(b) Not later than August 31, 1988, the Texas Department of Human Services shall conduct competitive cost reviews on its printing services and on the claims processing services required for the vendor drug, long-term care, and dental components of the early periodic screening, diagnosis, and treatment program of the medical assistance program.

(c) Not later than August 31, 1988, the Texas Department of Corrections shall conduct competitive cost reviews on its food services, building maintenance services, and transportation services.

#### ARTICLE 10

SECTION 10.01. Except as otherwise provided by this Act, this Act takes effect September 1, 1987.

SECTION 10.02. 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 27, 1987, by a viva-voce vote; May 28, 1987, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 29, 1987, House granted request of the Senate; June 1, 1987, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0. Passed the House, with amendments, on May 28, 1987, by a non-record vote; May 29, 1987, House granted request of the Senate for appointment of Conference Committee; June 1, 1987, House adopted Conference Committee Report by a non-record vote.

Approved June 18, 1987.

Effective Sept. 1, 1987.