

HUMAN RESOURCES CODE
TITLE 6. SERVICES FOR THE ELDERLY
CHAPTER 101. TEXAS DEPARTMENT ON AGING
SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

Sec. 101.001. DEPARTMENT AND BOARD ON AGING. (a) The Texas Department on Aging is created.

(b) The Texas Board on Aging is created as the governing body of the Texas Department on Aging. The board is composed of nine members appointed by the governor with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees. To be eligible for appointment to the board, a person must have demonstrated an interest in and knowledge of the problems of aging and must be a member of the general public. The members must include the following:

- (1) an expert in gerontology;
- (2) a medical professional;
- (3) a consumer advocate; and
- (4) three members of the general public.

(c) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the department;

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

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

(d) Members of the board serve for staggered terms of six years with the terms of three members expiring on February 1 of each odd-numbered year. A member may be reappointed to the board.

(e) Members of the board may receive the compensatory per diem authorized by the General Appropriations Act for each day spent engaged in the performance of their official duties. Board members are entitled to reimbursement for actual travel expenses incurred in the performance of their duties.

(f) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the department.

Acts 1979, 66th Leg., p. 2415, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981; Acts 1985, 69th Leg., 1st C.S., ch. 2, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.07, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1505, Sec. 2.02, eff. Sept. 1, 2005; Acts 2001, 77th Leg., ch. 592, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 1.28(3), eff. Sept. 1, 2003.

Sec. 101.0011. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 101.001(b);

(2) does not maintain during service on the board the qualifications required by Section 101.001(b);

(3) is ineligible for membership under Section 101.0031;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of

the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1985, 69th Leg., 1st C.S., ch. 2, Sec. 2, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.08, eff. Sept. 1, 1999.

Sec. 101.0012. TRAINING PROGRAM FOR BOARD MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the department and the board;

(2) the federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its subsequent amendments;

(3) the programs operated by the department;

(4) the role and functions of the department;

(5) the rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(6) the current budget for the department;

(7) the results of the most recent formal audit of the department;

(8) a history of funding sources for long-term care services;

(9) the independent living philosophy;

(10) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(11) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) In this section, "independent living philosophy" means control over one's life based on the choice of acceptable options that minimize reliance on others in making a decision or in performing everyday activities. The term includes:

(1) managing one's affairs;

(2) participating in day-to-day life in the community;

(3) fulfilling a range of social roles; and

(4) making decisions that lead to self-determination and the minimization of physical and psychological dependence upon others.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 1.09, eff. Sept. 1, 1999.

Sec. 101.002. SUNSET PROVISION. The Texas Department on Aging is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2006.

Acts 1979, 66th Leg., p. 2415, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 479, Sec. 214, eff. Sept. 1, 1985; Acts 1985, 69th Leg., 1st C.S., ch. 2, Sec. 2, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 4.12, eff. Nov. 12, 1991; Acts 1999, 76th Leg., ch. 1505, Sec. 1.10, eff. Sept. 1, 1999.

Sec. 101.003. PRESIDING OFFICER. (a) The governor shall designate a presiding officer of the board from among the members.

(b) A member holds the position of presiding officer at the pleasure of the governor.

Acts 1979, 66th Leg., p. 2416, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981; Acts 1985, 69th Leg., 1st C.S., ch. 2, Sec. 2, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 1505, Sec. 1.11, eff. Sept. 1, 1999.

Sec. 101.0031. RESTRICTIONS ON BOARD MEMBERSHIP AND EMPLOYMENT. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of aging; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of aging.

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

Added by Acts 1985, 69th Leg., 1st C.S., ch. 2, Sec. 2, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.19(18), eff. Sept. 1, 1987; Acts 1999, 76th Leg., ch. 1505, Sec. 1.12, eff. Sept. 1, 1999.

Sec. 101.004. EXECUTIVE DIRECTOR OF AGING; OTHER PERSONNEL. (a) The commissioner of health and human services shall employ an executive director of aging in accordance with Section 531.0056, Government Code. The executive director shall discharge all executive and administrative functions of the department. The executive director must be a person with executive ability and experience in the area of aging.

(b) Salaries and other office expenses are paid with funds appropriated to the department for those purposes.

(c) The department may accept services performed by other agencies to accomplish the purposes of this chapter.

Acts 1979, 66th Leg., p. 2416, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981; Acts 1995, 74th Leg., ch. 76, Sec. 8.145, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1460, Sec. 2.12, eff. Sept. 1, 1999.

Sec. 101.005. CITIZENS ADVISORY COUNCIL. (a) The Citizens Advisory Council is composed of one member appointed by the board from each designated area agency on aging. Each council member must also be a member of the local advisory council advising the area agency. Council members are entitled to the compensatory per diem authorized by the General Appropriations Act for each day spent engaged in the performance of their duties as directed by the board and are entitled to the same travel allowance authorized by the General Appropriations Act for state employees.

(b) The council shall work under the board's direction. The council shall inform policymakers and administrators at the state level of local needs and concerns relating to the aged.

(c) The council shall meet at least quarterly and may hold other meetings called by the chairman of the board.

(d) Council members serve for staggered terms of three years with the terms of one-third of the membership expiring on January 31 of each year.

Acts 1979, 66th Leg., p. 2416, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981; Acts 1985, 69th Leg., 1st C.S., ch. 2, Sec. 2, eff. Sept. 1, 1985.

Sec. 101.006. DIVISIONS OF THE DEPARTMENT. (a) The executive director may establish divisions within the department that he considers necessary for effective administration and the discharge of the department's functions.

(b) The executive director may allocate and reallocate functions among the divisions.

Added by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., 1st C.S., ch. 2, Sec. 2, eff. Sept. 1, 1985.

Sec. 101.0061. PERSONNEL MATTERS. (a) The executive director may employ personnel necessary for the administration of the department's duties.

(b) The executive director or the executive director's designee shall develop an intradepartmental career ladder program, one part of which shall require the intradepartmental posting of all nonentry level positions concurrently with any public posting.

(c) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this subsection.

(d) The executive director or the executive director's designee shall provide to members of the board and to the agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The board shall develop and implement policies that clearly separate the respective responsibilities of the board and the executive director.

(f) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, disability, 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 agency work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the agency work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

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

Added by Acts 1985, 69th Leg., 1st C.S., ch. 2, Sec. 2, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 693, Sec. 9, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1505, Sec. 1.13, eff. Sept. 1, 1999.

Sec. 101.007. MERIT SYSTEM. The department may establish a merit system for its employees. The merit system may be maintained in conjunction with other state agencies that are required by federal law to operate under a merit system.

Added by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981.

Sec. 101.008. FINANCES. (a) The executive director shall prepare and submit to the board for approval a biennial budget and request for an appropriation by the legislature of funds necessary to carry out the duties of the department. The budget and request must include an estimate of all federal funds to be allocated to the state for the department's purposes.

(b) The board shall submit the budget and request to the Legislative Budget Board and the governor in the manner prescribed by law.

(c) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act. The report must include information concerning the amount of matching funds required for federal grants to local retired senior volunteer programs.

(d) The financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Added by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., 1st C.S., ch. 2, Sec. 2, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 584, Sec. 23, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 693, Sec. 10, eff. Sept. 1, 1995.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 101.0205. POWERS AND DUTIES OF COMMISSIONER OF HEALTH

AND HUMAN SERVICES. The commissioner of health and human services has the powers and duties relating to the board and executive director as provided by Section 531.0055, Government Code. To the extent a power or duty given to the board or executive director by this chapter or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls. Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.13, eff. Sept. 1, 1999.

Sec. 101.021. RULES. (a) The board shall adopt rules governing the functions of the department, including rules that prescribe the policies and procedures followed by the board and the department in the administration of any local services programs, employment programs for the aged, volunteer programs for the aged, or other programs.

(b) The board by rule or order may delegate its rights, powers, and duties to the executive director. Acts 1979, 66th Leg., p. 2416, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981; Acts 1985, 69th Leg., 1st C.S., ch. 2, Sec. 2, eff. Sept. 1, 1985.

Sec. 101.022. GENERAL FUNCTIONS OF DEPARTMENT. (a) The department shall provide expertise and advice to state agencies and the legislature and other elected officials on aging issues, including recommendations to meet the needs of this state's elderly population.

(b) The department shall develop and strengthen the services available for the aged in the state by coordinating services provided by governmental and private agencies and facilities.

(c) The department shall extend and expand services for the aged by coordinating the interest and efforts of local communities in studying the problems of the aged citizens of this state.

(d) The department shall encourage, promote, and aid in the establishment of area agencies on aging for the development of programs and services on a local level that improve the living conditions of the aged by enabling them to more fully enjoy and participate in family and community life.

(e) The department shall sponsor voluntary community rehabilitation and recreational facilities to improve the general welfare of the aged.

(f) The department, through the executive director of aging, shall cooperate with state and federal agencies and other organizations in conducting studies and surveys on the special problems of the aged in matters such as mental and physical health, housing, family relationships, employment, income, vocational rehabilitation, recreation, transportation, insurance, legal rights, and education. The department shall make appropriate reports and recommendations to the governor and to state and federal agencies.

(g) The department shall conduct research and long-range planning regarding long-term care, community care, and other issues that affect elderly individuals.

(h) The department shall make recommendations to the governor, the legislature, and state agencies regarding:

(1) opportunities to coordinate programs for elderly individuals;

(2) unnecessary duplication in providing services to elderly individuals; and

(3) gaps in services to elderly individuals.

(i) The department shall cooperate with the Texas Department of Housing and Community Affairs to provide affordable housing for elderly individuals and for families in which an elderly individual is head of the household and shall:

(1) assess the need for housing for elderly individuals and for families in which an elderly individual is head of the household in different localities;

(2) set standards relating to the design and construction of housing for elderly individuals;

(3) provide planning assistance to builders; and

(4) publicize the availability of the housing program to potential developers and residents.

Acts 1979, 66th Leg., p. 2416, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 650, Sec. 7, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 762, Sec. 11, eff. Sept. 1,

1991; Acts 1995, 74th Leg., ch. 693, Sec. 23(1), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1505, Sec. 1.14, eff. Sept. 1, 1999.

Sec. 101.0221. PUBLIC INTEREST INFORMATION; COMPLAINTS. (a) The board shall prepare information of public interest describing the functions of the board and describing the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

(b) The board shall adopt rules establishing methods by which consumers and service recipients can be notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for the notification through inclusion of the information:

(1) on each registration form, application, or written contract relating to participation in a program that is funded in any part by money derived from the department;

(2) on a sign that is prominently displayed in the place of business of each person or entity engaging in a program that is funded in any part by money derived from the department; or

(3) in a bill for service provided by a person or entity engaging in a program that is funded in any part by money derived from the department.

Added by Acts 1985, 69th Leg., 1st C.S., ch. 2, Sec. 2, eff. Sept. 1, 1985.

Sec. 101.023. COMMUNITY SENIOR CITIZENS EMPLOYMENT PROGRAMS. (a) In this section, "suitable employment" means employment which is commensurate with the individual's skills and ability and for which compensation is paid equal to the federal minimum wage rate.

(b) The Texas Workforce Commission may establish and administer a community program for persons 55 years of age or older who lack suitable employment and have family incomes under federal poverty guidelines.

(c) The Texas Workforce Commission may contract with a public agency or a private, nonprofit organization with experience in managing similar programs to employ persons under this program in providing recreation, beautification, conservation, or restoration services, or public service employment positions for state, county, city, or regional governments or school districts. The Texas Workforce Commission may not contract with an organization that is not a subscriber under the state workers' compensation law or that does not pay the federal minimum wage rate or the prevailing wage rate for the particular job, whichever is greater.

(d) The state shall finance 80 percent of the cost of the program, and the governments receiving the services shall finance 20 percent of the cost.

Acts 1979, 66th Leg., p. 2417, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981; Acts 1995, 74th Leg., ch. 655, Sec. 11.73, eff. Sept. 1, 1995.

Sec. 101.024. VOLUNTARY COMMUNITY SERVICES PROGRAMS. (a) The department shall disburse state funds appropriated for the purpose to local public agencies or private, nonprofit corporations that operate programs to recruit elderly persons to perform voluntary community services or that operate programs under the National Senior Service Corps.

(b) A public agency or private, nonprofit corporation may not receive state money under this section if it is not able to qualify for federal matching money for the same purpose.

(c) The board by rules shall establish guidelines or formulas to determine the proportion of state money distributed to each public agency or private, nonprofit corporation. The board by rules may establish additional qualifications to receive the state money.

(d) State funds disbursed under this section may not be used to pay compensation to volunteer workers, except for participants in the Foster Grandparent and Senior Companion Programs, or for purposes other than financing the operation or administration of the volunteer programs, but it may be used to defray expenses incurred by volunteers in the performance of volunteer work. The board by rules may further limit the purposes for which the state money may be spent.

Acts 1979, 66th Leg., p. 2417, ch. 842, art. 1, Sec. 1, eff. Sept. 1,

1979. Amended by Acts 1979, 66th Leg., p. 2430, ch. 842, art. 2, Sec. 2, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981; Acts 1999, 76th Leg., ch. 1505, Sec. 1.15, eff. Sept. 1, 1999.

Sec. 101.025. COOPERATION WITH FEDERAL AND STATE AGENCIES. (a) The department is the state agency designated to handle federal programs relating to the aging that require action within the state and that are not the specific responsibility of another state agency under federal or state law.

(b) The department is not intended to supplant or to take over from the counties and municipalities of this state or from other state agencies or facilities any of the specific responsibilities that they hold. The department shall cooperate with federal and state agencies, counties, and municipalities and private agencies or facilities in the state in accomplishing the purposes of this chapter.

Acts 1979, 66th Leg., p. 2417, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981.

Sec. 101.0251. REVIEW OF ADMINISTRATIVE COSTS AND PROGRAMS. (a) The board by rule shall define "administrative costs" as used in this section. However, if a standard definition of administrative costs is required by law to be used by state agencies, the board shall use that definition.

(b) To determine the administrative costs incurred by an entity (including an area agency on aging and including an entity that spends money distributed by the department under Section 101.023 or 101.024 of this code) in engaging in a program that is funded in any part by money derived from the department, the department shall request appropriate information from the entity.

(c) The board shall establish the maximum amount of administrative costs that may be incurred by the entity in engaging in the program.

(d) The department periodically shall review the actions of entities receiving funds from the department and shall document its review. The review of an entity that spends money distributed under Section 101.024 of this code must include on-site evaluations of the entity and must include the review of documentation, which shall be required by the department, of the services performed by the aged in programs under Section 101.024.

Added by Acts 1985, 69th Leg., 1st C.S., ch. 2, Sec. 2, eff. Sept. 1, 1985.

Sec. 101.0252. REPORT ON UNIT COSTS. The department shall file with the Legislative Budget Board and the Governor's Office of Budget and Planning a report that clearly identifies the unit cost of each service, other than services related to community service volunteering and subsidized employment services, provided by an area agency on aging. The report must be filed twice each year on or before the date specified by the Legislative Budget Board. The report must be in the form required by the Legislative Budget Board. Added by Acts 1995, 74th Leg., ch. 693, Sec. 11, eff. Sept. 1, 1995.

Sec. 101.0255. SERVICE STANDARDS AND AGREEMENTS. (a) The department and the Texas Department of Human Services, with the approval of the Health and Human Services Commission, shall work to ensure consistency in service standards, reimbursement rates, contract terms, and performance standards used by the respective agency in the provision of the same or substantially similar services under a community program on aging under Subchapter III, Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.), or the Options for Independent Living program and a community care program of the Texas Department of Human Services.

(b) The department and the Texas Department of Human Services, in accordance with federal law, including the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.), shall enter into an agreement that allows an area agency on aging to jointly contract with a service provider that is under contract with the Texas Department of Human Services to provide services under a community care program.

(c) If cost-effective, the department shall use the billing system and audit procedures of the Texas Department of Human Services to eliminate unnecessary duplication and to secure reduced rates through economies of scale. If required by the Texas Department of Human Services, the department shall reimburse the Texas Department of Human Services through an interagency contract for the cost of any use.

(d) The department and the Texas Department of Human Services shall coordinate the monitoring of providers who contract with the respective agency to provide the same or a substantially similar service.

Added by Acts 1993, 73rd Leg., ch. 526, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.16, eff. Sept. 1, 1999.

Sec. 101.0256. COORDINATED ACCESS TO LOCAL SERVICES. (a) The department and the Texas Department of Human Services shall develop standardized assessment procedures to share information on common clients served in a similar service region.

(b) The department shall contract with the Texas Department of Transportation for the Texas Department of Transportation to deliver public transportation services to clients of eligible programs, except that the Texas Department of Transportation may not assume responsibility for client case review, case management, or coordination or authorization of benefits.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 1.17, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 13.09, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 281, Sec. 4.07, eff. June 14, 2005.

Sec. 101.026. DONATIONS. The department may accept and solicit gifts or grants of money or property from public or private sources. Donations of money must be placed in a special fund in the state treasury and expended on warrants drawn by the comptroller on order of the department. Donations of real property and of personal property other than money may be used or sold as the board considers proper.

Acts 1979, 66th Leg., p. 2417, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981.

Sec. 101.027. AUTHORITY TO EXPEND FUNDS. The department may accept, expend, and transfer federal and state funds appropriated for programs authorized by federal and state law. The department may accept, expend, and transfer funds received from any source, including a county, municipality, or public or private agency. The funds shall be deposited in the state treasury and may be used for the purposes of this chapter, subject to any conditions attached to the funds.

Added by Acts 1981, 67th Leg., p. 2388, ch. 599, Sec. 1, eff. Sept. 1, 1981.

Sec. 101.028. CONTRIBUTIONS TO LOCAL ORGANIZATIONS: CERTAIN COUNTIES. (a) This section applies only to counties having a population of not less than 23,750 and not more than 24,000 and to cities and towns within those counties.

(b) Each county and each city or town to which this section applies may cooperate with the department in carrying out the department's purposes on a local level by contributing funds to any local organization the functions of which are to cooperate with the department. The organization must operate with the approval and sanction of the department.

(c) The operation of buildings, facilities, services, and programs by an organization for other community services or benefits does not prohibit the contribution of the funds under this section for the part of the organization's program for the aging if that part of the program is approved by the department.

Added by Acts 1983, 68th Leg., p. 1001, ch. 235, art. 4, Sec. 1(a), eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 79, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 42, eff. Sept. 1, 2001.

Sec. 101.029. PUBLIC INFORMATION ON COST OF LONG-TERM CARE. The department shall develop programs to provide information to the public relating to:

(1) the cost of long-term care;
(2) the limits on Medicaid eligibility;
(3) the adequacy or inadequacy of other financing options, including Medicare; and

(4) possible methods of financing long-term care, including group insurance policies and other methods designed to assist individuals.

Added by Acts 1989, 71st Leg., ch. 1085, Sec. 6, eff. Sept. 1, 1989.

Sec. 101.030. FUNDING TO AREA AGENCIES ON AGING. (a) The board of the Texas Department on Aging, by rule, shall adopt a formula that meets the intent of the Older Americans Act, as amended, for allocating among area agencies on aging funds that the

department receives under Title III, federal Older Americans Act.

(b) The formula must provide for the allocation of the funds among the area agencies according to the most recent population estimates available from the U.S. Bureau of the Census or the Texas Department of Health.

(c) The board shall update the formula biennially and shall include the formula and the population estimates in each state plan on aging.

(d) Unless otherwise provided for by department rules regarding the carryover of unexpended Title III funds, at the end of a fiscal year excess unexpended Title III funds of an area agency on aging's allocations for that fiscal year shall be deducted from the allocation for the new fiscal year and that same amount of new fiscal year funds shall be reallocated. The department, by rule, shall adopt a reallocation formula that includes performance as a criterion, in addition to other criteria adopted by the department.

(e) The funds that the department receives under Title III, federal Older Americans Act, on or after September 1, 1992, shall be allocated and reallocated to area agencies on aging under the formulas adopted under this section.

Added by Acts 1989, 71st Leg., ch. 1126, Sec. 1, eff. Aug. 28, 1989. Renumbered from V.T.C.A., Human Resources Code Sec. 101.029 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(16), eff. Sept. 6, 1990. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 2.04, eff. Sept. 1, 2005; Acts 2001, 77th Leg., ch. 592, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 1.28(3), eff. Sept. 1, 2003.

Sec. 101.031. TRUSTS FOR CERTAIN RECIPIENTS OF MEDICAL ASSISTANCE. (a) An area agency on aging may contract with one or more private attorneys to establish trusts described by 42 U.S.C. Section 1396p(d)(4)(B) for the benefit of recipients of medical assistance under Chapter 32 who, without the establishment of these trusts, would become ineligible for medical assistance.

(b) The department shall allocate available state funds to the area agencies on aging for use in contracting for the establishment of trusts under Subsection (a).

Added by Acts 1997, 75th Leg., ch. 1226, Sec. 1, eff. Sept. 1, 1997.

Sec. 101.033. OLDER AMERICANS ACT; STATE PLAN. (a) The department and the Texas Department of Human Services shall jointly develop this state's plan on aging, as required by the federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its subsequent amendments.

(b) The department and the Texas Department of Human Services shall jointly conduct a statewide needs assessment for long-term care services. The assessment shall include input from:

- (1) area agencies on aging;
- (2) regional and local state agency staff; and
- (3) community-based organizations.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 1.18, eff. Sept. 1, 1999.

Sec. 101.034. TEXAS CARES PROGRAM. (a) The department by rule may establish and operate a Texas Cares program to provide persons eligible for discount drug price programs offered by pharmaceutical companies with:

(1) information regarding the availability of those programs; and

(2) in appropriate circumstances, assistance in enrolling in those programs.

(b) The department may solicit and accept gifts, grants, and donations from any source to use in funding the Texas Cares program.

(c) The department shall design the Texas Cares program to meet the primary goal of increasing awareness in appropriate populations of the availability of discount drug price programs offered by pharmaceutical companies. To the extent that adequate resources are available, the department shall:

(1) make information regarding discount drug price programs readily available on the department's Internet site;

(2) maintain a toll-free telephone number through which a person may obtain information regarding discount drug price programs; and

(3) make brochures or other written informational materials regarding discount drug price programs available on request by a pharmacist, physician, representative of an organization serving senior citizens, or other interested person.

(d) The department may:

- (1) conduct community outreach and education

activities to increase awareness of the availability of discount drug price programs offered by pharmaceutical companies;

(2) solicit and train volunteers to perform functions associated with the Texas Cares program, including:

(A) providing assistance to eligible persons in enrolling in discount drug price programs offered by pharmaceutical companies; and

(B) conducting community outreach and education activities; and

(3) coordinate operation of the Texas Cares program with the activities of area agencies on aging.

Added by Acts 2003, 78th Leg., ch. 506, Sec. 1, eff. June 20, 2003.

SUBCHAPTER C. OPTIONS FOR INDEPENDENT LIVING

Sec. 101.041. DEFINITIONS. In this subchapter:

(1) "Case management" means the process of assessing service needs, developing a plan of care, and arranging for and monitoring delivery of care to an elderly person under this subchapter.

(2) "Case management unit" is an entity that coordinates and administers case management.

(3) "Elderly person" means a person who is 60 years of age or older.

(4) "Service area" means a geographical area of the state designated for purposes of planning, development, and overall administration of services provided under this subchapter.

Added by Acts 1989, 71st Leg., ch. 894, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.042. OPTIONS FOR INDEPENDENT LIVING. (a) The department shall establish a statewide program entitled Options for Independent Living to help elderly persons remain at home despite limited self-care capacities and to prevent institutionalization.

(b) The Options for Independent Living program shall provide short-term support services to elderly persons for the purposes of:

(1) restoring functional capacities after illness or hospitalization; and

(2) educating and preparing elderly persons and their caregivers to provide self-care.

Added by Acts 1989, 71st Leg., ch. 894, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1991, 72nd Leg., ch. 425, Sec. 1, eff. Aug. 26, 1991.

Sec. 101.043. PERSONS TO BE SERVED. (a) The program shall give priority to an elderly person who:

(1) has recently suffered a major illness or health care crisis or has recently been hospitalized;

(2) lives in a rural area;

(3) has insufficient caregiver support;

(4) has a mild to moderate impairment or a temporary severe impairment; and

(5) is in great economic or social need, with particular attention to low-income minority older persons.

(b) The department shall maintain a memorandum of agreement with the Texas Department of Human Services assuring that there is no duplication of services to persons served by the community care for aged and disabled program of the Texas Department of Human Services.

(c) In awarding funding the department shall serve priority populations consistent with the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.), as amended.

Added by Acts 1989, 71st Leg., ch. 894, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1991, 72nd Leg., ch. 425, Sec. 2, eff. Aug. 26, 1991.

Amended by Acts 2001, 77th Leg., ch. 592, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 1.28(3), eff. Sept. 1, 2003.

Sec. 101.044. PROVISION OF SERVICES. (a) Support services shall include:

(1) case management;

(2) homemaking assistance, including personal care;

(3) residential repair and modification;

(4) benefits counseling;

(5) respite care;

(6) emergency response;

(7) education and training for caregivers;

(8) home-delivered meals;

(9) transportation; and

(10) other appropriate services identified by the case manager and client through the assessment and care planning process.

(b) A case manager shall conduct an individual assessment of an elderly person's needs and shall, in consultation with the elderly person and the elderly person's family, create a plan of care that specifies the type, amount, frequency, and duration of support services the elderly person needs.

(c) A plan of care must coordinate the available public and private services and resources that are most appropriate to meet the elderly person's needs.

(d) An area agency on aging may not directly provide homemaker, home health, residential repair, respite, meal delivery, or transportation service unless the area agency:

(1) receives no response to a request for proposals that meets department standards; and

(2) has exhausted all other procurement options available under department rules.

(e) An area agency on aging that wants to provide directly a service not available through a local public or private entity must obtain approval from the department in accordance with department rules governing the granting of such approval.

Added by Acts 1989, 71st Leg., ch. 894, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 425, Sec. 3, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 526, Sec. 2, eff. Sept. 1, 1993.

Sec. 101.045. CASE MANAGEMENT UNITS. (a) The department shall designate one or more case management units for each service area to provide case management services according to department rules and standards.

(b) The department shall designate an area agency on aging as a case management unit for a service area. The area agency on aging may act as the case management unit, after obtaining approval from the department in accordance with department rules governing the granting of such approval, or the area agency on aging may subcontract with a local service agency or hospital to act as the case management unit.

(c) The department may contract with another public or private entity to act as a case management unit for a service area if the area agency on aging cannot provide or subcontract for case management services.

(d) A case manager must be an employee of a case management unit.

(e) The department shall periodically review a case management unit.

Added by Acts 1989, 71st Leg., ch. 894, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.046. ADMINISTRATION OF PROGRAM. (a) The department, with the advice of an advisory committee, shall administer the program through grants to area agencies on aging.

(b) Area agencies on aging shall maintain their service provision levels in effect on September 1, 1989, independent of the Options for Independent Living program. Funds made available under this program may not be used to supplant service funds for services provided on September 1, 1989.

(c) An area agency on aging that receives funds under this section shall ensure the availability of the services for which the funds were granted.

Added by Acts 1989, 71st Leg., ch. 894, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.047. ADVISORY COMMITTEE. (a) The department shall appoint a statewide advisory committee that includes hospital discharge planners, hospital administrators, home health agency representatives, nurses, and physicians to advise the department in administering the program. The department shall appoint as many members as the department considers necessary to assist the department in performing its duties.

(b) The advisory committee shall elect its own presiding officer and shall meet and serve according to department rules.

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

Added by Acts 1989, 71st Leg., ch. 894, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.048. FEES. (a) The department by rule shall establish a copayment system using a sliding scale that is based on an elderly person's income.

(b) An elderly person whose income exceeds the basic income

and resources requirements for eligibility for the community care for aged and disabled program of the Texas Department of Human Services, but whose income is less than 200 percent of that level shall pay a portion of the cost of support services provided to the person by a case management unit according to the fee scale.

(c) An elderly person whose income exceeds 200 percent of the level established by the Texas Department of Human Services for the community care for aged and disabled program shall pay the full cost of support services provided by a case management unit.

(d) A local case management unit shall collect and account for all fees imposed for services provided by the case management unit and shall submit reports to the department as prescribed by department rules.

(e) Fees collected shall be used to defray program costs and to expand the program.

Added by Acts 1989, 71st Leg., ch. 894, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 425, Sec. 4, eff. Aug. 26, 1991.

Sec. 101.049. ANNUAL REPORT. (a) The department shall annually report on the program to the governor and the presiding officer of each house of the legislature.

(b) The report must include information concerning the manner in which the department has provided services under the program to elderly persons entitled to priority under Section 101.043(a).

(c) The report must be submitted not later than November 1 of each even-numbered year. The report may be combined with the report required by Section 101.008.

Added by Acts 1989, 71st Leg., ch. 894, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 693, Sec. 12, eff. Sept. 1, 1995.

SUBCHAPTER D. OFFICE OF LONG-TERM CARE OMBUDSMAN

Sec. 101.051. DEFINITIONS. In this subchapter:

(1) "Elderly resident" means a resident of a long-term care facility who is 60 years of age or older.

(2) "Long-term care facility" means a facility that serves persons who are 60 years of age or older and that is licensed or regulated or that is required to be licensed or regulated by the Texas Department of Human Services under Chapter 242, Health and Safety Code.

(3) "Office" means the office of the state long-term care ombudsman.

(4) "Representative" means an employee or volunteer specifically designated by the office as a representative of the office.

(5) "State ombudsman" means the chief administrator of the office.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(20), eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 315, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.100, eff. Sept. 1, 1995.

Sec. 101.052. ESTABLISHMENT OF OFFICE. (a) The department shall establish and operate the office of the state long-term care ombudsman.

(b) The department may operate the office directly or by contract or memorandum of agreement with a public agency or other appropriate private nonprofit organization. The department may not use an agency or organization that is:

(1) responsible for licensing or certifying long-term care services; or

(2) an association of long-term care facilities or of any other residential facility that serves persons who are 60 years of age or older, or an affiliate of such an association.

(c) The department shall consider the views of elderly persons, provider organizations, advocacy groups, and area agencies on aging in planning and operating the office.

(d) The department shall ensure that a person involved in designating the state ombudsman or in designating an employee or representative of the office does not have a conflict of interest.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.053. ROLE OF OFFICE. (a) The office and the ombudsman program shall operate in cooperation with any regulatory agency funded and mandated by the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.), and state statute.

(b) This subchapter does not affect the authority of the

Texas Department of Health and the Texas Department of Human Services to regulate long-term care facilities.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.054. POWERS AND DUTIES. (a) The state ombudsman and the office have the powers and duties required by state and federal law.

(b) The office may use appropriate administrative, legal, and other remedies to assist elderly residents as provided by department rules.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.055. LEGAL ASSISTANCE. The department shall ensure that the office receives adequate legal advice and representation. The attorney general shall represent the ombudsman or a representative if a suit or other legal action is brought or threatened to be brought against that person in connection with the person's performance of the official duties of the office.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1993, 73rd Leg., ch. 315, Sec. 2, eff. Aug. 30, 1993.

Sec. 101.056. OMBUDSMEN. (a) The office shall recruit volunteers and citizen organizations to participate in the ombudsman program. A paid staff member of an area agency on aging network or a nonprofit social service agency may be an ombudsman. An ombudsman is a representative of the office.

(b) The office shall provide training to ombudsmen as required by this subchapter and federal law.

(c) The office shall coordinate ombudsman services with the protection and advocacy systems that exist for persons with developmental disabilities or mental illness.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.057. INVESTIGATIONS. (a) The office shall have access to elderly residents and shall investigate and resolve complaints made by or on behalf of elderly residents.

(b) The department shall ensure that each ombudsman who investigates complaints has received proper training and has been approved by the office as qualified to investigate complaints.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.058. ACCESS TO RECORDS AND CONFIDENTIALITY. (a) The state ombudsman or his designee, specifically identified by the executive director of aging, shall have access to patient care records of elderly residents of long-term care facilities defined in Section 101.051(2) of this code. Certified volunteer ombudsmen are not entitled access to medical or other confidential information from the patient care records. The department, by rule, shall establish procedures for obtaining access to the records. All records and information to which the state ombudsman or his designee obtains access remain confidential.

(b) The office shall ensure that the identity of a complainant or any facility resident may be disclosed only with the written consent of the person or the person's legal representative or on court order.

(c) The information in files maintained by the office may be disclosed only by the ombudsman who has authority over the disposition of the files.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.059. REPORTING SYSTEM. The office shall establish a statewide ombudsman uniform reporting system to collect and analyze information relating to complaints and conditions in long-term care facilities as long as such system does not duplicate other state reporting systems and shall provide the information to the department, Texas Department of Health, and Texas Department of Human Services.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 2.05, eff. Sept. 1, 2005; Acts 2001, 77th Leg., ch. 592, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 1.28(3), eff. Sept. 1, 2003.

Sec. 101.060. ANALYSIS OF LAWS. The office shall analyze and monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies relating to long-term care facilities and services and shall recommend any changes the office considers necessary.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.061. PUBLIC INFORMATION. The office shall provide information to public agencies, legislators, and others that relates to the problems and concerns of elderly residents.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989.

Sec. 101.062. ANNUAL REPORT. (a) The office shall prepare an annual report that contains:

(1) information and findings relating to the problems and complaints of elderly residents; and

(2) policy, regulatory, and legislative recommendations to solve the problems, resolve the complaints, and improve the quality of the elderly residents' care and lives.

(b) The report must be submitted to the governor and the presiding officer of each house of the legislature not later than November 1 of each even-numbered year. The report may be combined with the report required by Section 101.008.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1995, 74th Leg., ch. 693, Sec. 13, eff. Sept. 1, 1995.

Sec. 101.063. LIMITATION OF LIABILITY. An ombudsman or a representative is not liable for civil damages or subject to criminal prosecution for performing official duties unless the ombudsman or representative acts in bad faith or with a malicious purpose.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1993, 73rd Leg., ch. 315, Sec. 3, eff. Aug. 30, 1993.

Sec. 101.064. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) intentionally interferes with an ombudsman attempting to perform official duties; or

(2) commits or attempts to commit an act of retaliation or reprisal against any resident or employee of a long-term care facility for filing a complaint or providing information to an ombudsman.

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

(c) The department shall assure that criminal sanctions will be initiated only after all administrative procedures are exhausted.

Added by Acts 1989, 71st Leg., ch. 159, Sec. 1, eff. Sept. 1, 1989.