

HEALTH AND SAFETY CODE CHAPTER 11. ORGANIZATION OF TEXAS DEPARTMENT OF HEALTH

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TITLE 2. HEALTH

SUBTITLE A. TEXAS DEPARTMENT OF HEALTH

CHAPTER 11. ORGANIZATION OF TEXAS DEPARTMENT OF HEALTH

Sec. 11.001. DEFINITIONS. In this title:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of public health.
- (3) "Department" means the Texas Department of Health. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993.

Sec. 11.002. PURPOSE OF BOARD AND DEPARTMENT. The Texas Board of Health and the Texas Department of Health are established to better protect and promote the health of the people of this state. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 11.003. SUNSET PROVISION. The Texas Board of Health and the Texas Department of Health are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board and the department are abolished and this chapter expires September 1, 2011. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 4.15, eff. Nov. 12, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 11.004. COMPOSITION AND RESPONSIBILITY OF DEPARTMENT. (a) The department is composed of the board, the commissioner, an administrative staff, the Texas Center for Infectious Disease, the South Texas Health Care System, and other officers and employees necessary to perform efficiently its powers and duties.

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

- (1) disease prevention;
- (2) health promotion;
- (3) indigent health care;
- (4) certain acute care services;
- (5) health care facility regulation, excluding long-term care facilities;
- (6) licensing of certain health professions; and
- (7) other health-related services as provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 107, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 263, Sec. 1, eff. May 22, 2001.

Sec. 11.0045. COMPREHENSIVE STRATEGIC AND OPERATIONAL PLAN. (a) The board shall develop, publish, and to the extent allowed by law implement a comprehensive strategic and operational plan.

(b) The board shall publish the plan not later than September 1 of each even-numbered year. The board shall at a minimum:

- (1) make the plan available on its generally accessible Internet site;
- (2) make printed copies of the plan available on request to members of the public; and
- (3) send printed copies of the plan to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the committees of the senate and the house of representatives that have oversight responsibilities regarding the board and the department.

(c) The plan at a minimum must include:

- (1) a statement of the aim and purpose of each of the department's missions, including:
 - (A) the prevention of disease;
 - (B) the promotion of health;
 - (C) indigent health care;

(D) the protection of parents' fundamental right to direct the health care and general upbringing of their children;

(E) acute care services for which the department is responsible;

(F) health care facility regulation for which the department is responsible;

(G) the licensing of health professions for which the department is responsible; and

(H) all other health-related services for which the department is responsible under law;

(2) an analysis regarding how each of the department's missions relate to other department missions;

(3) a detailed analysis of how to integrate or continue to integrate department programs with other department programs, including the integration of information gathering and information management within and across programs, for the purpose of minimizing duplication of effort, increasing administrative efficiency, simplifying access to department programs, and more efficiently meeting the health needs of this state;

(4) a detailed proposal to integrate or continue to integrate department programs with other department programs during the two-year period covered by the plan, to the extent allowed by law and in accordance with the department's analysis;

(5) a determination regarding whether it is necessary to collect each type of information that the department collects, and for each type of information that it is necessary for the department to collect, whether the department is efficiently and effectively collecting, analyzing, and disseminating the information and protecting the privacy of individuals;

(6) an assessment of services provided by the department that evaluates the need for the department to provide those services in the future;

(7) a method for soliciting the advice and opinions of local health departments, hospital districts, and other public health entities, of recipients and providers of services that are related to the department's missions, and of advocates for recipients or providers for the purpose of identifying and

assessing:

(A) the health-related needs of the state;

(B) ways in which the department's programs and information services can be better integrated and coordinated; and

(C) factors that the department should consider before adopting rules that affect recipients or providers of services that are related to the department's missions;

(8) a comprehensive inventory of health-related information resources that meet department criteria for usefulness and applicability to local health departments, to recipients or providers of services that are related to the department's missions, and to nonprofit entities, private businesses, and community groups with missions that are related to health;

(9) a statement regarding the ways in which the department will coordinate or attempt to coordinate with federal, state, local, and private programs that provide services similar to the services provided by the department;

(10) a list of other plans that the department is required to prepare under state law and a recommendation regarding which plans are obsolete or duplicate other required department plans; and

(11) an assessment of the extent to which previous plans prepared by the department under this section have effectively helped the department to identify and achieve its objectives, to improve its operations, or to guide persons who need to identify department services, identify department requirements, or communicate effectively with department personnel.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 11.005. COMPOSITION OF BOARD. (a) The board is composed of seven members appointed by the governor with the advice and consent of the senate.

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

(c) Four members of the board must have a demonstrated

interest in the services provided by the department, and three members must represent the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 1170, Sec. 16.01, eff. Sept. 1, 2003.

Sec. 11.0055. REQUIRED BOARD MEMBER TRAINING. (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 programs operated by the department;

(3) the role and functions of the department;

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

(5) the current budget for the department;

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

(7) 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

(8) 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.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.04, eff. Sept. 1, 1999.

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

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

(2) is registered, certified, or licensed by the department or by a regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department;

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

(4) uses or receives a substantial amount of tangible goods, services, or funds from the department other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1411, Sec. 1.05, eff. Sept. 1, 1999.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 1170, Sec. 16.02, eff. Sept. 1, 2003.

Sec. 11.008. OFFICERS. Not later than September 1 of each odd-numbered year, the governor shall designate one board member as chairman and one member as vice-chairman.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 11.009. REMOVAL OF BOARD MEMBERS. (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 11.005(a);

(2) does not maintain during service on the board the qualifications required by Section 11.005(a);

(3) violates a prohibition established by Section 11.006(b), (c), or (d);

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; 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 unless 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 is taken when a ground for removal of a board member exists.

(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 shall then notify the governor and the attorney general that a potential ground for

removal exists. If the potential ground for removal involves the chairman, the commissioner 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 1.06, eff. Sept. 1, 1999.

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

(1) a per diem as prescribed by the General Appropriations Act for each day spent in performing the member's official duties; and

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993.

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

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

(c) A meeting of a board committee shall be held in compliance with Chapter 551, Government Code.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

Sec. 11.012. COMMISSIONER. (a) The commissioner of health and human services shall employ the commissioner in accordance with Section 531.0056, Government Code.

(b) Except as provided in Subsection (c), the commissioner must:

(1) have at least five years of experience in the administration of public health systems; and

(2) be a person licensed to practice medicine in this state.

(c) The commissioner of health and human services may, based on the qualifications and experience in administering public health systems, employ a person other than a physician as the commissioner.

(d) If the commissioner of health and human services employs a person as commissioner who is not a physician, then the board shall designate a person licensed to practice medicine in this state as chief medical executive.

(e) The commissioner is the executive head of the department. The commissioner shall perform the duties assigned by the board and state law, subject to the provisions of this subtitle.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 623, Sec. 1, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 747, Sec. 16, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.148, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1460, Sec. 2.17, eff. Sept. 1, 1999.

Sec. 11.013. SEPARATION OF AUTHORITY. (a) The board shall adopt policies and rules and shall govern the department.

(b) The board may delegate to the commissioner, or to the person acting as commissioner in the commissioner's absence, any power or duty imposed on the board by law, including the authority to make final orders or decisions, except that the board may not delegate the power or duty to adopt rules. The delegation must be written.

(c) The board shall:

(1) supervise the commissioner's administration and enforcement of the health laws of this state; and

(2) develop and implement policies that clearly separate the respective responsibilities of the board and the staff

of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 11.014. INVESTIGATION OF DEPARTMENT. The board shall investigate the conduct of the work of the department. For that purpose, the board shall have access at any time to all department books and records and may require an officer or employee of the department to furnish written or oral information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 11.015. PERSONNEL. (a) The commissioner or the commissioner's designee shall develop an intra-agency career ladder program. The program shall require intra-agency postings of all nonentry level positions concurrently with any public posting. The commissioner may waive the posting requirements under circumstances outlined in department policies.

(b) The commissioner or the commissioner'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.

(c) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) 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 under 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 work force that meets federal and state guidelines; and

(3) procedures by which a determination can be made of significant underutilization in the department work force of all

persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.

(e) A policy statement prepared under Subsection (d) must:

- (1) cover an annual period;
- (2) be updated at least annually; and
- (3) be filed with the governor.

(f) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (e)(3). The report may be made separately or as a part of other biennial reports made to the legislature.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 11.016. ADVISORY COMMITTEES. (a) The board may appoint advisory committees to assist the board in performing its duties.

(b) The board shall appoint an advisory committee in a manner that provides for:

- (1) a balanced representation of persons with knowledge and interest in the committee's field of work;
- (2) the inclusion on the committee of at least two members who represent the interests of the public; and
- (3) a balanced representation of the geographic regions of the state.

(c) Repealed by Acts 1999, 76th Leg., ch. 1411, Sec. 1.17, eff. Sept. 1, 1999.

(d) Except as otherwise provided by law and contingent on the availability of department funds for this purpose, a member of an advisory committee appointed by the board is entitled to receive, with regard to travel expenses, the per diem and travel allowance authorized by the General Appropriations Act for state employees.

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

(f) The board shall establish procedures for receiving

reports relating to the activities and accomplishments of an advisory committee established by statute to advise the board or department. The board may appoint additional members to those advisory committees and may establish additional duties of those committees as the board determines to be necessary.

(g) The board shall adopt rules to implement this section. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 2, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.17, eff. Sept. 1, 1999.

Sec. 11.0161. COMPENSATORY PER DIEM FOR ADVISORY COMMITTEE MEMBER. (a) Within the limit of available funds, a member of an advisory committee appointed to assist the board and the department is entitled to receive, if authorized by board rule, a compensatory per diem, not to exceed the rate set in the General Appropriations Act, for each meeting the member attends.

(b) If a member has been appointed under the authority of a prior statute that provides no compensatory per diem or that provides for compensatory per diem in a specific amount, this section supersedes that statute.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 3, eff. Sept. 1, 1991.

Sec. 11.017. FINANCES. (a) 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 annual report must be in the form and reported in the time provided by the General Appropriations Act.

(b) The state auditor may audit the financial transactions of the board in accordance with Chapter 321, Government Code, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the audit in the audit plan under Section 321.013, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 4, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 785, Sec. 67, eff. Sept. 1, 2003.

Sec. 11.018. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

(a) 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 board.

(b) The board shall prepare information of public interest describing the functions of the board and department and the board's and department's procedures by which complaints are filed with and resolved by the board and department. The department shall make the information available to the public and appropriate state agencies.

(c) The board by rule shall establish methods by which consumers and service recipients can be notified of the names, mailing addresses, and telephone numbers of the board and department for the purpose of directing complaints to the board and department. The board may provide for that notification:

(1) on each registration form, application, or written contract for services of a person or entity regulated by the board or department;

(2) on a sign prominently displayed in the place of business of each person or entity regulated by the board or department; or

(3) in a bill for service provided by a person or entity regulated by the board or department.

(d) The department shall keep an information file about each complaint filed with the department relating to a license holder or entity regulated by the department or a service delivered by the department. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the department;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the department closed the file without taking action other than

to investigate the complaint.

(e) If a written complaint is filed with the department relating to a license holder or entity regulated by the department or a service delivered by the department, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 1.07, eff. Sept. 1, 1999.