

HEALTH AND SAFETY CODE CHAPTER 35. CHILDREN WITH SPECIAL HEALTH CARE NEEDS

HEALTH AND SAFETY CODE

TITLE 2. HEALTH

SUBTITLE B. TEXAS DEPARTMENT OF HEALTH PROGRAMS

CHAPTER 35. CHILDREN WITH SPECIAL HEALTH CARE NEEDS

Sec. 35.001. SHORT TITLE. This chapter may be cited as the Children with Special Health Care Needs Services Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.01, eff. Sept. 1, 1999.

Sec. 35.0021. DEFINITIONS. In this chapter:

(1) "Case management services" includes:

(A) coordinating medical services, marshaling available assistance, serving as a liaison between the child and the child's family and caregivers, insurance services, and other services needed to improve the well-being of the child and the child's family; and

(B) counseling for the child and the child's family about measures to prevent the transmission of AIDS or HIV and the availability in the geographic area of any appropriate health care services, such as mental health care, psychological health care, and social and support services.

(2) "Child with special health care needs" has the meaning assigned by Section 35.0022.

(3) "Dentist" means a person licensed by the State Board of Dental Examiners to practice dentistry in this state.

(4) "Facility" includes a hospital, an ambulatory surgical center, and an outpatient clinic.

(5) "Family support services" means support, resources, or other assistance provided to the family of a child with special health care needs. The term may include services described by Part A of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), as amended, and permanency planning, as that term is defined by Section 531.151, Government Code.

(6) "Other benefit" means a benefit, other than a benefit provided under this chapter, to which a person is entitled for payment of the costs of services provided under the program, including benefits available from:

(A) an insurance policy, group health plan, health maintenance organization, or prepaid medical or dental care plan;

(B) Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. Sec. 1395 et seq., 42 U.S.C. Sec. 1396 et seq., and 42 U.S.C. Sec. 1397aa et seq.), as amended;

(C) the Department of Veterans Affairs;

(D) the Civilian Health and Medical Program of the Uniformed Services;

(E) workers' compensation or any other compulsory employers' insurance program;

(F) a public program created by federal or state law or the ordinances or rules of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(G) a cause of action for the cost of care, including medical care, dental care, facility care, and medical supplies, required for a person applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

(7) "Physician" means a person licensed by the Texas State Board of Medical Examiners to practice medicine in this state.

(8) "Program" means the services program for children with special health care needs.

(9) "Provider" means a person who delivers services purchased by the department for the purposes of this chapter.

(10) "Rehabilitation services" means the process of the physical restoration, improvement, or maintenance of a body

function destroyed or impaired by congenital defect, disease, or injury and includes:

(A) facility care, medical and dental care, and occupational, speech, and physical therapy;

(B) the provision of braces, artificial appliances, durable medical equipment, and other medical supplies; and

(C) other types of care specified by the board in the program rules.

(11) "Services" means the care, activities, and supplies provided under this chapter or program rules, including medical care, dental care, facility care, medical supplies, occupational, physical, and speech therapy, and other care specified by program rules.

(12) "Specialty center" means a facility and staff that meet minimum standards established under the program and are designated by the board for program use in the comprehensive diagnostic and treatment services for a specific medical condition.

(13) "Support" means to contribute money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.02, eff. Sept. 1, 1999.

Sec. 35.0022. CHILD WITH SPECIAL HEALTH CARE NEEDS.

(a) In this chapter, "child with special health care needs" means a person who:

(1) is younger than 21 years of age and who has a chronic physical or developmental condition; or

(2) has cystic fibrosis, regardless of the person's age.

(b) The term "child with special health care needs" may include a person who has a behavioral or emotional condition that accompanies the person's physical or developmental condition. The term does not include a person who has a behavioral or emotional condition without having an accompanying physical or developmental condition.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.02, eff. Sept. 1, 1999.

Sec. 35.003. SERVICES PROGRAM FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS. (a) The program is in the department to provide services to eligible children with special health care needs. The program shall provide:

(1) early identification of children with special health care needs;

(2) diagnosis and evaluation of children with special health care needs;

(3) rehabilitation services to children with special health care needs;

(4) development and improvement of standards and services for children with special health care needs;

(5) case management services;

(6) other family support services; and

(7) access to health benefits plan coverage under Section 35.0031.

(b) The board by rule shall:

(1) specify the type, amount, and duration of services to be provided under this chapter; and

(2) permit the payment of insurance premiums for eligible children.

(c) If budgetary limitations exist, the board by rule shall establish a system of priorities relating to the types of services or the classes of persons eligible for the services. A waiting list of eligible persons may be established if necessary for the program to remain within the budgetary limitations. The department shall collect from each applicant for services who is placed on a waiting list appropriate information to facilitate contacting the applicant when services become available and to allow efficient enrollment of the applicant in those services. The information collected must include:

(1) the applicant's name, address, and phone number;

(2) the name, address, and phone number of a contact person other than the applicant;

(3) the date of the applicant's earliest application for services;

(4) the applicant's functional needs;

(5) the range of services needed by the applicant; and

(6) a date on which the applicant is scheduled for reassessment.

(d) The program may provide:

(1) transportation and subsistence for an eligible child with special health care needs and the child's parent, managing conservator, guardian, or other adult caretaker approved by the program to obtain services provided by the program; and

(2) the following services to an eligible child with special health care needs who dies in an approved facility outside the child's municipality of residence while receiving program services:

(A) the transportation of the child's remains, and the transportation of a parent or other person accompanying the remains, from the facility to the place of burial in this state that is designated by the parent or other person legally responsible for interment;

(B) the expense of embalming, if required for transportation;

(C) the cost of a coffin purchased at a minimum price, if a coffin is required for transportation; and

(D) any other necessary expenses directly related to the care and return of the child's remains to the place of burial in this state.

(e) The department may:

(1) develop methods to improve the efficiency and effectiveness of the program; and

(2) conduct pilot studies.

(f) The program is separate from the financial or medical assistance program established by Chapters 31 and 32, Human Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.03, eff. Sept. 1, 1999.

Sec. 35.0031. HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN ELIGIBLE CHILDREN. The department shall obtain coverage under a health benefits plan for a child who:

(1) is eligible for services under this chapter; and

(2) is not eligible for assistance under:

(A) a program established under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended; or

(B) the medical assistance program under Chapter 32, Human Resources Code.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.0032. BENEFITS COVERAGE REQUIRED. To the extent possible, the health benefits plan required by Section 35.0031 must provide benefits comparable to the benefits provided under the state child health plan established by this state to implement Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.0033. HEALTH BENEFITS PLAN PROVIDER. (a) A health benefits plan provider who provides coverage for benefits under Section 35.0031 must:

(1) hold a certificate of authority or other appropriate license issued by the Texas Department of Insurance that authorizes the health benefits plan provider to provide the type of coverage to be offered under Section 35.0031; and

(2) satisfy, except as provided by Subsection (b), any other applicable requirement of the Insurance Code or another insurance law of this state.

(b) Except as required by the department, a health benefits plan provider under this chapter is not subject to a law that requires coverage or the offer of coverage of a health care service or benefit.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1,

1999.

Sec. 35.0034. COST-SHARING PAYMENTS. (a) Except as provided by Subsection (b), the department may not require a child who is provided health benefits plan coverage under Section 35.0031 and who meets the income eligibility requirement of the medical assistance program under Chapter 32, Human Resources Code, to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage under this chapter.

(b) The department may require a child described by Subsection (a) to pay a copayment as a condition of health benefits plan coverage under Section 35.0031 that is equal to any copayment required under the state child health plan established by this state to implement Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended.

(c) The department may require a child who is provided health benefits plan coverage under Section 35.0031 and who meets the income eligibility requirement of a program established under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage. The payment must be equal to any premium, deductible, coinsurance, or other cost-sharing payment required under the state child health plan established by this state to implement Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.0035. DISALLOWANCE OF MATCHING FUNDS FROM FEDERAL GOVERNMENT. Expenditures made to provide health benefits plan coverage under Section 35.0031 may not be included for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.004. SERVICE PROVIDERS. (a) The board shall adopt substantive and procedural rules for the selection of providers to participate in the program, including rules for the selection of specialty centers and rules requiring that providers accept program payments as payment in full for services provided.

(b) The board shall approve physicians, dentists, licensed dietitians, facilities, specialty centers, and other providers to participate in the program according to the criteria and following the procedures prescribed by the board.

(c) The department may pay only for services delivered by an approved provider, except in an emergency.

(d) Except as specified in the program rules, a recipient of services may select any provider approved by the board. If the recipient is a minor, the person legally authorized to consent to the treatment may select the provider.

(e) The board shall adopt substantive and procedural rules for the modification, suspension, or termination of the approval of a provider.

(f) The board shall provide a due process hearing procedure for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, do not apply to conflict resolution procedures adopted under this section.

(g) The department may not terminate the approval of a provider while a hearing is pending under this section. The department may withhold payments while the hearing is pending, but shall pay the withheld payments and resume contract payments if the final determination is favorable to the provider.

(h) Subsection (f) does not apply if a contract:

(1) is canceled by the department because services are restricted to conform to budgetary limitations and service priorities are adopted by the board regarding types of services to be provided; or

(2) expires according to its terms.

(i) The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes) does not apply to a payment made by the department for services provided by a publicly supported



medical school facility to an eligible child. A publicly supported medical school facility receiving payment under this chapter shall deposit the payment in local funds.

(j) This section does not apply to services for which coverage is provided under the health benefits plan established under Section 35.0031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 393, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1505, Sec. 3.05, eff. Sept. 1, 1999.

Sec. 35.0041. PARTICIPATION AND REIMBURSEMENT OF TELEMEDICINE MEDICAL SERVICE PROVIDERS. (a) The department by rule shall develop and implement policies permitting reimbursement of a provider for services under the program performed using telemedicine medical services.

(b) The policies must provide for reimbursement of:

(1) providers using telemedicine medical services and telehealth services in a cost-effective manner that ensures the availability to a child with special health care needs of services appropriately performed using telemedicine medical services and telehealth services that are comparable to the same types of services available to that child without use of telemedicine medical services and telehealth services;

(2) a provider for a service performed using telemedicine medical services and telehealth services at an amount equal to the amount paid to a provider for performing the same service without using telemedicine medical services and telehealth services;

(3) multiple providers of different services who participate in a single telemedicine medical services or telehealth services session for a child with special health care needs, if the department determines that reimbursing each provider for the session is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services and telehealth services, including the costs of transportation and lodging and other direct

costs; and

(4) providers using telemedicine medical services and telehealth services included in the school health and related services program.

(c) In developing and implementing the policies required by this section, the department shall consult with:

(1) The University of Texas Medical Branch at Galveston;

(2) Texas Tech University Health Sciences Center;

(3) the Health and Human Services Commission, including the state Medicaid office;

(4) providers of telemedicine medical services and telehealth services hub sites in this state;

(5) providers of services to children with special health care needs; and

(6) representatives of consumer or disability groups affected by changes to services for children with special health care needs.

(d) This section applies to services for which coverage is provided under the health benefits plan established under Section 35.0031.

Added by Acts 2001, 77th Leg., ch. 959, Sec. 4, eff. June 14, 2001.

Sec. 35.005. ELIGIBILITY FOR SERVICES. (a) The board by rule shall:

(1) define medical, financial, and other criteria for eligibility to receive services; and

(2) establish a system for verifying eligibility information submitted by an applicant for or recipient of services.

(b) In defining medical and financial criteria for eligibility under Subsection (a), the board may not:

(1) establish an exclusive list of coverable medical conditions; or

(2) consider as a source of support to provide services assets legally owned or available to a child's household.

(c) A child is not eligible to receive rehabilitation services unless:

(1) the child is a resident of this state;

(2) at least one physician or dentist certifies to the department that the physician or dentist has examined the child and finds the child to be a child with special health care needs whose disability meets the medical criteria established by the board;

(3) the department determines that the persons who have any legal obligation to provide services for the child are unable to pay for the entire cost of the services;

(4) the child has a family income that is less than or equal to 200 percent of the federal poverty level; and

(5) the child meets all other eligibility criteria established by board rules.

(d) A child is not eligible to receive services, other than rehabilitation services, unless the child:

(1) is a resident of this state; and

(2) meets all other eligibility criteria established by board rules.

(e) Notwithstanding Subsection (c)(4), a child with special health care needs who has a family income that is greater than 200 percent of the federal poverty level and who meets all other eligibility criteria established by this section and by board rules is eligible for services if the department determines that the child's family is or will be responsible for medical expenses that are equal to or greater than the amount by which the family's income exceeds 200 percent of the federal poverty level.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.06, eff. Sept. 1, 1999.

Sec. 35.006. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The board shall adopt substantive and procedural rules for the denial of applications and the modification, suspension, or termination of services.

(b) The department may deny services to an applicant and modify, suspend, or terminate services to a recipient after:

(1) notice to the child or the person who is legally obligated to support the child;

(2) a preliminary program review; and

(3) an opportunity for a fair hearing.

(c) The board by rule shall provide criteria for action by the department under this section.

(d) The department shall conduct hearings under this section in accordance with the board's due process hearing rules. Chapter 2001, Government Code, do not apply to the granting, denial, modification, suspension, or termination of services.

(e) This section does not apply if the department restricts services to conform to budgetary limitations that require the board to adopt service priorities regarding types of services to be provided.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

Sec. 35.0061. REFERRAL FOR BEHAVIORAL OR EMOTIONAL CONDITIONS. If a child with special health care needs who is eligible for services under this chapter has a behavioral or emotional condition and the child is eligible for services from another provider of services that would address the behavioral or emotional condition, the department shall refer the child to that provider for those services.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.07, eff. Sept. 1, 1999.

Sec. 35.007. FINANCIAL ELIGIBILITY; OTHER BENEFITS.

(a) The board shall require a child receiving services, or the person who has a legal obligation to support the child, to pay for or reimburse the department for that part of the cost of the services that the child or person is financially able to pay.

(b) A child is not eligible to receive services under this chapter to the extent that the child or a person with a legal obligation to support the child is eligible for some other benefit that would pay for all or part of the services. The board may waive this subsection if its enforcement will deny services to a class of children because of conflicting state and federal laws or rules and regulations.

(c) When the application is made under this chapter or at

any time before, during, or after the receipt of services, an applicant for or recipient of services shall inform the department of any other benefit to which the child or any person who has a legal obligation to support the child may be entitled.

(d) A child who has received services that are covered by some other benefit, or any other person with a legal obligation to support the child, shall reimburse the department to the extent of the services provided when the other benefit is received.

(e) The department may collect the cost of services provided under this chapter directly:

(1) in accordance with Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. Sec. 1395 et seq., 42 U.S.C. Sec. 1396 et seq., and 42 U.S.C. Sec. 1397aa et seq.), as amended; or

(2) from any personal insurance, a health maintenance organization, or any other third party who has a legal obligation to pay other benefits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.08, eff. Sept. 1, 1999.

Sec. 35.008. RECOVERY OF COSTS. (a) The department may recover the cost of services provided under this chapter from a person who does not pay or reimburse the department as required by Section 35.007 or from any third party who has a legal obligation to pay other benefits.

(b) This section creates a separate cause of action, and the commissioner may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department.

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date on which the department is reimbursed.

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

Sec. 35.009. FEES. The board may adopt reasonable procedures and standards for the determination of fees and charges for program services.

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

Sec. 35.010. FUNDING. The department may receive and spend:

- (1) gifts made for the purposes of this chapter; and
- (2) funds appropriated or granted by the state or federal government to provide services for children.

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

Sec. 35.011. CONTRACTS. The department may enter into contracts and agreements necessary to carry out this chapter, including interagency agreements to provide for the efficient and uninterrupted provision of necessary services to children who are eligible to receive services from two or more public programs.

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

Sec. 35.012. RECORDS. (a) The department may take a census, make surveys, and establish permanent records of children with special health care needs.

(b) The department shall maintain a record of orthotic and prosthetic devices, durable medical equipment, and medical supplies purchased by the department for children with special health care needs. Those items are not state-owned personal property and are exempt from the personal property inventory requirements of Subtitle D, Title 10, Government Code.

(c) The purchase of the items described by Subsection (b) is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 11, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 17.19(4), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1505, Sec. 3.09, eff. Sept. 1, 1999.

Sec. 35.013. LIMITATIONS ON AUTHORITY. (a) This chapter does not limit the authority of a parent, managing conservator, or guardian over a minor.

(b) This chapter does not entitle an employee, agent, or

representative of the department or other official agent to enter a home over the objection of a child or, if the child is a minor, over the objection of the child's parent, managing conservator, or guardian.

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