

HEALTH AND SAFETY CODE CHAPTER 533. POWERS AND DUTIES

HEALTH AND SAFETY CODE

TITLE 7. MENTAL HEALTH AND MENTAL RETARDATION

SUBTITLE A. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL
RETARDATION

CHAPTER 533. POWERS AND DUTIES

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 533.0001. 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 commissioner as provided by Section 531.0055, Government Code. To the extent a power or duty given to the board or commissioner by this title or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.22, eff. Sept. 1, 1999.

Sec. 533.001. GIFTS AND GRANTS. (a) The department may negotiate with a federal agency to obtain grants to assist in expanding and improving mental health and mental retardation services in this state.

(b) The department may accept gifts and grants of money, personal property, and real property to expand and improve the mental health and mental retardation services available to the people of this state.

(c) The department may accept gifts and grants of money, personal property, and real property on behalf of a department facility to expand and improve the mental health or mental retardation services available at the facility.

(d) The department shall use a gift or grant made for a specific purpose in accordance with the purpose expressly prescribed by the donor. The department may decline the gift or grant if the department determines that it cannot be economically used for that purpose.

(e) The department shall keep a record of each gift or grant in the department's central office in the city of Austin.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.002. COMPETITIVE REVIEW REQUIREMENT. The department shall establish procedures to:

- (1) promote more efficient use of public funds;
- (2) ensure periodic review of department management and support activities in order to:

- (A) improve department operations;
- (B) improve the determination of costs;
- (C) increase department productivity; and
- (D) remain competitive with the private sector;

and

- (3) ensure that the state not provide a service that is available through the private sector unless the state can provide the service at a lower cost.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.13, eff. Sept. 1, 1997.

Sec. 533.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a volunteer program in a local mental health or mental retardation authority or a community center, the department may allocate available funds appropriated for providing volunteer services.

(b) The department shall develop formal policies that encourage the growth and development of volunteer services in local mental health or mental retardation authorities and community centers.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 3, eff. Sept. 1, 1999.

Sec. 533.004. LIENS. (a) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a patient with mental illness or client with mental retardation in an amount equal to the amount of reimbursement sought.

(b) The amount of the reimbursement sought may not exceed:

(1) the amount the department is authorized to charge under Section 552.017 or under Subchapter D, Chapter 593, if the patient or client received the services in a department facility; or

(2) the amount the community center is authorized to charge under Section 534.017 if the patient or client received the services in a community center.

(c) The lien attaches to:

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

(2) a judgment of a court in this state or a decision of a public agency in a proceeding brought by or on behalf of the patient or client to recover damages for an injury for which the patient or client was admitted to a department facility or community center; and

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

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

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

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

(e) The notice must contain:

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

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

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

(4) the name and location of the department facility

or community center.

(f) Not later than the 31st day before the date on which the department files the notice of the lien with the county clerk, the department shall notify by certified mail the patient or client and the person legally responsible for the patient's or client's support. The notice must contain a copy of the charges, the statutory procedures relating to filing a lien, and the procedures to contest the charges. The board by rule shall prescribe the procedures to contest the charges.

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

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

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.005. EASEMENTS. The department may grant a

temporary or permanent easement or right-of-way on land held by the department. The department must grant an easement or right-of-way on terms and conditions the department considers to be in the state's best interest.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1175, Sec. 1, eff. June 18, 1999.

Sec. 533.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN.

(a) The department shall report to the Texas State Board of Medical Examiners any allegation received by the department that a physician employed by or under contract with the department has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 164.051, Occupations Code. The report must be made in the manner provided by Section 154.051, Occupations Code.

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.801, eff. Sept. 1, 2001.

Sec. 533.007. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION; CRIMINAL PENALTY FOR UNLAWFUL DISCLOSURE. (a) The department, a local mental health or mental retardation authority, or a community center may deny employment or volunteer status to an applicant if:

(1) the department, authority, or community center determines that the applicant's criminal history record information indicates that the person is not qualified or suitable; or

(2) the applicant fails to provide a complete set of fingerprints if the department establishes that method of obtaining criminal history record information.

(b) The board shall adopt rules relating to the use of information obtained under this section, including rules that

prohibit an adverse personnel action based on arrest warrant or wanted persons information received by the department.

(c) Repealed by Acts 1993, 73rd Leg., ch. 790, Sec. 46(26), eff. Sept. 1, 1993.

(d) Relettered as subsection (a) by Laws 1999, 76th Leg., ch. 1209, Sec. 4, eff. Sept. 1, 1999.

(e) to (h) Repealed by Acts 1993, 73rd Leg., ch. 790, Sec. 46(26), eff. Sept. 1, 1993.

(i) Relettered as subsection (b) by Laws 1999, 76th Leg., ch. 1209, eff. Sept. 1, 1999.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.02, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 790, Sec. 46(26), eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1209, Sec. 4, eff. Sept. 1, 1999.

Sec. 533.0075. EXCHANGE OF EMPLOYMENT RECORDS. The department, a local mental health or mental retardation authority, or a community center may exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority, or community center.

Added by Acts 1993, 73rd Leg., ch. 646, Sec. 2, eff. Aug. 30, 1993.

Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 5, eff. Sept. 1, 1999.

Sec. 533.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH MENTAL ILLNESS AND MENTAL RETARDATION. (a) Each department facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for individuals with mental illness and mental retardation in the facility's or center's service area.

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

(c) Each department facility and community center shall annually submit to the department a report showing that the facility or center has complied with Subsection (a).

(d) The department shall compile information from the reports and shall make the information available to each designated provider in a service area.

(e) Each department facility and community center shall ensure that designated staff are trained to:

(1) assist clients through the Social Security Administration disability determination process;

(2) provide clients and their families information related to the Social Security Administration Work Incentive Provisions; and

(3) assist clients in accessing and utilizing the Social Security Administration Work Incentive Provisions to finance training, services, and supports needed to obtain career goals.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 655, Sec. 6.04, eff. Sept. 1, 1995.

Sec. 533.009. EXCHANGE OF PATIENT AND CLIENT RECORDS.

(a) Department facilities, local mental health or mental retardation authorities, community centers, other designated providers, and subcontractees of mental health and mental retardation services are component parts of one service delivery system within which patient or client records may be exchanged without the patient's or client's consent.

(b) The board shall adopt rules to carry out the purposes of this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 6, eff. Sept. 1, 1999.

Sec. 533.0095. COLLECTION AND MAINTENANCE OF INFORMATION REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The executive commissioner of the Health and Human Services Commission by rule shall require the department to collect information and maintain current records regarding a person found not guilty of an offense by reason of insanity under Chapter 46C, Code of Criminal

Procedure, who is:

(1) ordered by a court to receive inpatient mental health services under Chapter 574 or under Chapter 46C, Code of Criminal Procedure;

(2) committed by a court for long-term placement in a residential care facility under Chapter 593 or under Chapter 46C, Code of Criminal Procedure; or

(3) ordered by a court to receive outpatient or community-based treatment and supervision.

(b) Information maintained by the department under this section must include the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

(c) The department shall file annually with the presiding officer of each house of the legislature a written report containing the name of each person described by Subsection (a), the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

Added by Acts 2005, 79th Leg., Ch. 831, Sec. 3, eff. September 1, 2005.

Sec. 533.010. INFORMATION RELATING TO PATIENT'S CONDITION. (a) A person, including a hospital, sanitarium, nursing or rest home, medical society, or other organization, may provide to the department or a medical organization, hospital, or hospital committee any information, including interviews, reports, statements, or memoranda relating to a person's condition and treatment for use in a study to reduce mental disorders and mental disabilities.

(b) The department or a medical organization, hospital, or hospital committee receiving the information may use or publish the information only to advance mental health and mental retardation research and education in order to reduce mental disorders and mental disabilities. A summary of the study may be released for general publication.

(c) The identity of a person whose condition or treatment is

studied is confidential and may not be revealed under any circumstances. Information provided under this section and any finding or conclusion resulting from the study is privileged information.

(d) A person is not liable for damages or other relief if the person:

(1) provides information under this section;

(2) releases or publishes the findings and conclusions of the person or organization to advance mental health and mental retardation research and education; or

(3) releases or publishes generally a summary of a study.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.011. RETURN OF PERSON WITH MENTAL RETARDATION TO STATE OF RESIDENCE. (a) The department may return a nonresident person with mental retardation who is committed to a facility for persons with mental retardation in this state to the proper agency of the person's state of residence.

(b) The department may permit the return of a resident of this state who is committed to a facility for persons with mental retardation in another state.

(c) The department may enter into reciprocal agreements with the proper agencies of other states to facilitate the return of persons committed to facilities for persons with mental retardation in this state or another state to the state of their residence.

(d) The superintendent of a department facility for persons with mental retardation may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a person with mental retardation returned to this state.

(e) The state returning a person with mental retardation to another state shall bear the expenses of returning the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.012. COOPERATION OF STATE AGENCIES. (a) At the department's request, all state departments, agencies, officers, and employees shall cooperate with the department in activities

that are consistent with their functions.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 268, Sec. 32(f), eff. September 1, 2008.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.134, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 13.05, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281, Sec. 4.03, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268, Sec. 32(f), eff. September 1, 2008.

Sec. 533.013. DUPLICATION OF REHABILITATION SERVICES. The department shall enter into an agreement with the Texas Rehabilitation Commission that defines the roles and responsibilities of the department and the commission regarding the agencies' shared client populations. The agreement must establish methods to prevent the duplication and fragmentation of employment services provided by the agencies.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 4, eff. Sept. 1, 1999.

Sec. 533.014. RESPONSIBILITY OF LOCAL MENTAL HEALTH AUTHORITIES IN MAKING TREATMENT RECOMMENDATIONS. (a) The board shall adopt rules that:

(1) relate to the responsibility of the local mental health authorities to make recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health services, including individuals who are in contact with the criminal justice system and individuals detained in local jails and juvenile detention facilities;

(2) govern commitments to a local mental health authority;

(3) govern transfers of patients that involve a local mental health authority; and

(4) provide for emergency admission to a department mental health facility if obtaining approval from the authority could result in a delay that might endanger the patient or others.

(b) The board's first consideration in developing rules under this section must be to satisfy individual patient treatment needs in the most appropriate setting. The board shall also consider reducing patient inconvenience resulting from admissions and transfers between providers.

(c) The department shall notify each judge who has probate jurisdiction in the service area and any other person the local mental health authority considers necessary of the responsibility of the local mental health authority to make recommendations relating to the most appropriate and available treatment alternatives and the procedures required in the area.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 3, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 367, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1214, Sec. 1, eff. Sept. 1, 2003.

Sec. 533.015. UNANNOUNCED INSPECTIONS. The department may make any inspection of a facility or program under the department's jurisdiction without announcing the inspection.

Added by Acts 1995, 74th Leg., ch. 531, Sec. 2, eff. Aug. 28, 1995.

Sec. 533.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY SERVICE PROVIDERS. (a) A state agency, local agency, local mental health authority, or local mental retardation authority that expends public money to acquire goods or services in connection with providing or coordinating the provision of mental health or mental retardation services may satisfy the requirements of any state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with the public money in accordance with Section 533.017 or in accordance with:

(1) Section 2155.144, Government Code, if the entity is a state agency subject to that law;

(2) Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or

(3) this section, if the entity is not covered by Subdivision (1) or (2).

(b) An agency or authority under Subsection (a)(3) may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

(c) Subject to Subsection (d), the agency or authority may consider all relevant factors in determining the best value, including:

(1) any installation costs;

(2) the delivery terms;

(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the agency's or authority's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the agency or authority to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;

(7) the total long-term cost to the agency or authority of acquiring the vendor's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on the agency's or authority's productivity;

(10) the acquisition price; and

(11) any other factor relevant to determining the best value for the agency or authority in the context of a particular acquisition.

(d) If a state agency to which this section applies acquires goods or services with a value that exceeds \$100,000, the state agency shall consult with and receive approval from the Health and Human Services Commission before considering factors other than

price and meeting specifications.

(e) The state auditor or the department may audit the agency's or authority's acquisitions of goods and services under this section to the extent state money or federal money appropriated by the state is used to make the acquisitions.

(f) The agency or authority may adopt rules and procedures for the acquisition of goods and services under this section.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 5, eff. Sept. 1, 1997.

Sec. 533.017. PARTICIPATION IN DEPARTMENT PURCHASING CONTRACTS OR GROUP PURCHASING PROGRAM. The department may allow a state agency, local agency, local mental health authority, or local mental retardation authority that expends public money to purchase goods or services in connection with providing or coordinating the provision of mental health or mental retardation services to purchase goods or services with the public money by participating in:

(1) a contract the department has made to purchase goods or services; or

(2) a group purchasing program established or designated by the department that offers discounts to providers of mental health or mental retardation services.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 5, eff. Sept. 1, 1997.

Sec. 533.018. SPECIAL OLYMPICS TEXAS ACCOUNT. (a) The Texas Department of Mental Health and Mental Retardation Special Olympics Texas account is a separate account in the general revenue fund. The account is composed of money deposited to the credit of the account under Section 502.2922, Transportation Code. Money in the account may be used only for the purposes of this section.

(b) The department administers the account. Annually, the department shall distribute the money deposited to the credit of the account to Special Olympics Texas to be used only to pay for costs associated with training and with area and regional competitions of the Special Olympics Texas.

Added by Acts 2001, 77th Leg., ch. 475, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF SERVICES

Sec. 533.031. DEFINITIONS. In this subchapter:

(1) "Elderly resident" means a person 65 years of age or older residing in a department facility.

(2) "Extended care unit" means a residential unit in a department facility that contains patients with chronic mental illness who require long-term care, maintenance, limited programming, and constant supervision.

(3) "Transitional living unit" means a residential unit that is designed for the primary purpose of facilitating the return of hard-to-place psychiatric patients with chronic mental illness from acute care units to the community through an array of services appropriate for those patients.

(4) "Commission" means the Health and Human Services Commission.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "ICF-MR and related waiver programs" includes ICF-MR Section 1915(c) waiver programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with mental retardation.

(7) "Section 1915(c) waiver program" means a federally funded Medicaid program of the state that is authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)).

(8) "Qualified service provider" means an entity that meets requirements for service providers established by the executive commissioner.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 478, Sec. 1, eff. June 16, 2007.

Sec. 533.032. LONG-RANGE PLANNING. (a) The department shall have a long-range plan covering at least six years that includes at least the provisions required by Sections 531.022 and 531.023, Government Code, and Chapter 2056, Government Code. The

plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons the department serves are met.

(b) In developing the plan, the department shall:

(1) solicit input from:

(A) local authorities for mental health and mental retardation;

(B) community representatives;

(C) consumers of mental health and mental retardation services, including consumers of campus-based and community-based services, and family members of consumers of those services; and

(D) other interested persons; and

(2) consider the report developed under Subsection (c).

(c) The department shall develop a report containing information and recommendations regarding the most efficient long-term use and management of the department's campus-based facilities. The report must:

(1) project future bed requirements for state schools and state hospitals;

(2) document the methodology used to develop the projection of future bed requirements;

(3) project maintenance costs for institutional facilities;

(4) recommend strategies to maximize the use of institutional facilities; and

(5) specify how each state school and state hospital will:

(A) serve and support the communities and consumers in its service area; and

(B) fulfill statewide needs for specialized services.

(d) In developing the report under Subsection (c), the department shall:

(1) conduct two public meetings, one meeting to be held at the beginning of the process and the second meeting to be

held at the end of the process, to receive comments from interested parties; and

(2) consider:

(A) the medical needs of the most medically fragile of its clients;

(B) the provision of services to clients with severe and profound mental retardation and to persons with mental retardation who are medically fragile or have behavioral problems;

(C) the program and service preference information collected under Section 533.038; and

(D) input solicited from consumers of services of state schools and state hospitals.

(e) The department shall develop a report analyzing state and federally funded residential services for persons with mental retardation. The report shall:

(1) determine any disparity in cost and quality outcomes achieved between services provided in state-operated programs, including but not limited to ICFs-MR and HCS, and the same or comparable services provided by private sector providers; and

(2) identify and quantify the reasons for any disparity that exists.

(f) The department, in preparing the report under Subsection (e), shall obtain ongoing input from stakeholders, including department staff, private providers, advocates, consumers, and family members of consumers.

(g) The department shall:

(1) attach the reports required by Subsections (c) and (e) to the department's legislative appropriations request for each biennium;

(2) at the time the department presents its legislative appropriations request, present the reports to the:

(A) governor;

(B) governor's budget office;

(C) lieutenant governor;

(D) speaker of the house of representatives;

(E) Legislative Budget Board; and

(F) Health and Human Services Commission; and

(3) update the department's long-range plan biennially and include the reports in the plan.

(h) The department shall, in coordination with the Health and Human Services Commission, evaluate the current and long-term costs associated with serving inpatient psychiatric needs of persons living in counties now served by at least three state hospitals within 120 miles of one another. This evaluation shall take into consideration the condition of the physical plants and other long-term asset management issues associated with the operation of the hospitals, as well as other issues associated with quality psychiatric care. After such determination is made, the Health and Human Services Commission shall begin to take action to influence the utilization of these state hospitals in order to ensure efficient service delivery.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 4, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(103), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1187, Sec. 5, eff. Sept. 1, 1999.

Sec. 533.0325. CONTINUUM OF SERVICES IN CAMPUS FACILITIES. The board by rule shall establish criteria regarding the uses of the department's campus-based facilities as part of a full continuum of services.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 6, eff. Sept. 1, 1999.

Sec. 533.033. DETERMINATION OF REQUIRED RANGE OF MENTAL HEALTH SERVICES. (a) Consistent with the purposes and policies of this subtitle, the commissioner biennially shall determine:

(1) the types of mental health services that can be most economically and effectively provided at the community level for persons exhibiting various forms of mental disability; and

(2) the types of mental health services that can be most economically and effectively provided by department facilities.

(b) In the determination, the commissioner shall assess the limits, if any, that should be placed on the duration of mental health services provided at the community level or at a department

facility.

(c) The department biennially shall review the types of services the department provides and shall determine if a community provider can provide services of a comparable quality at a lower cost than the department's costs.

(d) The commissioner's findings shall guide the department in planning and administering services for persons with mental illness.

(e) The commissioner shall report the commissioner's findings to the legislature, the Legislative Budget Board, and the governor's budget office with the department's biennial appropriations request.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES. (a) The department may cooperate, negotiate, and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based mental health and mental retardation services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.73, eff. Sept. 1, 2003.

Sec. 533.0345. STATE AGENCY SERVICES STANDARDS. (a) The department by rule shall develop model program standards for mental health and mental retardation services for use by each state agency that provides or pays for mental health or mental retardation services. The department shall provide the model standards to each agency that provides mental health or mental retardation services as identified by the Health and Human Services Commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of mental health and mental retardation services provided by or through a state agency.

(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service

delivery by state agencies.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 7, eff. Sept. 1, 1999.

Sec. 533.0346. AUTHORITY TO TRANSFER SERVICES TO COMMUNITY CENTERS. (a) The department may transfer operations of and services provided at the Amarillo State Center, Beaumont State Center, and Laredo State Center to a community center established under Chapter 534, including a newly established center providing mental retardation services or mental health and mental retardation services.

(b) The transfer may occur only on the department's approval of a plan submitted in accordance with Section 534.001(d) or of an amendment to a previously approved plan. In developing the plan or plan amendment, the center or proposed center proposing to accept the state center operation and service responsibilities shall consider input from consumers of mental health and mental retardation services and family members of and advocates for those consumers, organizations that represent affected employees, and other providers of mental health and mental retardation services.

(c) The center or proposed center proposing to accept the state center operation and service responsibilities shall publish notice of the initial planning meeting regarding the content of the plan or plan amendment and of the meeting to review the content of the proposed plan or plan amendment before it is submitted under Section 534.001(d). The notices must include the time and location of the meeting. The notice of the meeting to review the content of the plan or amendment must include information regarding how to obtain a copy of the proposed plan or amendment. The notices must be published not fewer than 30 days and not more than 90 days before the date set for the meeting in a newspaper of general circulation in each county containing any part of the proposed service area. If a county in which notice is required to be published does not have a newspaper of general circulation, the notices shall be published in a newspaper of general circulation in the nearest county in which a newspaper of general circulation is published.

(d) At the time the operations and services are transferred to the community center, money supporting the cost of providing

operations and services at a state center shall be transferred to the community center to ensure continuity of services.

(e) The Amarillo State Center is exempt from the requirements listed in Subsections (b) and (c).

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 7, eff. Sept. 1, 1999.

Sec. 533.035. LOCAL MENTAL HEALTH AND MENTAL RETARDATION AUTHORITIES. (a) The executive commissioner shall designate a local mental health authority and a local mental retardation authority in one or more local service areas. The executive commissioner may delegate to the local authorities the authority and responsibility of the executive commissioner, the commission, or a department of the commission related to planning, policy development, coordination, including coordination with criminal justice entities, resource allocation, and resource development for and oversight of mental health and mental retardation services in the most appropriate and available setting to meet individual needs in that service area. The executive commissioner may designate a single entity as the local mental health authority and the local mental retardation authority for a service area.

(b) The department by contract or other method of allocation, including a case-rate or capitated arrangement, may disburse to a local mental health and mental retardation authority department federal and department state funds to be spent in the local service area for:

(1) community mental health and mental retardation services; and

(2) chemical dependency services for persons who are dually diagnosed as having both chemical dependency and mental illness or mental retardation.

(b-1) This subsection expires September 1, 2009, and applies only to the determination of payment methodologies for mental health services and not to rate setting or the payment rates for intermediate care facilities for the mentally retarded, Section 1915(c) waiver programs, mental retardation service coordination, and other Medicaid services. Before the Department of State Health Services institutes a change in payment methodology for mental

health services, the department shall:

(1) evaluate various forms of payment for services, including fee-for-service, case rate, capitation, and other appropriate payment methods to determine the most cost-effective and efficient form of payment for services;

(2) evaluate the effect of each proposed payment methodology on:

(A) the availability of services in urban and rural service areas;

(B) the availability of services for persons who are indigent;

(C) the cost certainty of the delivery of Medicaid rehabilitation mental health services; and

(D) the ability of the local mental health authority to meet unique local needs and develop and manage a network of providers;

(3) determine the implementation and ongoing operational costs for the state and local mental health authorities associated with each proposed payment methodology;

(4) develop an implementation plan, with the advice and assistance of the local authority network advisory committee, for any new payment methodology for mental health services that integrates the department's findings under Subdivisions (1), (2), and (3); and

(5) report the department's findings and the implementation plan for any new payment methodology for mental health services to the executive commissioner and the legislature not later than January 1, 2009.

(c) A local mental health and mental retardation authority, with the approval of the Department of State Health Services or the Department of Aging and Disability Services, or both, as applicable, shall use the funds received under Subsection (b) to ensure mental health, mental retardation, and chemical dependency services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

(1) assembling a network of service providers;

(2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health or mental retardation services; and

(3) procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

(d) A local mental health and mental retardation authority shall demonstrate to the department that the services that the authority provides directly or through subcontractors and that involve state funds comply with relevant state standards.

(e) Subject to Section 533.0358, in assembling a network of service providers, a local mental health authority may serve as a provider of services only as a provider of last resort and only if the local authority demonstrates to the department in the local authority's local network development plan that:

(1) the local authority has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area; and

(2) there is not a willing provider of the relevant services in the local authority's service area or in the county where the provision of the services is needed.

(e-1) A local mental retardation authority may serve as a provider of ICF-MR and related waiver programs only if:

(1) the local authority complies with the limitations prescribed by Section 533.0355(d); or

(2) the ICF-MR and related waiver programs are necessary to ensure the availability of services and the local authority demonstrates to the commission that there is not a willing ICF-MR and related waiver program qualified service provider in the local authority's service area where the service is needed.

(f) Repealed by Acts 2007, 80th Leg., R.S., Ch. 478, Sec. 7, eff. June 16, 2007.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 478, Sec. 7, eff. June 16, 2007.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.03, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 869, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1209, Sec. 14, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.74, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 478, Sec. 2, eff. June 16, 2007.

Acts 2007, 80th Leg., R.S., Ch. 478, Sec. 7, eff. June 16, 2007.

Sec. 533.0351. LOCAL AUTHORITY NETWORK ADVISORY COMMITTEE.

(a) The executive commissioner shall establish a local authority network advisory committee to advise the executive commissioner and the Department of State Health Services on technical and administrative issues that directly affect local mental health authority responsibilities.

(b) The committee is composed of equal numbers of representatives of local mental health authorities, community mental health service providers, private mental health service providers, local government officials, advocates for individuals with mental health needs, consumers of mental health services, family members of individuals with mental health needs, and other individuals with expertise in the field of mental health appointed by the executive commissioner. In addition, the executive commissioner may appoint facilitators to the committee as necessary. In appointing the members, the executive commissioner shall also ensure a balanced representation of:

- (1) different regions of this state;
- (2) rural and urban counties; and
- (3) single-county and multicounty local mental health authorities.

(c) Members appointed to the advisory committee must have some knowledge of, familiarity with, or understanding of the day-to-day operations of a local mental health authority.

(d) The advisory committee shall:

(1) review rules and proposed rules and participate in any negotiated rulemaking process related to local mental health authority operations;

(2) advise the executive commissioner and the Department of State Health Services regarding evaluation and coordination of initiatives related to local mental health authority operations;

(3) advise the executive commissioner and the Department of State Health Services in developing a method of contracting with local mental health authorities that will result in contracts that are flexible and responsive to:

(A) the needs and services of local communities;
and

(B) the department's performance expectations;

(4) coordinate with work groups whose actions may affect local mental health authority operations;

(5) report to the executive commissioner and the Department of State Health Services on the committee's activities and recommendations at least once each fiscal quarter; and

(6) work with the executive commissioner or the Department of State Health Services as the executive commissioner directs.

(e) For any written recommendation the committee makes to the Department of State Health Services, the department shall provide to the committee a written response regarding any action taken on the recommendation or the reasons for the department's inaction on the subject of the recommendation.

(f) The committee is subject to Chapter 2110, Government Code, except that the committee is not subject to Section 2110.004 or 2110.008, Government Code. The committee is abolished on September 1, 2017, unless the executive commissioner adopts a rule continuing the committee in existence beyond that date.

(g) The Department of State Health Services may reimburse consumers of mental health services and family members of individuals with mental health needs appointed to the committee for travel costs incurred in performing their duties as provided in the

General Appropriations Act.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 8, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1158, Sec. 79, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 478, Sec. 3, eff. June 16, 2007.

Sec. 533.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE AREA. (a) Each local mental health or mental retardation authority shall develop a local service area plan to maximize the authority's services by using the best and most cost-effective means of using federal, state, and local resources to meet the needs of the local community according to the relative priority of those needs. Each local mental health or mental retardation authority shall undertake to maximize federal funding.

(b) A local service area plan must be consistent with the purposes, goals, and policies stated in Section 531.001 and the department's long-range plan developed under Section 533.032.

(c) The department and a local mental health or mental retardation authority shall use the local authority's local service plan as the basis for contracts between the department and the local authority and for establishing the local authority's responsibility for achieving outcomes related to the needs and characteristics of the authority's local service area.

(d) In developing the local service area plan, the local mental health or mental retardation authority shall:

(1) solicit information regarding community needs from:

(A) representatives of the local community;

(B) consumers of community-based mental health and mental retardation services and members of the families of those consumers;

(C) consumers of services of state schools for persons with mental retardation, members of families of those consumers, and members of state school volunteer services councils, if a state school is located in the local service area of the local

authority; and

(D) other interested persons; and

(2) consider:

(A) criteria for assuring accountability for, cost-effectiveness of, and relative value of service delivery options;

(B) goals to minimize the need for state hospital and community hospital care;

(C) goals to ensure a client with mental retardation is placed in the least restrictive environment appropriate to the person's care;

(D) opportunities for innovation to ensure that the local authority is communicating to all potential and incoming consumers about the availability of services of state schools for persons with mental retardation in the local service area of the local authority;

(E) goals to divert consumers of services from the criminal justice system;

(F) goals to ensure that a child with mental illness remains with the child's parent or guardian as appropriate to the child's care; and

(G) opportunities for innovation in services and service delivery.

(e) The department and the local mental health or mental retardation authority by contract shall enter into a performance agreement that specifies required standard outcomes for the programs administered by the local authority. Performance related to the specified outcomes must be verifiable by the department. The performance agreement must include measures related to the outputs, costs, and units of service delivered. Information regarding the outputs, costs, and units of service delivered shall be recorded in the local authority's automated data systems, and reports regarding the outputs, costs, and units of service delivered shall be submitted to the department at least annually as provided by department rule.

(f) The department and the local mental health or mental retardation authority shall provide an opportunity for community

centers and advocacy groups to provide information or assistance in developing the specified performance outcomes under Subsection (e).

Added by Acts 2003, 78th Leg., ch. 358, Sec. 1, eff. June 18, 2003.

Renumbered from Health and Safety Code, Section 533.0354 by Acts 2005, 79th Leg., Ch. 728, Sec. 23.001(52), eff. September 1, 2005.

Sec. 533.03521. LOCAL NETWORK DEVELOPMENT PLAN CREATION AND APPROVAL. (a) A local mental health authority shall develop a local network development plan regarding the configuration and development of the local mental health authority's provider network. The plan must reflect local needs and priorities and maximize consumer choice and access to qualified service providers.

(b) The local mental health authority shall submit the local network development plan to the Department of State Health Services for approval.

(c) On receipt of a local network development plan under this section, the department shall review the plan to ensure that the plan:

(1) complies with the criteria established by Section 533.0358 if the local mental health authority is providing services under that section; and

(2) indicates that the local mental health authority is reasonably attempting to solicit the development of a provider base that is:

(A) available and appropriate; and

(B) sufficient to meet the needs of consumers in the local authority's local service area.

(d) If the department determines that the local network development plan complies with Subsection (c), the department shall approve the plan.

(e) At least biennially, the department shall review a local mental health authority's local network development plan and determine whether the plan complies with Subsection (c).

(f) As part of a local network development plan, a local mental health authority annually shall post on the local authority's website a list of persons with whom the local authority

had a contract or agreement in effect during all or part of the previous year, or on the date the list is posted, related to the provision of mental health services.

Added by Acts 2007, 80th Leg., R.S., Ch. 478, Sec. 4, eff. June 16, 2007.

Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES. (a) A local mental health authority shall ensure the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for adults with bipolar disorder, schizophrenia, or clinically severe depression and for children with serious emotional illnesses. The local mental health authority shall ensure that individuals are engaged with treatment services that are:

(1) ongoing and matched to the needs of the individual in type, duration, and intensity;

(2) focused on a process of recovery designed to allow the individual to progress through levels of service;

(3) guided by evidence-based protocols and a strength-based paradigm of service; and

(4) monitored by a system that holds the local authority accountable for specific outcomes, while allowing flexibility to maximize local resources.

(b) The department shall require each local mental health authority to incorporate jail diversion strategies into the authority's disease management practices for managing adults with schizophrenia and bipolar disorder to reduce the involvement of those client populations with the criminal justice system.

(c) The department shall enter into performance contracts between the department and each local mental health authority for the fiscal years ending August 31, 2004, and August 31, 2005, that specify measurable outcomes related to their success in using disease management practices to meet the needs of the target populations.

(d) The department shall study the implementation of disease management practices, including the jail diversion

measures, and shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report on the progress in implementing disease management practices and jail diversion measures by local mental health authorities. The report must be delivered not later than December 31, 2004, and must include specific information on:

(1) the implementation of jail diversion measures undertaken; and

(2) the effect of disparities in per capita funding levels among local mental health authorities on the implementation and effectiveness of disease management practices and jail diversion measures.

(e) The department may use the fiscal year ending August 31, 2004, as a transition period for implementing the requirements of Subsections (a)-(c).

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.75, eff. Sept. 1, 2003.

Sec. 533.0355. LOCAL MENTAL RETARDATION AUTHORITY RESPONSIBILITIES. (a) The executive commissioner shall adopt rules establishing the roles and responsibilities of local mental retardation authorities.

(b) In adopting rules under this section, the executive commissioner must include rules regarding the following local mental retardation authority responsibilities:

- (1) access;
- (2) intake;
- (3) eligibility functions;
- (4) enrollment, initial person-centered assessment, and service authorization;
- (5) utilization management;
- (6) safety net functions, including crisis management services and assistance in accessing facility-based care;
- (7) service coordination functions;
- (8) provision and oversight of state general revenue services;
- (9) local planning functions, including stakeholder

involvement, technical assistance and training, and provider complaint and resolution processes; and

(10) processes to assure accountability in performance, compliance, and monitoring.

(c) In determining eligibility under Subsection (b)(3), a local mental retardation authority must offer a state school as an option among the residential services and other community living options available to an individual who is eligible for those services and who meets the department's criteria for state school admission, regardless of whether other residential services are available to the individual.

(d) In establishing a local mental retardation authority's role as a qualified service provider of ICF-MR and related waiver programs under Section 533.035(e-1), the executive commissioner shall require the local mental retardation authority to:

(1) base the local authority's provider capacity on the local authority's August 2004 enrollment levels for the waiver programs the local authority operates and, if the local authority's enrollment levels exceed those levels, to reduce the levels by attrition; and

(2) base any increase in the local authority's provider capacity on:

(A) the local authority's state-mandated conversion from an ICF-MR program to a Section 1915(c) waiver program allowing for a permanent increase in the local authority's provider capacity in accordance with the number of persons who choose the local authority as their provider;

(B) the local authority's voluntary conversion from an ICF-MR program to a Section 1915(c) waiver program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider;

(C) the local authority's refinancing from services funded solely by state general revenue to a Medicaid program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their

provider; or

(D) other extenuating circumstances that:

(i) are monitored and approved by the Department of Aging and Disability Services;

(ii) do not include increases that unnecessarily promote the local authority's provider role over its role as a local mental retardation authority; and

(iii) may include increases necessary to accommodate a family-specific or consumer-specific circumstance and choice.

(e) Any increase based on extenuating circumstances under Subsection (d)(2)(D) is considered a temporary increase in the local mental retardation authority's provider capacity, to be reduced by attrition.

(f) At least biennially, the Department of Aging and Disability Services shall review and determine the local mental retardation authority's status as a qualified service provider in accordance with criteria that includes the consideration of the local authority's ability to assure the availability of services in its area, including:

(1) program stability and viability;

(2) the number of other qualified service providers in the area; and

(3) the geographical area in which the local authority is located.

(g) The Department of Aging and Disability Services shall ensure that local services delivered further the following goals:

(1) to provide individuals with the information, opportunities, and support to make informed decisions regarding the services for which the individual is eligible;

(2) to respect the rights, needs, and preferences of an individual receiving services; and

(3) to integrate individuals with mental retardation and developmental disabilities into the community in accordance with relevant independence initiatives and permanency planning laws.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.76, eff. Sept. 1,

2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 478, Sec. 5, eff. June 16, 2007.

Sec. 533.0356. LOCAL BEHAVIORAL HEALTH AUTHORITIES.

(a) In this section, "commission" means the Texas Commission on Alcohol and Drug Abuse.

(b) The department and the commission jointly may designate a local behavioral health authority in a local service area to provide mental health and chemical dependency services in that area. The board and the commission may delegate to an authority designated under this section the authority and responsibility for planning, policy development, coordination, resource allocation, and resource development for and oversight of mental health and chemical dependency services in that service area. An authority designated under this section has:

(1) all the responsibilities and duties of a local mental health authority provided by Section 533.035 and by Subchapter B, Chapter 534; and

(2) the responsibility and duty to ensure that chemical dependency services are provided in the service area as described by the statewide service delivery plan adopted under Section 461.0124.

(c) In the planning and implementation of services, the authority shall give proportionate priority to mental health services and chemical dependency services that ensures that funds purchasing services are used in accordance with specific regulatory and statutory requirements that govern the respective funds.

(d) A local mental health authority may apply to the department and commission for designation as a local behavioral health authority.

(e) The department and commission, by contract or by a case-rate or capitated arrangement or another method of allocation, may disburse money, including federal money, to a local behavioral health authority for services.

(f) A local behavioral health authority, with the approval

of the department or the commission as provided by contract, shall use money received under Subsection (e) to ensure that mental health and chemical dependency services are provided in the local service area at the same level as the level of services previously provided through:

- (1) the local mental health authority; and
- (2) the commission.

(g) In determining whether to designate a local behavioral health authority for a service area and in determining the functions of the authority if designated, the department and commission shall solicit and consider written comments from any interested person including community representatives, persons who are consumers of the proposed services of the authority, and family members of those consumers.

(h) An authority designated under this section shall demonstrate to the department and the commission that services involving state funds that the authority oversees comply with relevant state standards.

(i) The board and the commission jointly may adopt rules to govern the operations of local behavioral health authorities. The department and the commission jointly may assign the local behavioral health authority the duty of providing a single point of entry for mental health and chemical dependency services.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 9, eff. Sept. 1, 1999.

Sec. 533.0357. BEST PRACTICES CLEARINGHOUSE FOR LOCAL MENTAL HEALTH AUTHORITIES. (a) In coordination with local mental health authorities, the department shall establish an online clearinghouse of information relating to best practices of local mental health authorities regarding the provision of mental health services, development of a local provider network, and achievement of the best return on public investment in mental health services.

(b) The department shall solicit and collect from local mental health authorities that meet established outcome and performance measures, community centers, consumers and advocates with expertise in mental health or in the provision of mental health services, and other local entities concerned with mental health

issues examples of best practices related to:

- (1) developing and implementing a local network development plan;
- (2) assembling and expanding a local provider network to increase consumer choice;
- (3) creating and enforcing performance standards for providers;
- (4) managing limited resources;
- (5) maximizing available funding;
- (6) producing the best client outcomes;
- (7) ensuring consumers of mental health services have control over decisions regarding their health;
- (8) developing procurement processes to protect public funds;
- (9) achieving the best mental health consumer outcomes possible; and
- (10) implementing strategies that effectively incorporate consumer and family involvement to develop and evaluate the provider network.

(c) The department may contract for the services of one or more contractors to develop, implement, and maintain a system of collecting and evaluating the best practices of local mental health authorities as provided by this section.

(d) The department shall encourage local mental health authorities that successfully implement best practices in accordance with this section to mentor local mental health authorities that have service deficiencies.

(e) Before the executive commissioner may remove a local mental health authority's designation under Section 533.035(a) as a local mental health authority, the executive commissioner shall:

- (1) assist the local mental health authority in attaining training and mentorship in using the best practices established in accordance with this section; and
- (2) track and document the local mental health authority's improvements in the provision of service or continued service deficiencies.

(f) Subsection (e) does not apply to the removal of a local

mental health authority's designation initiated at the request of a local government official who has responsibility for the provision of mental health services.

(g) The department shall implement this section using only existing resources.

(h) The Department of State Health Services shall ensure that a local mental health authority providing best practices information to the department or mentoring another local mental health authority complies with Section 533.03521(f).

Added by Acts 2007, 80th Leg., R.S., Ch. 478, Sec. 6, eff. June 16, 2007.

Sec. 533.0358. LOCAL MENTAL HEALTH AUTHORITY'S PROVISION OF SERVICES AS PROVIDER OF LAST RESORT. (a) A local mental health authority may serve as a provider of services under Section 533.035(e) only if, through the local network development plan process, the local authority determines that at least one of the following applies:

(1) interested qualified service providers are not available to provide services or no service provider meets the local authority's procurement requirements;

(2) the local authority's network of providers does not provide a minimum level of consumer choice by:

(A) presenting consumers with two or more qualified service providers in the local authority's network for service packages; and

(B) presenting consumers with two or more qualified service providers in the local authority's network for specific services within a service package;

(3) the local authority's provider network does not provide consumers in the local service area with access to services at least equal to the level of access provided as of a date the executive commissioner specifies;

(4) the combined volume of services delivered by qualified service providers in the local network does not meet all of the local authority's service capacity for each service package identified in the local network development plan;

(5) the performance of the services by the local authority is necessary to preserve critical infrastructure and ensure continuous provision of services; or

(6) existing contracts or other agreements restrict the local authority from contracting with qualified service providers for services in the local network development plan.

(b) If a local mental health authority continues to provide services in accordance with this section, the local authority shall identify in the local authority's local network development plan:

(1) the proportion of its local network services that the local authority will provide; and

(2) the local authority's basis for its determination that the local authority must continue to provide services.

Added by Acts 2007, 80th Leg., R.S., Ch. 478, Sec. 6, eff. June 16, 2007.

Sec. 533.0359. RULEMAKING FOR LOCAL MENTAL HEALTH AUTHORITIES. (a) In developing rules governing local mental health authorities under Sections 533.035, 533.0351, 533.03521, 533.0357, and 533.0358, the executive commissioner shall use rulemaking procedures under Subchapter B, Chapter 2001, Government Code.

(b) The executive commissioner by rule shall prohibit a trustee or employee of a local mental health authority from soliciting or accepting from another person a benefit, including a security or stock, a gift, or another item of value, that is intended to influence the person's conduct of authority business.

Added by Acts 2007, 80th Leg., R.S., Ch. 478, Sec. 6, eff. June 16, 2007.

Sec. 533.036. REPORT ON APPLICATION FOR SERVICES. (a) The department shall collect information relating to each application for residential and nonresidential services provided by the department or a mental retardation authority and the department's or authority's response to the application.

(b) The information must include:

(1) the applicant's age, diagnosis, and legal status;

(2) the date on which the department or authority receives the application; and

(3) the date on which the department or authority acts on the application.

(c) The department shall use the information to prepare for the board an annual report on the applications and their disposition. The department may not include information in the report that would disclose an applicant's identity.

(d) The board shall submit copies of the report to the legislature not later than October 1 of each year.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS.

(a) The department may provide mental health and mental retardation services through halfway houses, sheltered workshops, community centers, and other mental health and mental retardation services programs.

(b) The department may operate or contract for the provision of part or all of the sheltered workshop services and may contract for the sale of goods produced and services provided by a sheltered workshop program. The goods and services may be sold for cash or on credit.

(c) An operating fund may be established for each sheltered workshop the department operates. Each operating fund must be in a national or state bank that is a member of the Federal Deposit Insurance Corporation.

(d) Money derived from gifts or grants received for sheltered workshop purposes and the proceeds from the sale of sheltered workshop goods and services shall be deposited to the credit of the operating fund. The money in the fund may be spent only in the operation of the sheltered workshop to:

(1) purchase supplies, materials, services, and equipment;

(2) pay salaries of and wages to participants and employees;

(3) construct, maintain, repair, and renovate facilities and equipment; and

(4) establish and maintain a petty cash fund of not more than \$100.

(e) Money in an operating fund that is used to pay salaries of and wages to participants in the sheltered workshop program is money the department holds in trust for the participants' benefit.

(f) This section does not affect the authority or jurisdiction of a community center as prescribed by Chapter 534. Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.038. FACILITIES AND SERVICES FOR CLIENTS WITH MENTAL RETARDATION. (a) The department may designate all or any part of a department facility as a special facility for the diagnosis, special training, education, supervision, treatment, care, or control of clients with mental retardation.

(b) The department may specify the facility in which a client with mental retardation under the department's jurisdiction is placed.

(c) The department may maintain day classes at a department facility for the convenience and benefit of clients with mental retardation of the community in which the facility is located and who are not capable of enrollment in a public school system's regular or special classes.

(d) A person with mental retardation, or a person's legally authorized representative, seeking residential services shall receive a clear explanation of programs and services for which the person is determined to be eligible, including state schools, community ICF-MR programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services. The preferred programs and services chosen by the person or the person's legally authorized representative shall be documented in the person's record. If the preferred programs or services are not available, the person or the person's legally authorized representative shall be given assistance in gaining access to alternative services and the selected waiting list.

(e) The department shall ensure that the information regarding program and service preferences collected under Subsection (d) is documented and maintained in a manner that

permits the department to access and use the information for planning activities conducted under Section 533.032.

(f) The department may spend money appropriated for the state school system only in accordance with limitations imposed by the General Appropriations Act.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1999, 76th Leg., ch. 1187, Sec. 10, eff. Sept. 1, 1999.

Sec. 533.039. CLIENT SERVICES OMBUDSMAN. (a) The commissioner shall employ an ombudsman responsible for assisting a person, or a parent or guardian of a person, who has been denied service by the department, a department program or facility, or a local mental health or mental retardation authority.

(b) The ombudsman shall:

(1) explain and provide information on department and local mental health or mental retardation authority services, facilities, and programs and the rules, procedures, and guidelines applicable to the person denied services; and

(2) assist the person in gaining access to an appropriate program or in placing the person on an appropriate waiting list.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 11, eff. Sept. 1, 1999.

Sec. 533.040. SERVICES FOR CHILDREN AND YOUTH. (a) The department shall ensure the development of programs and the expansion of services at the community level for children with mental illness or mental retardation, or both, and for their families. The department shall:

(1) prepare and review budgets for services for children;

(2) develop departmental policies relating to children's programs and service delivery; and

(3) increase interagency coordination activities to enhance the provision of services for children.

(b) The department shall designate an employee authorized

in the department's schedule of exempt positions to be responsible for planning and coordinating services and programs for children and youth. The employee shall perform budget and policy review and provide interagency coordination of services for children and youth.

(c) The department shall designate an employee as a youth suicide prevention officer. The officer shall serve as a liaison to the Texas Education Agency and public schools on matters relating to the prevention of and response to suicide or attempted suicide by public school students.

(d) The department and the Interagency Council on Early Childhood Intervention shall:

(1) jointly develop:

(A) a continuum of care for children younger than seven years of age who have mental illness; and

(B) a plan to increase the expertise of the department's service providers in mental health issues involving children younger than seven years of age; and

(2) coordinate, if practicable, department and council activities and services involving children with mental illness and their families.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.46, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 57, Sec. 1, eff. May 15, 2003.

Sec. 533.041. SERVICES FOR EMOTIONALLY DISTURBED CHILDREN AND YOUTH. (a) At each department mental health facility, the department shall make short-term evaluation and diagnostic services available for emotionally disturbed children and youth who are referred to the department by the Texas Department of Human Services if evaluation and diagnostic services for the children and youth are not immediately available through a local mental health authority.

(b) The Texas Department of Human Services may pay for the services according to fees jointly agreed to by both agencies. The department may use payments received under the agreement to contract for community-based residential placements for

emotionally disturbed children and youth.

(c) The department shall maintain computerized information on emotionally disturbed children and youth that contains both individual and aggregate information. The purpose of the information is to allow the department to track services and placements and to conduct research on the treatment of the children and youth. The department may coordinate activities with the Texas Department of Human Services in developing the information. The department shall make the information available to the department's mental health facilities and to community centers.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY TRAINING. (a) The department, the Texas Department of Human Services, the Texas Youth Commission, the Texas Juvenile Probation Commission, and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the agencies involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families. The memorandum must:

(1) outline the responsibility of each agency in coordinating and developing a plan for interagency training on individualized assessment and effective intervention and treatment services for children and dysfunctional families; and

(2) provide for the establishment of an interagency task force to:

(A) develop a training program to include identified competencies, content, and hours for completion of the training with at least 20 hours of training required each year until the program is completed;

(B) design a plan for implementing the program, including regional site selection, frequency of training, and selection of experienced clinical public and private professionals or consultants to lead the training;

(C) monitor, evaluate, and revise the training program, including the development of additional curricula based on

future training needs identified by staff and professionals; and

(D) submit a report to the governor, lieutenant governor, and speaker of the house of representatives by October 15 of each even-numbered year.

(b) The task force consists of:

(1) one clinical professional and one training staff member from each agency, appointed by that agency; and

(2) 10 private sector clinical professionals with expertise in dealing with troubled children, youth, and dysfunctional families, two of whom are appointed by each agency.

(c) The task force shall meet at the call of the department.

(d) The department shall act as the lead agency in coordinating the development and implementation of the memorandum.

(e) The agencies shall review and by rule revise the memorandum not later than August each year.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.04, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.47, eff. Sept. 1, 1997.

Sec. 533.042. EVALUATION OF ELDERLY RESIDENTS. (a) The department shall evaluate each elderly resident at least annually to determine if the resident can be appropriately served in a less restrictive setting.

(b) The department shall consider the proximity to the resident of family, friends, and advocates concerned with the resident's well-being in determining whether the resident should be moved from a department facility or to a different department facility. The department shall recognize that a nursing home may not be able to meet the special needs of an elderly resident.

(c) In evaluating an elderly resident under this section and to ensure appropriate placement, the department shall identify the special needs of the resident, the types of services that will best meet those needs, and the type of facility that will best provide those services.

(d) The treating physician shall conduct the evaluation of an elderly resident of a department mental health facility. The appropriate interdisciplinary team shall conduct the evaluation of

an elderly resident of a department mental retardation facility.

(e) The department shall attempt to place an elderly resident in a less restrictive setting if the department determines that the resident can be appropriately served in that setting. The department shall coordinate the attempt with the local mental health and mental retardation authority.

(f) A local mental health or mental retardation authority shall provide continuing care for an elderly resident placed in the authority's service area under this section.

(g) The local mental health or mental retardation authority shall have the right of access to all residents and records of residents who request continuing care services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 5, eff. Aug. 30, 1993.

Sec. 533.043. PROPOSALS FOR GERIATRIC, EXTENDED, AND TRANSITIONAL CARE. (a) The department shall solicit proposals from community providers to operate:

(1) community residential programs that will provide at least the same services that an extended care unit provides for the population the provider proposes to serve; or

(2) transitional living units that will provide at least the same services that the department traditionally provides in facility-based transitional care units.

(b) The department shall solicit proposals from community providers to operate community residential programs for elderly residents at least every two years.

(c) A proposal for extended care services may be designed to serve all or part of an extended care unit's population.

(d) A proposal to operate transitional living units may provide that the community provider operate the transitional living unit in a community setting or on the grounds of a department facility.

(e) The department shall require each provider to:

(1) offer adequate assurances of ability to:

(A) provide the required services;

(B) meet department standards; and
(C) safeguard the safety and well-being of each resident; and

(2) sign a memorandum of agreement with the local mental health or mental retardation authority, as appropriate, outlining the responsibilities for continuity of care and monitoring, if the provider is not the local authority.

(f) The department may fund a proposal through a contract if the provider agrees to meet the requirements prescribed by Subsection (e) and agrees to provide the services at a cost that is equal to or less than the cost to the department to provide the services.

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

(h) The department is responsible for the care of a patient in an extended care program funded under this section. The department may terminate a contract for extended care services if the program ends or does not provide the required services. The department shall provide the services or find another program to provide the services if the department terminates a contract.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.044. MEMORANDUM OF UNDERSTANDING ON ASSESSMENT TOOLS. (a) The department and Texas Department of Human Services by rule shall adopt a joint memorandum of understanding that requires the use of a uniform assessment tool to assess whether an elderly person, a person with mental retardation, a person with a developmental disability, or a person who is suspected of being a person with mental retardation or a developmental disability and who is receiving services in a facility regulated or operated by the department or Texas Department of Human Services needs a guardian of the person or estate, or both.

(b) The memorandum must prescribe:

- (1) the facilities that must use the assessment; and
- (2) the circumstances in which the facilities must use

the assessment.

(c) Each agency shall review and modify the memorandum as necessary not later than the last month of each state fiscal year. Added by Acts 1993, 73rd Leg., ch. 905, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 798, Sec. 4, eff. Aug. 28, 1995.

Sec. 533.045. USE OF CERTAIN DRUGS FOR CERTAIN PATIENTS.

(a) The department may place on a clozapine treatment plan each patient in a state hospital for whom the treatment is medically feasible and appropriate. The department may place a patient on a treatment plan using a drug other than clozapine if the drug produces results that are similar to or better than clozapine in treating schizophrenics.

(b) If a patient in a state hospital responds to a treatment plan required or authorized by Subsection (a) to the extent that the patient can be discharged from the hospital, the department may:

(1) assist the patient in applying for disability benefits and for Medicaid if the patient is potentially eligible;

(2) place the patient in a community setting with continuing drug treatments and with medical monitoring;

(3) provide or ensure that the patient is provided supportive housing, rehabilitation services, and job placement, as appropriate; and

(4) provide outpatient care at state hospitals or require a local mental health authority to provide outpatient care, as appropriate.

(c) The department may use facility beds vacated by patients discharged through the use of a treatment plan allowed by Subsection (a) for other appropriate uses.

Added by Acts 1993, 73rd Leg., ch. 973, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 533.044 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(31), eff. Sept. 1, 1995.

Sec. 533.046. FEDERAL FUNDING FOR MENTAL HEALTH SERVICES FOR CHILDREN AND FAMILIES. (a) The department shall enter into an interagency agreement with the Texas Department of Human Services

to:

(1) amend the eligibility requirements of the state's emergency assistance plan under Title IV-A, Social Security Act (42 U.S.C. Section 601 et seq.), to include mental health emergencies; and

(2) prescribe the procedures the agencies will use to delegate to the department and to local mental health and mental retardation authorities the administration of mental health emergency assistance.

(b) The interagency agreement must provide that:

(1) the department certify to the Texas Department of Human Services the nonfederal expenditures for which the state will claim federal matching funds; and

(2) the Texas Department of Human Services retain responsibility for making final eligibility decisions.

(c) The department shall allocate to local mental health and mental retardation authorities 66 percent of the federal funds received under this section.

Added by Acts 1995, 74th Leg., ch. 373, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 655, Sec. 6.07, eff. Sept. 1, 1995.

Sec. 533.047. MANAGED CARE ORGANIZATIONS: MEDICAID PROGRAM. The department shall develop performance, operation, quality of care, marketing, and financial standards for the provision by managed care organizations of mental health and mental retardation services to Medicaid clients.

Added by Acts 1995, 74th Leg., ch. 574, Sec. 2, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 533.045 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(59), eff. Sept. 1, 1997.

Sec. 533.048. GUARDIANSHIP ADVISORY COMMITTEE. (a) In this section, "institution" means:

(1) an ICF-MR; or

(2) a state hospital, state school, or state center maintained and managed by the department.

(b) The commissioner shall appoint a guardianship advisory committee composed of nine members, five of whom must be parents of

residents of institutions.

(c) The commissioner shall designate a member of the advisory committee to serve as presiding officer. The members of the advisory committee shall elect any other necessary officers.

(d) The advisory committee shall meet at the call of the presiding officer.

(e) A member of the advisory committee serves at the will of the commissioner.

(f) A member of the advisory committee may not receive compensation for serving on the advisory committee but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the advisory committee as provided by the General Appropriations Act.

(g) The advisory committee shall develop a plan and make specific recommendations to the department regarding methods to facilitate the appointment of relatives of residents of institutions as guardians of those residents to make decisions regarding appropriate care settings for the residents.

Added by Acts 2001, 77th Leg., ch. 1239, Sec. 5, eff. Sept. 1, 2001.

Sec. 533.049. PRIVATIZATION OF STATE SCHOOL. (a) After August 31, 2004, and before September 1, 2005, the department may contract with a private service provider to operate a state school only if:

(1) the Health and Human Services Commission determines that the private service provider will operate the state school at a cost that is at least 25 percent less than the cost to the department to operate the state school;

(2) the Health and Human Services Commission approves the contract;

(3) the private service provider is required under the contract to operate the school at a quality level at least equal to the quality level achieved by the department when the department operated the school, as measured by the school's most recent applicable ICF-MR survey; and

(4) the state school, when operated under the contract, treats a population with the same characteristics and

need levels as the population treated by the state school when operated by the department.

(b) On or before April 1, 2004, the department shall report to the commissioner of health and human services whether the department has received a proposal by a private service provider to operate a state school. The report must include an evaluation of the private service provider's qualifications, experience, and financial strength, a determination of whether the provider can operate the state school under the same standard of care as the department, and an analysis of the projected savings under a proposed contract with the provider. The savings analysis must include all department costs to operate the state school, including costs, such as employee benefits, that are not appropriated to the department.

(c) If the department contracts with a private service provider to operate a state school, the department, the Governor's Office of Budget and Planning, and the Legislative Budget Board shall identify sources of funding that must be transferred to the department to fund the contract.

(d) The department may renew a contract under this section. The conditions listed in Subsections (a)(1)-(3) apply to the renewal of the contract.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.77(a), eff. Sept. 1, 2004.

Sec. 533.050. PRIVATIZATION OF STATE MENTAL HOSPITAL.

(a) After August 31, 2004, and before September 1, 2005, the department may contract with a private service provider to operate a state mental hospital owned by the department only if:

(1) the Health and Human Services Commission determines that the private service provider will operate the hospital at a cost that is at least 25 percent less than the cost to the department to operate the hospital;

(2) the Health and Human Services Commission approves the contract;

(3) the hospital, when operated under the contract, treats a population with the same characteristics and acuity levels

as the population treated at the hospital when operated by the department; and

(4) the private service provider is required under the contract to operate the hospital at a quality level at least equal to the quality level achieved by the department when the department operated the hospital, as measured by the hospital's most recent applicable accreditation determination from the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

(b) On or before April 1, 2004, the department shall report to the commissioner of health and human services whether the department has received a proposal by a private service provider to operate a state mental hospital. The report must include an evaluation of the private service provider's qualifications, experience, and financial strength, a determination of whether the provider can operate the hospital under the same standard of care as the department, and an analysis of the projected savings under a proposed contract with the provider. The savings analysis must include all department costs to operate the hospital, including costs, such as employee benefits, that are not appropriated to the department.

(c) If the department contracts with a private service provider to operate a state mental hospital, the department, the Governor's Office of Budget and Planning, and the Legislative Budget Board shall identify sources of funding that must be transferred to the department to fund the contract.

(d) The department may renew a contract under this section. The conditions listed in Subsections (a)(1)-(3) apply to the renewal of the contract.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.78(a), eff. Sept. 1, 2004.

SUBCHAPTER C. POWERS AND DUTIES RELATING TO ICF-MR PROGRAM

Sec. 533.062. PLAN ON LONG-TERM CARE FOR PERSONS WITH MENTAL RETARDATION. (a) The department shall biennially develop a proposed plan on long-term care for persons with mental retardation.

(b) The proposed plan must specify the capacity of the HCS

waiver program for persons with mental retardation and the number and levels of new ICF-MR beds to be authorized in each region. In developing the proposed plan, the department shall consider:

- (1) the needs of the population to be served;
- (2) projected appropriation amounts for the biennium;

and

- (3) the requirements of applicable federal law.

(c) Each proposed plan shall cover the subsequent fiscal biennium. The department shall conduct a public hearing on the proposed plan. Not later than July 1 of each even-numbered year, the department shall submit the plan to the Health and Human Services Commission for approval.

(d) The Health and Human Services Commission may modify the proposed plan as necessary before its final approval. In determining the appropriate number of ICF-MR facilities for persons with a related condition, the department and the Health and Human Services Commission shall consult with the Texas Department of Human Services.

(e) The Health and Human Services Commission shall submit the proposed plan as part of the consolidated health and human services budget recommendation required under Section 13, Article 4413(502), Revised Statutes.

(f) After legislative action on the appropriation for long-term care services for persons with mental retardation, the Health and Human Services Commission shall adjust the plan to ensure that the number of ICF-MR beds licensed or approved as meeting license requirements and the capacity of the HCS waiver program are within appropriated funding amounts.

(g) After any necessary adjustments, the Health and Human Services Commission shall approve the final biennial plan and publish the plan in the Texas Register.

(h) The department may submit proposed amendments to the plan to the Health and Human Services Commission.

(i) In this section, "HCS waiver program" means services under the state Medicaid home and community-based services waiver program for persons with mental retardation adopted in accordance with 42 U.S.C. Section 1396n(c).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.06, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 646, Sec. 6, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 747, Sec. 27, eff. Sept. 1, 1993.

Sec. 533.063. REVIEW OF ICF-MR RULES. (a) The department and the Texas Department of Human Services shall meet as necessary to discuss proposed changes in the rules or the interpretation of the rules that govern the ICF-MR program.

(b) The departments shall jointly adopt a written policy interpretation letter that describes the proposed change and shall make a copy of the letter available to providers.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.097, eff. Sept. 1, 1995.

Sec. 533.065. ICF-MR APPLICATION CONSOLIDATION LIST.

(a) The department shall maintain a consolidated list of applications for certification for participation in the ICF-MR program.

(b) The department shall list the applications in descending order using the date on which the department received the completed application.

(c) The department shall approve applications in the order in which the applications are listed.

(d) The department shall notify the Texas Department of Human Services of each application for a license or for compliance with licensing standards the department approves.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.098, eff. Sept. 1, 1995.

Sec. 533.066. INFORMATION RELATING TO ICF-MR PROGRAM.

(a) At least annually, the department and the Texas Department of Human Services shall jointly sponsor a conference on the ICF-MR program to:

- (1) assist providers in understanding survey rules;

(2) review deficiencies commonly found in ICF-MR facilities; and

(3) inform providers of any recent changes in the rules or in the interpretation of the rules relating to the ICF-MR program.

(b) The departments also may use any other method to provide necessary information to providers, including publications.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.099, eff. Sept. 1, 1995.

SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

Sec. 533.081. DEVELOPMENT OF FACILITY BUDGETS. The department, in budgeting for a facility, shall use uniform costs for specific types of services a facility provides unless a legitimate reason exists and is documented for the use of other costs.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.082. DETERMINATION OF SAVINGS IN FACILITIES.

(a) The department shall determine the degree to which the costs of operating department facilities for persons with mental illness or mental retardation in compliance with applicable standards are affected as populations in the facilities fluctuate.

(b) In making the determination, the department shall:

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

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

(c) The department shall allocate to community-based mental health programs any savings realized in operating department facilities for persons with mental illness.

(d) The department shall allocate to community-based mental retardation programs any savings realized in operating department facilities for persons with mental retardation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.083. CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION OF FACILITY. The department shall establish objective criteria for determining when a new facility may be needed and when a facility may be expanded, closed, or consolidated.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (a) To the extent provided by this subtitle, the department may lease, transfer, or otherwise dispose of any surplus real property, including any improvements under its management and control, or authorize the lease, transfer, or disposal of the property. Surplus property is property the board designates as having minimal value to the present service delivery system and projects to have minimal value to the service delivery system as described in the department's long-range plan.

(b) The proceeds from the lease, transfer, or disposal of surplus real property, including any improvements, shall be deposited to the credit of the department in the Texas capital trust fund established under Chapter 2201, Government Code. The proceeds and any interest from the proceeds may be appropriated only for improvements to the department's system of facilities.

(c) A lease proposal shall be advertised at least once a week for four consecutive weeks in at least two newspapers. One newspaper must be a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location. The other newspaper must have statewide circulation. Each lease is subject to the attorney general's approval as to substance and form. The board shall adopt forms, rules, and contracts that, in the board's best judgment, will protect the state's interests. The board may reject any or all bids.

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

(e) Notwithstanding Subsection (c), the department may

enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(5), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1175, Sec. 2, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.79, eff. Sept. 1, 2003.

Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT.

(a) The mental health community services account is an account in the general revenue fund that may be appropriated only for the provision of mental health services by or under contract with the department.

(b) The department shall deposit to the credit of the mental health community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

(c) Interest earned on the mental health community services account shall be credited to the account. The account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.80, eff. Sept. 1, 2003.

Sec. 533.0846. MENTAL RETARDATION COMMUNITY SERVICES

ACCOUNT. (a) The mental retardation community services account is an account in the general revenue fund that may be appropriated only for the provision of mental retardation services by or under contract with the department.

(b) The department shall deposit to the credit of the mental retardation community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

(c) Interest earned on the mental retardation community services account shall be credited to the account. The account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.81, eff. Sept. 1, 2003.

Sec. 533.085. FACILITIES FOR INMATE AND PAROLEE CARE.

(a) With the written approval of the governor, the department may contract with:

(1) the institutional division of the Texas Department of Criminal Justice to transfer facilities to that department or otherwise provide facilities for inmates with mental illness or mental retardation in the custody of that department; and

(2) the pardons and paroles division of the Texas Department of Criminal Justice to transfer facilities to that board or otherwise provide facilities for persons with mental illness or mental retardation paroled or released under that board's supervision.

(b) An agency must report to the governor the agency's reasons for proposing to enter into a contract under this section and request the governor's approval.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.086. USE OF DEPARTMENT FACILITIES BY SUBSTANCE

ABUSERS. (a) The department shall annually provide the Texas Commission on Alcohol and Drug Abuse with an analysis by county of the hospitalization rates of persons with substance abuse problems. The analysis must include information indicating which admissions were for persons with only substance abuse problems and which admissions were for persons with substance abuse problems but whose primary diagnoses were other types of mental health problems.

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

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 533.087. LEASE OF REAL PROPERTY. (a) The department may lease real property, including any improvements under the

department's management and control, regardless of whether the property is surplus property. Except as provided by Subsection (c), the department may award a lease of real property only:

- (1) at the prevailing market rate; and
- (2) by competitive bid.

(b) The department shall advertise a proposal for lease at least once a week for four consecutive weeks in:

- (1) a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location; and

- (2) a newspaper of statewide circulation.

(c) The department may lease real property or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

- (1) the board determines that sufficient public benefit will be derived from the lease; and

- (2) the property is leased to:

- (A) a federal or state agency;
- (B) a unit of local government;
- (C) a not-for-profit organization; or
- (D) an entity related to the department by a

service contract.

(d) The board shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e) The board may reject any bid.

(f) This section does not authorize the department to close or consolidate a facility used to provide mental health or mental retardation services without legislative approval.

(g) Notwithstanding Subsections (a) and (b), the department may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Added by Acts 1995, 74th Leg., ch. 821, Sec. 10, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 1175, Sec. 3, eff. June 18, 1999.

SUBCHAPTER E. JAIL DIVERSION PROGRAM

Sec. 533.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local mental health or mental retardation authority may develop and may prioritize its available funding for:

(1) a system to divert members of the priority population, including those members with co-occurring substance abuse disorders, before their incarceration or other contact with the criminal justice system, to services appropriate to their needs, including:

- (A) screening and assessment services; and
- (B) treatment services, including:
 - (i) assertive community treatment services;
 - (ii) inpatient crisis respite services;
 - (iii) medication management services;
 - (iv) short-term residential services;
 - (v) shelter care services;
 - (vi) crisis respite residential services;
 - (vii) outpatient integrated mental health services;
 - (viii) co-occurring substance abuse treatment services;
 - (ix) psychiatric rehabilitation and service coordination services;
 - (x) continuity of care services; and
 - (xi) services consistent with the Texas Council on Offenders with Mental Impairments model;

(2) specialized training of local law enforcement and court personnel to identify and manage offenders or suspects who may be members of the priority population; and

(3) other model programs for offenders and suspects who may be members of the priority population, including crisis intervention training for law enforcement personnel.

(b) A local mental health or mental retardation authority developing a system, training, or a model program under Subsection

(a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.

(c) A local mental health or mental retardation authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

Added by Acts 2003, 78th Leg., ch. 1214, Sec. 3, eff. Sept. 1, 2003.