HEALTH AND SAFETY CODE

TITLE 2. HEALTH

SUBTITLE D. PREVENTION, CONTROL, AND REPORTS OF DISEASES

CHAPTER 81. COMMUNICABLE DISEASES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 81.001. SHORT TITLE. This chapter may be cited as the Communicable Disease Prevention and Control Act.

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

Sec. 81.002. RESPONSIBILITY OF STATE AND PUBLIC. The state has a duty to protect the public health. Each person shall act responsibly to prevent and control communicable disease.

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

Sec. 81.003. DEFINITIONS. In this chapter:

(1) "Communicable disease" means an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.

(2) "Health authority" means:

(A) a physician appointed as a health authority under Chapter 121 (Local Public Health Reorganization Act) or the health authority's designee; or

(B) a physician appointed as a regional director under Chapter 121 (Local Public Health Reorganization Act) who performs the duties of a health authority or the regional director's designee.

(3) "Health professional" means an individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of the health of another individual or of an animal; and

(B) duties require a specified amount of formal

education and may require a special examination, certificate or license, or membership in a regional or national association.

(4) "Local health department" means a department created under Chapter 121 (Local Public Health Reorganization Act).

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

(6) "Public health district" means a district created under Chapter 121 (Local Public Health Reorganization Act).

(7) "Public health disaster" means:

(A) a declaration by the governor of a state of disaster; and

(B) a determination by the commissioner that there exists an immediate threat from a communicable disease that:

(i) poses a high risk of death or serious long-term disability to a large number of people; and

(ii) creates a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.

(8) "Reportable disease" includes only a disease or condition included in the list of reportable diseases.

(9) "Resident of this state" means a person who:

(A) is physically present and living voluntarily in this state;

(B) is not in the state for temporary purposes; and

(C) intends to make a home in this state, which may be demonstrated by the presence of personal effects at a specific abode in the state; employment in the state; possession of a Texas driver's license, motor vehicle registration, voter registration, or other similar documentation; or other pertinent evidence.

(10) "School authority" means:

(A) the superintendent of a public school system or the superintendent's designee; or

(B) the principal or other chief administrative officer of a private school.

(11) "Sexually transmitted disease" means an

infection, with or without symptoms or clinical manifestations, that may be transmitted from one person to another during, or as a result of, sexual relations between two persons and that may:

(A) produce a disease in, or otherwise impair the health of, either person; or

(B) cause an infection or disease in a fetus in utero or a newborn.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.167, eff. Sept. 1, 2003.

Sec. 81.004. ADMINISTRATION OF CHAPTER. (a) The commissioner is responsible for the general statewide administration of this chapter.

(b) The board may adopt rules necessary for the effective administration and implementation of this chapter.

(c) A designee of the board may exercise a power granted to or perform a duty imposed on the board under this chapter except as otherwise required by law.

(d) A designee of the commissioner may exercise a power granted to or perform a duty imposed on the commissioner under this chapter except as otherwise required by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.168, eff. Sept. 1, 2003.

Sec. 81.005. CONTRACTS. The department may enter into contracts or agreements with persons as necessary to implement this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

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

Sec. 81.006. FUNDS. The department may seek, receive, and spend appropriations, grants, fees, or donations for the purpose of identifying, reporting, preventing, or controlling communicable diseases or conditions determined to be injurious or to be a threat to the public health subject to any limitations or conditions prescribed by the legislature.

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

Sec. 81.007. LIMITATION ON LIABILITY. A private individual performing duties in compliance with orders or instructions of the department or a health authority issued under this chapter is not liable for the death of or injury to a person or for damage to property, except in a case of wilful misconduct or gross negligence.

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

Sec. 81.008. COMMUNICABLE DISEASE IN ANIMALS; EXCHANGE OF INFORMATION. The Texas Animal Health Commission and the Texas A&M University Veterinary Diagnostic Laboratory shall each adopt by rule a memorandum of understanding with the department to exchange information on communicable diseases in animals.

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

Sec. 81.009. EXEMPTION FROM MEDICAL TREATMENT. (a) This chapter does not authorize or require the medical treatment of an individual who chooses treatment by prayer or spiritual means as part of the tenets and practices of a recognized church of which the individual is an adherent or member. However, the individual may be isolated or quarantined in an appropriate facility and shall obey the rules, orders, and instructions of the department or health authority while in isolation or quarantine.

(b) An exemption from medical treatment under this section does not apply during an emergency or an area quarantine or after the issuance by the governor of an executive order or a proclamation under Chapter 418, Government Code (Texas Disaster Act of 1975).

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

Sec. 81.010. INTERAGENCY COORDINATING COUNCIL FOR HIV AND HEPATITIS. (a) In this section, "AIDS" and "HIV" have the meanings assigned by Section 85.002.

(b) The Interagency Coordinating Council for HIV and Hepatitis facilitates communication between state agencies concerning policies relating to AIDS, HIV, and hepatitis.

(c) The council consists of one representative from each of

the following agencies appointed by the executive director or commissioner of each agency:

(1) the Department of State Health Services;

(2) the Department of Aging and Disability Services;

(3) the Department of Assistive and Rehabilitative Services;

(4) the Department of Family and Protective Services;

(5) the Texas Youth Commission;

(6) the Texas Department of Criminal Justice;

(7) the Texas Juvenile Probation Commission;

(8) the Texas Education Agency;

(9) the Texas Medical Board;

(10) the Texas Board of Nursing;

(11) the State Board of Dental Examiners;

(12) the Health and Human Services Commission;

(13) the Texas Workforce Commission; and

(14) the Texas Higher Education Coordinating Board.

(d) All representatives appointed to the council must be directly involved in policy or program activities related to services for AIDS, HIV, or hepatitis for their respective agencies.

(e) The representative from the Health and Human Services Commission serves as chairperson of the council.

(f) The council may meet on meeting dates set by the council. Each agency that has a representative appointed to the council should ensure that a representative of the agency attends each meeting of the council.

(g) The council shall provide an opportunity for interested members of the public, including consumers and providers of health services, to provide recommendations and information to the council during:

(1) any meeting at which the council intends to vote or votes on any matter; and

(2) at least one of any two consecutive meetings of the council.

(h) The council shall:

(1) coordinate communication among the member agencies listed in Subsection (c) concerning each agency's programs

in providing services related to AIDS, HIV, and hepatitis;

(2) develop a plan that facilitates coordination of agency programs based on statistical information regarding this state for:

(A) prevention of AIDS, HIV infection, and hepatitis; and

(B) provision of services to individuals who have hepatitis or are infected with HIV;

(3) identify all statewide plans related to AIDS, HIV, and hepatitis;

(4) compile a complete inventory of all federal, state, and local money spent in this state on HIV infection, AIDS, and hepatitis prevention and health care services, including services provided through or covered under Medicaid and Medicare;

(5) identify the areas with respect to which state agencies interact on HIV, AIDS, and hepatitis issues and the policy issues arising from that interaction;

(6) assess gaps in prevention and health care services for HIV infection, AIDS, and hepatitis in this state, including gaps in services that result from provision of services by different state agencies, and develop strategies to address these gaps through service coordination;

(7) identify barriers to prevention and health care services for HIV infection, AIDS, and hepatitis faced by marginalized populations;

(8) identify the unique health care service and other service needs of persons who are infected with HIV or who have AIDS or hepatitis;

(9) evaluate the level of service and quality of health care in this state for persons who are infected with HIV or who have AIDS or hepatitis as compared to national standards;

(10) identify issues that emerge related to HIV, AIDS, and hepatitis and the potential impact on delivery of prevention and health care services; and

(11) provide the information required under Subdivisions (1) through (10) to the Department of State Health Services.

(h-1) Each agency listed in Subsection (c) shall provide information under Subsection (h) to the council. The council may request information under Subsection (h) from an agency, and the agency shall comply with the request.

(i) Not later than September 1 of each year, the Department of State Health Services shall file a report with the legislature and the governor containing policy recommendations based on information reported to the council in Subsection (h) relating to:

(1) prevention of AIDS, HIV infection, and hepatitis; and

(2) delivery of health services to individuals who have AIDS or hepatitis or are infected with HIV.

(j) The council shall establish advisory committees composed of representatives from associations, consumer advocates, and regulatory agencies, boards, or commissions as needed to assist in carrying out its duties under this section.

(k) The Health and Human Services Commission shall provide administrative support to the council.

Added by Acts 1993, 73rd Leg., ch. 708, Sec. 1, eff. Sept. 1, 1993. Amended by ; Acts 1995, 74th Leg., ch. 835, Sec. 24, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.38, eff. Sept. 1, 1997. Renumbered from Sec. 85.017 and amended by Acts 2001, 77th Leg., ch. 195, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 2.008, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 670, Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 889, Sec. 61, eff. September 1, 2007.

Sec. 81.011. REQUEST FOR INFORMATION. In times of emergency or epidemic declared by the commissioner, the department is authorized to request information pertaining to names, dates of birth, and most recent addresses of individuals from the driver's license records of the Department of Public Safety for the purpose of notification to individuals of the need to receive certain immunizations or diagnostic, evaluation, or treatment services for

suspected communicable diseases.

Redesignated from Health and Safety Code Sec. 81.023, subsec. (d) and amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.169, eff. Sept. 1, 2003.

SUBCHAPTER B. PREVENTION

Sec. 81.021. BOARD'S DUTY. The board shall exercise its power in matters relating to protecting the public health to prevent the introduction of disease into the state.

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

Sec. 81.022. HEALTH EDUCATION. (a) The department may conduct a program of health education for the prevention and control of communicable disease.

(b) The department may contract for presentations to increase the public awareness of individual actions needed to prevent and control communicable disease. The types of presentations include mass media productions, outdoor display advertising, newspaper advertising, literature, bulletins, pamphlets, posters, and audiovisual displays.

(c) The department shall recommend a public school health curriculum to the State Board of Education.

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

Sec. 81.023. IMMUNIZATION. (a) The board shall develop immunization requirements for children.

(b) The board shall cooperate with the Department of Protective and Regulatory Services in formulating and implementing the immunization requirements for children admitted to child-care facilities.

(c) The board shall cooperate with the State Board of Education in formulating and implementing immunization requirements for students admitted to public or private primary or secondary schools.

(d) Redesignated as V.T.C.A., Health and Safety Code Sec. 81.011 by Acts 2003, 78th Leg., ch. 198, Sec. 2.169.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 898, Sec. 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.075, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.169, eff. Sept. 1, 2003.

Sec. 81.024. REPORTS BY BOARD. The board shall provide regular reports of the incidence, prevalence, and medical and economic effects of each disease that the board determines is a threatening risk to the public health. A disease may be a risk because of its indirect complications.

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

SUBCHAPTER C. REPORTS AND REPORTABLE DISEASES

Sec. 81.041. REPORTABLE DISEASES. (a) The board shall identify each communicable disease or health condition that shall be reported under this chapter.

(b) The board shall classify each reportable disease according to its nature and the severity of its effect on the public health.

(c) The board shall maintain and revise as necessary the list of reportable diseases.

(d) The board may establish registries for reportable diseases and other communicable diseases and health conditions. The provision to the department of information relating to a communicable disease or health condition that is not classified as reportable is voluntary only.

(e) Acquired immune deficiency syndrome and human immunodeficiency virus infection are reportable diseases under this chapter for which the board shall require reports.

(f) In a public health disaster, the commissioner may require reports of communicable diseases or other health conditions from providers without board rule or action. The commissioner shall issue appropriate instructions relating to complying with the reporting requirements of this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.170, eff. Sept. 1, 2003.

Sec. 81.042. PERSONS REQUIRED TO REPORT. (a) A report under Subsection (b), (c), or (d) shall be made to the local health authority.

(b) A dentist or veterinarian licensed to practice in this state or a physician shall report, after the first professional encounter, a patient or animal examined that has or is suspected of having a reportable disease.

(c) A local school authority shall report a child attending school who is suspected of having a reportable disease. The board by rule shall establish procedures to determine if a child should be suspected and reported and to exclude the child from school pending appropriate medical diagnosis or recovery.

(d) A person in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of a specimen derived from a human body yields microscopical, cultural, serological, or other evidence of a reportable disease shall report the findings, in accordance with this section and procedures adopted by the board, in the jurisdiction in which:

(1) the physician's office is located, if the laboratory examination was requested by a physician; or

(2) the laboratory is located, if the laboratory examination was not requested by a physician.

(e) The following persons shall report to the local health authority or the department a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)-(d):

(1) a professional registered nurse;

(2) an administrator or director of a public or private temporary or permanent child-care facility;

(3) an administrator or director of a nursing home, personal care home, maternity home, adult respite care center, or adult day-care center;

(4) an administrator of a home health agency;

(5) an administrator or health official of a public or

private institution of higher education;

(6) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;

(7) a superintendent, manager, or health official of a public or private camp, home, or institution;

(8) a parent, guardian, or householder;

(9) a health professional;

(10) an administrator or health official of a penal or correctional institution; or

(11) emergency medical service personnel, a peace officer, or a firefighter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.171, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1312, Sec. 7, eff. June 21, 2003.

Sec. 81.043. RECORDS AND REPORTS OF HEALTH AUTHORITY. (a) Each health authority shall keep a record of each case of a reportable disease that is reported to the authority.

(b) Except as provided by Subsection (c), a health authority shall report reportable diseases to the department's central office at least as frequently as the interval set by board rule.

(c) A health authority each week shall report to the department's central office all cases reported to the authority during the previous week of:

(1) acquired immune deficiency syndrome; and

(2) human immunodeficiency virus infection.

(d) A health authority must include in a report filed under Subsection (c) all information required by the department for purposes of this section or other law, including:

(1) an infected person's city and county of residence, age, gender, race, ethnicity, and national origin; and

(2) the method by which the disease was transmitted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.172, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 447, Sec. 1, eff. September 1, 2007.

Sec. 81.044. REPORTING PROCEDURES. (a) The board shall prescribe the form and method of reporting under this chapter, which may be in writing, by telephone, by electronic data transmission, or by other means.

(b) The board may require the reports to contain any information relating to a case that is necessary for the purposes of this chapter, including:

(1) the patient's name, address, age, sex, race, and occupation;

(2) the date of onset of the disease or condition;

(3) the probable source of infection; and

(4) the name of the attending physician or dentist.

(c) The commissioner may authorize an alternate routing of information in particular cases if the commissioner determines that the reporting procedure would cause the information to be unduly delayed.

(d) For a case of acquired immune deficiency syndrome or human immunodeficiency virus infection, the department shall require the reports to contain:

(1) the information described by Subsection (b); and

(2) the patient's ethnicity, national origin, and city and county of residence.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 447, Sec. 2, eff. September 1, 2007.

For expiration of this section, see Subsection (e).

Sec. 81.0445. MRSA REPORTING PROCEDURES PILOT PROGRAM. (a) The executive commissioner of the Health and Human Services Commission by rule shall develop and the department shall establish a pilot program to research and implement procedures for reporting cases of methicillin-resistant Staphylococcus aureus (MRSA).

(b) The department shall select to administer the program a health authority that:

(1) demonstrates an interest in hosting the program;

and

(2) possesses adequate resources to administer the program successfully.

(c) The pilot program must:

(1) require all clinical laboratories within the area served by the health authority to report all cases of methicillin-resistant Staphylococcus aureus to the pilot program administrator;

(2) track the prevalence of methicillin-resistant Staphylococcus aureus;

(3) study the cost and feasibility of expanding the list of reportable diseases established under this chapter to include methicillin-resistant Staphylococcus aureus;

(4) develop a methodology for the electronic exchange of information regarding the occurrence of methicillin-resistant Staphylococcus aureus within the area served by the health authority;

(5) collect data and analyze findings regarding the sources and possible prevention of methicillin-resistant Staphylococcus aureus;

(6) provide for the reporting to the public by the department of information regarding methicillin-resistant Staphylococcus aureus;

(7) compile and make available to the public a summary, by location, of the infections reported; and

(8) make recommendations to the department regarding Subdivisions (1) through (7).

(d) Not later than September 1, 2009, the department, in consultation with the health authority administering the pilot program, shall submit to the legislature a report concerning the effectiveness of the pilot program in tracking and reducing the number of methicillin-resistant Staphylococcus aureus infections within the area served by the health authority.

(e) This section expires, and the pilot program is abolished, September 1, 2009.

Added by Acts 2007, 80th Leg., R.S., Ch. 656, Sec. 1, eff. June 15, 2007.

Sec. 81.045. REPORTS OF DEATH. (a) A physician who attends a person during the person's last illness shall immediately notify the health authority of the jurisdiction in which the person's death is pronounced or the department if the physician knows or suspects that the person died of a reportable disease or other communicable disease that the physician believes may be a threat to the public health.

(b) An attending physician or health authority, with consent of the survivors, may request an autopsy if the physician or health authority needs further information concerning the cause of death in order to protect the public health. The health authority shall order the autopsy to determine the cause of death if there are no survivors or the survivors withhold consent to the autopsy. The autopsy results shall be reported to the department.

(c) A justice of the peace acting as coroner or a county medical examiner in the course of an inquest under Chapter 49, Code of Criminal Procedure, who finds that a person's cause of death was a reportable disease or other communicable disease that the coroner or medical examiner believes may be a threat to the public health shall immediately notify the health authority of the jurisdiction in which the finding is made or the department.

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

Sec. 81.046. CONFIDENTIALITY. (a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

(c) Medical or epidemiological information may be released:

(1) for statistical purposes if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information;

(3) to medical personnel, appropriate state agencies, or county and district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions;

(4) to appropriate federal agencies, such as the Centers for Disease Control of the United States Public Health Service, but the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition; or

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information.

(d) In a case of sexually transmitted disease involving a minor under 13 years of age, information may not be released, except that the child's name, age, and address and the name of the disease may be released to appropriate agents as required by Chapter 261, Family Code. If that information is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

(e) A state or public health district officer or employee, local health department officer or employee, or health authority may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of, or reports or information about, a person examined or treated for a reportable disease by the public health district, local health department, or health authority without that person's consent.

(f) Reports, records, and information relating to cases or suspected cases of diseases or health conditions may be released to the extent necessary during a public health disaster to law enforcement personnel solely for the purpose of protecting the health or life of the person identified in the report, record, or information. Only the minimum necessary information may be released under this subsection, as determined by the health

authority or the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.39, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.173, eff. Sept. 1, 2003.

Sec. 81.047. EPIDEMIOLOGICAL REPORTS. Subject to the confidentiality requirements of this chapter, the department shall require epidemiological reports of disease outbreaks and of individual cases of disease suspected or known to be of importance to the public health. The department shall evaluate the reports to determine the trends involved and the nature and magnitude of the hazards.

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

Sec. 81.048. NOTIFICATION OF EMERGENCY PERSONNEL, PEACE OFFICERS, DETENTION OFFICERS, COUNTY JAILERS, AND FIRE FIGHTERS. (a) The board shall:

(1) designate certain reportable diseases for notification under this section; and

(2) define the conditions that constitute possible exposure to those diseases.

(b) Notice of a positive test result for a reportable disease designated under Subsection (a) shall be given to an emergency medical service personnel, peace officer, detention officer, county jailer, or fire fighter as provided by this section if:

(1) the emergency medical service personnel, peace officer, detention officer, county jailer, or fire fighter delivered a person to a hospital as defined by Section 74.001, Civil Practice and Remedies Code;

(2) the hospital has knowledge that the person has a reportable disease and has medical reason to believe that the person had the disease when the person was admitted to the hospital; and

(3) the emergency medical service personnel, peace officer, detention officer, county jailer, or fire fighter was

exposed to the reportable disease during the course of duty.

(c) Notice of the possible exposure shall be given:

(1) by the hospital to the local health authority;

(2) by the local health authority to the director of the appropriate department of the entity that employs the emergency medical service personnel, peace officer, detention officer, county jailer, or fire fighter; and

(3) by the director to the employee affected.

(d) A person notified of a possible exposure under this section shall maintain the confidentiality of the information as provided by this chapter.

(e) A person is not liable for good faith compliance with this section.

(f) This section does not create a duty for a hospital to perform a test that is not necessary for the medical management of the person delivered to the hospital.

(g) A hospital that gives notice of a possible exposure under Subsection (c) or a local health authority that receives notice of a possible exposure under Subsection (c) may give notice of the possible exposure to a person other than emergency medical personnel, a peace officer, a detention officer, a county jailer, or a fire fighter if the person demonstrates that the person was exposed to the reportable disease while providing emergency care. The executive commissioner of the Health and Human Services Commission shall adopt rules to implement this subsection.

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

Amended by:

Acts 2005, 79th Leg., Ch. 135, Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 243, Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 243, Sec. 2, eff. September 1, 2005.

Sec. 81.049. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly fails to report a reportable disease or health condition under this subchapter.

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

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

Sec. 81.050. MANDATORY TESTING OF PERSONS SUSPECTED OF EXPOSING CERTAIN OTHER PERSONS TO REPORTABLE DISEASES, INCLUDING HIV INFECTION. (a) The board by rule shall prescribe the criteria that constitute exposure to reportable diseases, including HIV infection. The criteria must be based on activities that the United States Public Health Service determines pose a risk of infection.

(b) A person whose occupation or whose volunteer service is included in one or more of the following categories may request the department or a health authority to order testing of another person who may have exposed the person to a reportable disease, including HIV infection:

(1) a law enforcement officer;

(2) a fire fighter;

(3) an emergency medical service employee or paramedic;

(4) a correctional officer; or

(5) an employee, contractor, or volunteer, other than a correctional officer, who performs a service in a correctional facility as defined by Section 1.07, Penal Code, or a secure correctional facility or secure detention facility as defined by Section 51.02, Family Code.

(c) A request under this section may be made only if the person:

(1) has experienced the exposure in the course of the person's employment or volunteer service;

(2) believes that the exposure places the person at risk of a reportable disease, including HIV infection; and

(3) presents to the department or health authority a sworn affidavit that delineates the reasons for the request.

(d) The department or the department's designee who meets the minimum training requirements prescribed by board rule shall review the person's request and inform the person whether the request meets the criteria establishing risk of infection with a reportable disease, including HIV infection.

(e) The department or the department's designee shall give the person who is subject to the order prompt and confidential written notice of the order. The order must:

(1) state the grounds and provisions of the order, including the factual basis for its issuance;

(2) refer the person to appropriate health care facilities where the person can be tested for reportable diseases, including HIV infection; and

(3) inform the person who is subject to the order of that person's right to refuse to be tested and the authority of the department or health authority to ask for a court order requiring the test.

(f) If the person who is subject to the order refuses to comply, the prosecuting attorney who represents the state in district court, on request of the department or the department's designee, shall petition the district court for a hearing on the order. The person who is subject to the order has the right to an attorney at the hearing, and the court shall appoint an attorney for a person who cannot afford legal representation. The person may not waive the right to an attorney unless the person has consulted with an attorney.

(g) In reviewing the order, the court shall determine whether exposure occurred and whether that exposure presents a possible risk of infection as defined by board rule. The attorney for the state and the attorney for the person subject to the order may introduce evidence at the hearing in support of or opposition to the testing of the person. On conclusion of the hearing, the court shall either issue an appropriate order requiring counseling and testing of the person for reportable diseases, including HIV infection, or refuse to issue the order if the court has determined that the counseling and testing of the person is unnecessary. The court may assess court costs against the person who requested the test if the court finds that there was not reasonable cause for the request.

(h) The department or the department's designee shall inform the person who requested the order of the results of the test. If the person subject to the order is found to have a reportable disease, the department or the department's designee shall inform that person and the person who requested the order of the need for medical follow-up and counseling services. The

department or the department's designee shall develop protocols for coding test specimens to ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete.

(i) HIV counseling and testing conducted under this section must conform to the model protocol on HIV counseling and testing prescribed by the department.

(j) For the purpose of qualifying for workers' compensation or any other similar benefits for compensation, an employee who claims a possible work-related exposure to a reportable disease, including HIV infection, must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease, including HIV infection.

(k) A person listed in Subsection (b) who may have been exposed to a reportable disease, including HIV infection, may not be required to be tested.

(l) In this section "HIV" and "test result" have the meanings assigned by Section 81.101.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 17, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 320, Sec. 1, eff. September 1, 2005.

Sec. 81.051. PARTNER NOTIFICATION PROGRAMS; HIV INFECTION. (a) The department shall establish programs for partner notification and referral services.

(b) The partner notification services offered by health care providers participating in a program shall be made available and easily accessible to all persons with clinically validated HIV seropositive status.

(c) If a person with HIV infection voluntarily discloses the name of a partner, that information is confidential. Partner names may be used only for field investigation and notification.

(d) An employee of a partner notification program shall make the notification. The employee shall inform the person who is named as a partner of the:

(1) methods of transmission and prevention of HIV infection;

(2) telephone numbers and addresses of HIV antibody testing sites; and

(3) existence of local HIV support groups, mental health services, and medical facilities.

(e) The employee may not disclose:

(1) the name of or other identifying information concerning the identity of the person who gave the partner's name; or

(2) the date or period of the partner's exposure.

(f) If the person with HIV infection also makes the notification, the person should provide the information listed in Subsection (d).

(g) A partner notification program shall be carried out as follows:

(1) a partner notification program shall make the notification of a partner of a person with HIV infection in the manner authorized by this section regardless of whether the person with HIV infection who gave the partner's name consents to the notification; and

(2) a health care professional shall notify the partner notification program when the health care professional knows the HIV+ status of a patient and the health care professional has actual knowledge of possible transmission of HIV to a third party. Such notification shall be carried out in the manner authorized in this section and Section 81.103.

(h) A health care professional who fails to make the notification required by Subsection (g) is immune from civil or criminal liability for failure to make that notification.

(i) A partner notification program shall provide counseling, testing, or referral services to a person with HIV infection regardless of whether the person discloses the names of any partners.

(j) A partner notification program shall routinely evaluate the performance of counselors and other program personnel to ensure that high quality services are being delivered. A program shall

adopt quality assurance and training guidelines according to recommendations of the Centers for Disease Control of the United States Public Health Service for professionals participating in the program.

(k) In this section, "HIV" has the meaning assigned by Section 81.101.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 18, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 622, Sec. 1, eff. June 14, 1995.

For expiration of Subsections (b-2) and (b-3), see Subsection (b-3).

Sec. 81.052. REPORTS AND ANALYSES CONCERNING AIDS AND HIV INFECTION. (a) The department shall ensure timely and accurate reporting under this chapter of information relating to acquired immune deficiency syndrome and human immunodeficiency virus infection.

(b) The department shall:

(1) quarterly compile the information submitted under Section 81.043(c) and make the compiled data available to the public within six months of the last day of each quarter;

(2) annually analyze and determine trends in incidence and prevalence of AIDS and HIV infection by region, city, county, age, gender, race, ethnicity, national origin, transmission category, and other factors as appropriate; and

(3) annually prepare a report on the analysis conducted under Subdivision (2) and make the report available to the public.

(b-1) The department may not include any information that would allow the identification of an individual in an analysis conducted under Subsection (b) or in a report prepared under that subsection.

(b-2) Not later than January 1, 2009, the department shall prepare and submit to both houses of the legislature a report that:

(1) addresses emerging technologies and advancements in AIDS and HIV infection surveillance and epidemiology, including the use of the technologies and advancements to improve the testing

for and reporting of AIDS and HIV infection; and

(2) makes recommendations regarding this state's use of the emerging technologies and advancements to enhance surveillance, treatment, and prevention of AIDS and HIV infection.

(b-3) Subsection (b-2) and this subsection expire September 1, 2009.

(c) The department shall annually project the number of AIDS cases expected in this state based on the reports.

(d) The department shall make available epidemiologic projections and other analyses, including comparisons of Texas and national trends, to state and local agencies for use in planning, developing, and evaluating AIDS and HIV-related programs and services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 19, eff. Sept. 1, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 447, Sec. 3, eff. September 1, 2007.

SUBCHAPTER D. INVESTIGATION AND INSPECTION

Sec. 81.061. INVESTIGATION. (a) The department shall investigate the causes of communicable disease and methods of prevention.

(b) The department may require special investigations of specified cases of disease to evaluate the status in this state of epidemic, endemic, or sporadic diseases. Each health authority shall provide information on request according to the department's written instructions.

(c) The department may investigate the existence of communicable disease in the state to determine the nature and extent of the disease and to formulate and evaluate the control measures used to protect the public health. A person shall provide records and other information to the department on request according to the department's written instructions.

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

Sec. 81.062. WITNESSES; DOCUMENTS. (a) For the purpose

of an investigation under Section 81.061(c), the department may administer oaths, summon witnesses, and compel the attendance of a witness or the production of a document. The department may request the assistance of a county or district court to compel the attendance of a summoned witness or the production of a requested document at a hearing.

(b) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to appear at a hearing or proceeding under this section conducted outside the witness's or deponent's county of residence is entitled to a travel and per diem allowance. The board by rule shall set the allowance in an amount not to exceed the travel and per diem allowance authorized for state employees traveling in this state on official business.

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

Sec. 81.063. SAMPLES. (a) A person authorized to conduct an investigation under this subchapter may take samples of materials present on the premises, including soil, water, air, unprocessed or processed foodstuffs, manufactured clothing, pharmaceuticals, and household goods.

(b) A person who takes a sample under this section shall offer a corresponding sample to the person in control of the premises for independent analysis.

(c) A person who takes a sample under this section may reimburse or offer to reimburse the owner for the materials taken. The reimbursement may not exceed the actual monetary loss to the owner.

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

Sec. 81.064. INSPECTION. (a) The department or a health authority may enter at reasonable times and inspect within reasonable limits a public place in the performance of that person's duty to prevent or control the entry into or spread in this state of communicable disease by enforcing this chapter or the rules of the board adopted under this chapter.

(b) In this section, "a public place" means all or any portion of an area, building or other structure, or conveyance that

is not used for private residential purposes, regardless of ownership.

(c) Evidence gathered during an inspection by the department or health authority under this section may not be used in a criminal proceeding other than a proceeding to assess a criminal penalty under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.174, eff. Sept. 1, 2003.

Sec. 81.065. RIGHT OF ENTRY. (a) For an investigation or inspection, the commissioner, an employee of the department, or a health authority has the right of entry on land or in a building, vehicle, watercraft, or aircraft and the right of access to an individual, animal, or object that is in isolation, detention, restriction, or quarantine instituted by the commissioner, an employee of the department, or a health authority or instituted voluntarily on instructions of a private physician.

(b) Evidence gathered during an entry by the commissioner, department, or health authority under this section may not be used in a criminal proceeding other than a proceeding to assess a criminal penalty under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.175, eff. Sept. 1, 2003.

Sec. 81.066. CONCEALING COMMUNICABLE DISEASE OR EXPOSURE TO COMMUNICABLE DISEASE; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly conceals or attempts to conceal from the department, a health authority, or a peace officer, during the course of an investigation under this chapter, the fact that:

(1) the person has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health; or

(2) a minor child or incompetent adult of whom the person is a parent, managing conservator, or guardian has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.176, eff. Sept. 1, 2003.

Sec. 81.067. CONCEALING, REMOVING, OR DISPOSING OF AN INFECTED OR CONTAMINATED ANIMAL, OBJECT, VEHICLE, WATERCRAFT, OR AIRCRAFT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly conceals, removes, or disposes of an infected or contaminated animal, object, vehicle, watercraft, or aircraft that is the subject of an investigation under this chapter by the department, a health authority, or a peace officer.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.177, eff. Sept. 1, 2003.

Sec. 81.068. REFUSING ENTRY OR INSPECTION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly refuses or attempts to refuse entry to the department, a health authority, or a peace officer on presentation of a valid search warrant to investigate, inspect, or take samples on premises controlled by the person or by an agent of the person acting on the person's instruction.

(b) A person commits an offense if the person knowingly refuses or attempts to refuse inspection under Section 81.064 or entry or access under Section 81.065.

(c) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.178, eff. Sept. 1, 2003.

SUBCHAPTER E. CONTROL

Sec. 81.081. BOARD'S DUTY. The board shall impose control measures to prevent the spread of disease in the exercise of its power to protect the public health.

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

Sec. 81.082. ADMINISTRATION OF CONTROL MEASURES. (a) A health authority has supervisory authority and control over the

administration of communicable disease control measures in the health authority's jurisdiction unless specifically preempted by the department. Control measures imposed by a health authority must be consistent with, and at least as stringent as, the control measure standards in rules adopted by the board.

(b) A communicable disease control measure imposed by a health authority in the health authority's jurisdiction may be amended, revised, or revoked by the department if the department finds that the modification is necessary or desirable in the administration of a regional or statewide public health program or policy. A control measure imposed by the department may not be modified or discontinued until the department authorizes the action.

(c) The control measures may be imposed on an individual, animal, place, or object, as appropriate.

(c-1) A health authority may designate health care facilities within the health authority's jurisdiction that are capable of providing services for the examination, observation, quarantine, isolation, treatment, or imposition of control measures during a public health disaster or during an area quarantine under Section 81.085. A health authority may not designate a nursing home or other institution licensed under Chapter 242.

(d) A declaration of a public health disaster may continue for not more than 30 days. A public health disaster may be renewed one time by the commissioner for an additional 30 days.

(e) The governor may terminate a declaration of a public health disaster at any time.

(f) In this section, "control measures" includes:

(1) immunization;

(2) detention;

(3) restriction;

(4) disinfection;

(5) decontamination;

(6) isolation;

(7) quarantine;

(8) disinfestation;

(9) chemoprophylaxis;

(10) preventive therapy;

(11) prevention; and

(12) education.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 20, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 198, Sec. 2.179, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.01, eff. September 1, 2007.

Sec. 81.083. APPLICATION OF CONTROL MEASURES TO INDIVIDUAL. (a) Any person, including a physician, who examines or treats an individual who has a communicable disease shall instruct the individual about:

(1) measures for preventing reinfection and spread of the disease; and

(2) the necessity for treatment until the individual is cured or free from the infection.

(b) If the department or a health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease, the department or health authority may order the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state.

(c) An order under this section must be in writing and be delivered personally or by registered or certified mail to the individual or to the individual's parent, legal guardian, or managing conservator if the individual is a minor.

(d) An order under this section is effective until the individual is no longer infected with a communicable disease or, in the case of a suspected disease, expiration of the longest usual incubation period for the disease.

(e) An individual may be subject to court orders under Subchapter G if the individual is infected or is reasonably

suspected of being infected with a communicable disease that presents an immediate threat to the public health and:

(1) the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, does not comply with the written orders of the department or a health authority under this section; or

(2) a public health disaster exists, regardless of whether the department or health authority has issued a written order and the individual has indicated that the individual will not voluntarily comply with control measures.

(f) An individual who is the subject of court orders under Subchapter G shall pay the expense of the required medical care and treatment except as provided by Subsections (g)-(i).

(g) A county or hospital district shall pay the medical expenses of a resident of the county or hospital district who is:

(1) indigent and without the financial means to pay for part or all of the required medical care or treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program or facility.

(h) The state may pay the medical expenses of a nonresident individual who is:

(1) indigent and without the financial means to pay for part or all of the required medical care and treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program.

(i) The provider of the medical care and treatment under Subsection (h) shall certify the reasonable amount of the required medical care to the comptroller. The comptroller shall issue a warrant to the provider of the medical care and treatment for the certified amount.

(j) The department may:

(1) return a nonresident individual involuntarily hospitalized in this state to the program agency in the state in

which the individual resides; and

(2) enter into reciprocal agreements with the proper agencies of other states to facilitate the return of individuals involuntarily hospitalized in this state.

(k) If the department or a health authority has reasonable cause to believe that a group of five or more individuals has been exposed to or infected with a communicable disease, the department or health authority may order the members of the group to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state. If the department or health authority adopts control measures under this subsection, each member of the group is subject to the requirements of this section.

(l) An order under Subsection (k) must be in writing and be delivered personally or by registered or certified mail to each member of the group, or the member's parent, legal guardian, or managing conservator if the member is a minor. If the name, address, and county of residence of any member of the group is unknown at the time the order is issued, the department or health authority must publish notice in a newspaper of general circulation in the county that includes the area of the suspected exposure and any other county in which the department or health authority suspects a member of the group resides. The notice must contain the following information:

(1) that the department or health authority has reasonable cause to believe that a group of individuals is ill with, has been exposed to, or is the carrier of a communicable disease;

(2) the suspected time and place of exposure to the disease;

(3) a copy of any orders under Subsection (k);

(4) instructions to an individual to provide the individual's name, address, and county of residence to the department or health authority if the individual knows or reasonably suspects that the individual was at the place of the suspected exposure at the time of the suspected exposure;

(5) that the department or health authority may request that an application for court orders under Subchapter G be

filed for the group, if applicable; and

(6) that a criminal penalty applies to an individual who:

(A) is a member of the group; and

(B) knowingly refuses to perform or allow the performance of the control measures in the order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.180, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.02, eff. September 1, 2007.

Sec. 81.084. APPLICATION OF CONTROL MEASURES TO PROPERTY. (a) If the department or a health authority has reasonable cause to believe that property in its jurisdiction is or may be infected or contaminated with a communicable disease, the department or health authority may place the property in quarantine for the period necessary for a medical examination or technical analysis of samples taken from the property to determine if the property is infected or contaminated. The department or health authority may tag an object for identification with a notice of possible infection or contamination.

(b) The department or health authority shall send notice of its action by registered or certified mail or by personal delivery to the person who owns or controls the property. If the property is land or a structure or an animal or other property on the land, the department or health authority shall also post the notice on the land and at a place convenient to the public in the county courthouse. If the property is infected or contaminated as a result of a public health disaster, the department or health authority is not required to provide notice under this subsection.

(c) The department or health authority shall remove the quarantine and return control of the property to the person who owns or controls it if the property is found not to be infected or contaminated. The department or health authority by written order may require the person who owns or controls the property to impose control measures that are technically feasible to disinfect or

decontaminate the property if the property is found to be infected or contaminated.

(d) The department or health authority shall remove the quarantine and return control of the property to the person who owns or controls it if the control measures are effective. If the control measures are ineffective or if there is not a technically feasible control measure available for use, the department or health authority may continue the quarantine and order the person who owns or controls the property:

(1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination;

(2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or

(3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the quarantine is removed by the board or health authority.

(d-1) In a public health disaster, the department or health authority by written order may require a person who owns or controls property to impose control measures that are technically feasible to disinfect or decontaminate the property or, if technically feasible control measures are not available, may order the person who owns or controls the property:

(1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination;

(2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or

(3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the department or health authority authorizes entry into the structure or property.

(e) The department or health authority may petition the county or district court of the county in which the property is

located for orders necessary for public health if:

(1) a person fails or refuses to comply with the orders of the department or health authority as required by this section; and

(2) the department or health authority has reason to believe that the property is or may be infected or contaminated with a communicable disease that presents an immediate threat to the public health.

(f) After the filing of a petition, the court may grant injunctive relief for the health and safety of the public.

(g) The person who owns or controls the property shall pay all expenses of implementing control measures, court costs, storage, and other justifiable expenses. The court may require the person who owns or controls the property to execute a bond in an amount set by the court to ensure the performance of any control measures, restoration, or destruction ordered by the court. If the property is an object, the bond may not exceed the value of the object in a noninfected or noncontaminated state. The bond shall be returned to the person when the department or health authority informs the court that the property is no longer infected or contaminated or that the property has been destroyed.

(h) If the court finds that the property is not infected or contaminated, it shall order the department or health authority to:

(1) remove the quarantine;

(2) if the property is an object, remove the quarantine tags; and

(3) release the property to the person who owns or controls it.

(i) The department or health authority, as appropriate, shall charge the person who owns or controls the property for the cost of any control measures performed by the department's or health authority's employees. The department shall deposit the payments received to the credit of the general revenue fund to be used for the administration of this chapter. A health authority shall distribute payments received to each county, municipality, or other jurisdiction in an amount proportional to the jurisdiction's contribution to the quarantine and control expense.

(j) In this section, "property" means:

(1) an object;

(2) a parcel of land; or

(3) a structure, animal, or other property on a parcel of land.

(k) In a public health disaster, the department or a health authority may impose additional control measures the department or health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.181, eff. Sept. 1, 2003.

Sec. 81.085. AREA QUARANTINE; CRIMINAL PENALTY. (a) If an outbreak of communicable disease occurs in this state, the commissioner or one or more health authorities may impose an area quarantine coextensive with the area affected. The commissioner may impose an area quarantine, if the commissioner has reasonable cause to believe that individuals or property in the area may be infected or contaminated with a communicable disease, for the period necessary to determine whether an outbreak of communicable disease has occurred. A health authority may impose the quarantine only within the boundaries of the health authority's jurisdiction.

(b) A health authority may not impose an area quarantine until the authority consults with the department. A health authority that imposes an area quarantine shall give written notice to and shall consult with the governing body of each county and municipality in the health authority's jurisdiction that has territory in the affected area as soon as practicable.

(c) The department may impose additional disease control measures in a quarantine area that the department considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health. Absent preemptive action by the department under this chapter or by the governor under Chapter 418, Government Code (Texas Disaster Act of 1975), a health authority may impose in a quarantine area under the authority's jurisdiction additional disease control measures that the health authority considers necessary and most appropriate to arrest, control, and

eradicate the threat to the public health.

(d) If an affected area includes territory in an adjacent state, the department may enter into cooperative agreements with the appropriate officials or agencies of that state to:

(1) exchange morbidity, mortality, and other technical information;

(2) receive extrajurisdictional inspection reports;

(3) coordinate disease control measures;

(4) disseminate instructions to the population of the area, operators of interstate private or common carriers, and private vehicles in transit across state borders; and

(5) participate in other public health activities appropriate to arrest, control, and eradicate the threat to the public health.

(e) The department or health authority may use all reasonable means of communication to inform persons in the quarantine area of the department's or health authority's orders and instructions during the period of area quarantine. The department or health authority shall publish at least once each week during the area quarantine period, in a newspaper of general circulation in the area, a notice of the orders or instructions in force with a brief explanation of their meaning and effect. Notice by publication is sufficient to inform persons in the area of their rights, duties, and obligations under the orders or instructions.

(f) The department or, with the department's consent, a health authority may terminate an area quarantine.

(g) To provide isolation and quarantine facilities during an area quarantine, the commissioner's court of a county, the governing body of a municipality, or the governing body of a hospital district may suspend the admission of patients desiring admission for elective care and treatment, except for needy or indigent residents for whom the county, municipality, or district is constitutionally or statutorily required to care.

(h) A person commits an offense if the person knowingly fails or refuses to obey a rule, order, or instruction of the department or an order or instruction of a health authority issued under a department rule and published during an area quarantine

under this section. An offense under this subsection is a felony of the third degree.

(i) On request of the department during a public health disaster, an individual shall disclose the individual's immunization information. If the individual does not have updated or appropriate immunizations, the department may take appropriate action during a quarantine to protect that individual and the public from the communicable disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.182, eff. Sept. 1, 2003.

Sec. 81.086. APPLICATION OF CONTROL MEASURES TO PRIVATE AND COMMON CARRIERS AND PRIVATE CONVEYANCES. (a) This section applies to any private or common carrier or private conveyance, including a vehicle, aircraft, or watercraft, while the vehicle or craft is in this state.

(b) If the department or health authority has reasonable cause to believe that a carrier or conveyance has departed from or traveled through an area infected or contaminated with a communicable disease, the department or health authority may order the owner, operator, or authorized agent in control of the carrier or conveyance to:

(1) stop the carrier or conveyance at a port of entry or place of first landing or first arrival in this state; and

(2) provide information on passengers and cargo manifests that includes the details of:

(A) any illness suspected of being communicable that occurred during the journey;

(B) any condition on board the carrier or conveyance during the journey that may lead to the spread of disease; and

(C) any control measures imposed on the carrier or conveyance, its passengers or crew, or its cargo or any other object on board during the journey.

(c) The department or health authority may impose necessary technically feasible control measures under Section 81.083 or 81.084 to prevent the introduction and spread of communicable

disease in this state if the department or health authority, after inspection, has reasonable cause to believe that a carrier or conveyance that has departed from or traveled through an infected or contaminated area:

(1) is or may be infected or contaminated with a communicable disease;

(2) has cargo or an object on board that is or may be infected or contaminated with a communicable disease; or

(3) has an individual on board who has been exposed to, or is the carrier of, a communicable disease.

(d) The owner or operator of a carrier or conveyance placed in quarantine by order of the department or health authority, or of a county or district court under Section 81.083 or 81.084, shall bear the expense of the control measures employed to disinfect or decontaminate the carrier or conveyance. The department or health authority, as appropriate, shall charge and be reimbursed for the cost of control measures performed by the department's or health authority's employees. The board shall deposit the reimbursements to the credit of the general revenue fund to be used to administer this chapter. A health authority shall distribute the reimbursements to each county, municipality, or other governmental entity in an amount proportional to that entity's contribution to the quarantine and control expense.

(e) The owner or claimant of cargo or an object on board the carrier or conveyance shall pay the expense of the control measures employed in the manner provided by Section 81.084. The cost of services rendered or provided by the board or health authority is subject to reimbursement as provided by Subsection (d).

(f) A crew member, passenger, or individual on board the carrier or conveyance shall pay the expense of control measures employed under Section 81.083. The state may pay the expenses of an individual who is:

(1) without the financial means to pay for part or all of the required medical care or treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, or local medical assistance program,

as provided by Section 81.083.

(g) A carrier, a conveyance, cargo, an object, an animal, or an individual placed in quarantine under this section may not be removed from or leave the area of quarantine without the department's or health authority's permission.

(h) If the department or health authority has reasonable cause to believe that a carrier or conveyance is transporting cargo or an object that is or may be infected or contaminated with a communicable disease, the department or health authority may:

(1) require that the cargo or object be transported in secure confinement or sealed in a car, trailer, hold, or compartment, as appropriate, that is secured on the order and instruction of the board or health authority, if the cargo or object is being transported through this state;

(2) require that the cargo or object be unloaded at an alternate location equipped with adequate investigative and disease control facilities if the cargo or object is being transported to an intermediate or ultimate destination in this state that cannot provide the necessary facilities; and

(3) investigate and, if necessary, quarantine the cargo or object and impose any required control measure as authorized by Section 81.084.

(i) The department or health authority may require an individual transported by carrier or conveyance who the department or health authority has reasonable cause to believe has been exposed to or is the carrier of a communicable disease to be isolated from other travelers and to disembark with the individual's personal effects and baggage at the first location equipped with adequate investigative and disease control facilities, whether the person is in transit through this state or to an intermediate or ultimate destination in this state. The department or health authority may investigate and, if necessary, isolate or involuntarily hospitalize the individual until the department or health authority approves the discharge as authorized by Section 81.083.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.183, eff. Sept. 1, 2003.

Sec. 81.087. VIOLATION OF CONTROL MEASURE ORDERS; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly refuses to perform or allow the performance of certain control measures ordered by a health authority or the department under Sections 81.083-81.086.

(b) An offense under this section is a Class B misdemeanor. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.088. REMOVAL, ALTERATION, OR DESTRUCTION OF QUARANTINE DEVICES; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally:

(1) removes, alters, or attempts to remove or alter an object the person knows is a quarantine device, notice, or security item in a manner that diminishes the effectiveness of the device, notice, or item; or

(2) destroys an object the person knows is a quarantine device, notice, or security item.

(b) An offense under this section is a Class B misdemeanor. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.184, eff. Sept. 1, 2003.

Sec. 81.089. TRANSPORTATION; CRIMINAL PENALTY. (a) A person commits an offense if, before notifying the department or health authority at a port of entry or a place of first landing or first arrival in this state, the person knowingly or intentionally:

(1) transports or causes to be transported into this state an object the person knows or suspects may be infected or contaminated with a communicable disease that is a threat to the public health;

(2) transports or causes to be transported into this state an individual who the person knows has or is the carrier of a communicable disease that is a threat to the public health; or

(3) transports or causes to be transported into this state a person, animal, or object in a private or common carrier or a private conveyance that the person knows is or suspects may be infected or contaminated with a communicable disease that is a

threat to the public health.

(b) An offense under this section is a Class A misdemeanor, except that if the person acts with the intent to harm or defraud another, the offense is a felony of the third degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.185, eff. Sept. 1, 2003.

Sec. 81.090. SEROLOGIC TESTING DURING PREGNANCY. (a) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:

(1) take or cause to be taken a sample of the woman's blood at the first examination and visit;

(2) submit the sample to a laboratory approved under this section for:

(A) a standard serologic test for syphilis approved by the board;

(B) a standard serologic test for HIV infection approved by the board; and

(C) a standard serologic test for hepatitis B infection approved by the board; and

(3) retain a report of each case for nine months and deliver the report to any successor in the case.

(b) A successor is presumed to have complied with this section.

(c) A physician or other person in attendance at a delivery shall:

(1) take or cause to be taken a sample of blood from the mother on admission for delivery; and

(2) submit the sample to a laboratory approved under this section for:

(A) a standard serologic test for syphilis approved by the board;

(B) a standard serologic test for HIV infection approved by the board; and

(C) a standard serologic test for hepatitis B infection approved by the board.

(d) A state, county, municipal, or private laboratory that

conducts standard serologic tests on blood samples submitted under this section must be approved by the department. For the purpose of approving laboratories, the board shall adopt rules establishing:

(1) minimum standards of proficiency for a laboratory that conducts standard serologic tests;

(2) procedures for the inspection and monitoring of laboratories conducting standard serologic tests;

(3) criteria for the issuance, suspension, and revocation of laboratory proficiency certification to perform standard serologic tests; and

(4) criteria for approval and disapproval of serologic tests and procedures.

(e) The commissioner shall provide each county clerk with the names of the approved laboratories in the county and shall notify the county clerk of any additions, suspensions, or revocations of proficiency approval.

(f) A state, county, or municipal laboratory shall execute a test required by this section and submit a report to the physician without charge.

(g) Repealed by Acts 1993, 73rd Leg., ch. 30, Sec. 3, eff. Sept. 1, 1993.

(h) The department is not required to approve a laboratory under Subsection (d) or provide a list of approved laboratories under Subsection (e) as long as the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Section 263a), and subsequent amendments, are in effect.

(i) Before conducting or causing to be conducted a standard serologic test for HIV infection under this section, the physician or other person shall advise the woman that the result of a test taken under this section is confidential as provided by Subchapter F, but that the test is not anonymous. The physician or other person shall explain the difference between a confidential and an anonymous test to the woman and that an anonymous test may be available from another entity. The physician or other person shall make the information available in another language, if needed, and if resources permit. The information shall be provided by the physician or another person, as needed, in a manner and in terms

understandable to a person who may be illiterate if resources permit.

(j) The result of a standard test for HIV infection under Subsection (a)(2)(B) or (c)(2)(B) is a test result for purposes of Subchapter F.

(k) Before the blood sample is taken, the health care provider shall distribute to the patient printed materials about AIDS, HIV, hepatitis B, and syphilis. A health care provider shall verbally notify the patient that an HIV test shall be performed if the patient does not object. If the patient objects, the patient shall be referred to an anonymous testing facility or instructed about anonymous testing methods. The health care provider shall note on the medical records that the distribution of printed materials was made and that verbal notification was given. The materials shall be provided to the health care provider by the Texas Department of Health and shall be prepared and designed to inform the patients about:

(1) the incidence and mode of transmission of AIDS, HIV, hepatitis B, and syphilis;

(2) how being infected with HIV, AIDS, hepatitis B, or syphilis could affect the health of their child;

(3) the available cure for syphilis;

(4) the available treatment to prevent maternal-infant HIV transmission; and

(5) methods to prevent the transmission of the HIV virus, hepatitis B, and syphilis.

(l) A physician or other person may not conduct a standard test for HIV infection under Subsection (a)(2)(B) or (c)(2)(B) if the woman objects.

(m) If a screening test and a confirmatory test conducted under this section show that the woman is or may be infected with HIV, hepatitis B, or syphilis, the physician or other person who submitted the sample for the test shall provide or make available to the woman disease-specific information on the disease diagnosed, including:

(1) information relating to treatment of HIV infection, acquired immune deficiency syndrome, hepatitis B, or

syphilis, which must be in another language, if needed, and must be presented, as necessary, in a manner and in terms understandable to a person who may be illiterate if resources permit; and

(2) counseling under Section 81.109, if HIV infection or AIDS is diagnosed.

(n) A physician or other person may comply with the requirements of Subsection (m)(1) by referring the woman to an entity that provides treatment for individuals infected with the disease diagnosed.

(o) In this section, "HIV" has the meaning assigned by Section 81.101.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 30, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 420, Sec. 1, eff. June 6, 1993; Acts 1995, 74th Leg., ch. 805, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 573, Sec. 1, eff. Sept. 1, 1999.

Sec. 81.091. OPHTHALMIA NEONATORUM PREVENTION; CRIMINAL PENALTY. (a) A physician, nurse, midwife, or other person in attendance at childbirth shall use or cause to be used prophylaxis approved by the board to prevent ophthalmia neonatorum.

(b) A midwife is responsible for the administration of the prophylaxis to each infant the midwife delivers by:

(1) administering the prophylaxis under standing delegation orders issued by a licensed physician; or

(2) requiring the prophylaxis to be administered by an appropriately licensed and trained individual under standing delegation orders issued by a licensed physician.

(c) Subject to the availability of funds, the department shall furnish prophylaxis approved by the board free of charge to:

(1) health care providers if the newborn's financially responsible adult is unable to pay; and

(2) a midwife identified under Chapter 203, Occupations Code, who requests prophylaxis for administration under standing delegation orders issued by a licensed physician under Subsection (b) and subject to the provisions of Subchapter A, Chapter 157, Occupations Code.

(d) If a physician is not available to issue a standing delegation order or if no physician will agree to issue a standing delegation order, a midwife shall administer or cause to be administered by an appropriately trained and licensed individual prophylaxis approved by the Texas Board of Health to prevent ophthalmia neonatorum to each infant that the midwife delivers.

(e) Administration and possession by a midwife of prophylaxis under this section is not a violation of Chapter 483.

(f) A health care provider may not charge for prophylaxis received free from the department.

(g) A person commits an offense if the person is a physician or other person in attendance on a pregnant woman either during pregnancy or at delivery and fails to perform a duty required by this section. An offense under this section is a Class B misdemeanor.

(h) In this section, "financially responsible adult" means a parent, guardian, spouse, or any other person whom the laws of this state hold responsible for the debts incurred as a result of hospitalization or treatment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 158, Sec. 24, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 14.772, eff. Sept. 1, 2001.

Sec. 81.092. CONTRACTS FOR SERVICES. The department may contract with a physician to provide services to persons infected or reasonably suspected of being infected with a sexually transmitted disease or tuberculosis if:

(1) local or regional health department services are not available;

(2) the person in need of examination or treatment is unable to pay for the services; and

(3) there is an immediate need for examination or treatment of the person.

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

Sec. 81.093. PERSONS PROSECUTED FOR CERTAIN CRIMES. (a) A court may direct a person convicted of an offense under Section

43.02, Penal Code, under Chapter 481 (Texas Controlled Substances Act), or under Sections 485.031 through 485.035 to be subject to the control measures of Section 81.083 and to the court-ordered management provisions of Subchapter G.

(b) The court shall order that a presentencing report be prepared under Section 9, Article 42.12, Code of Criminal Procedure, to determine if a person convicted of an offense under Chapter 481 (Texas Controlled Substances Act) or under Sections 485.031 through 485.035 should be subject to Section 81.083 and Subchapter G.

(c) On the request of a prosecutor who is prosecuting a person under Section 22.012, Penal Code, the court shall release to the prosecutor the presentencing report and a statement as to whether the court directed the person to be subject to control measures and court-ordered management for human immunodeficiency virus infection or acquired immune deficiency syndrome.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 21, eff. Sept. 1, 1991.

Sec. 81.094. TESTING BY HOSPITALS OF PERSONS INDICTED FOR CERTAIN CRIMES. A hospital shall perform a medical procedure or test on a person if a court orders the hospital to perform the procedure or test on a person whom the court orders to undergo the procedure or test under Article 21.31, Code of Criminal Procedure. The procedure or test is a cost of court.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 22, eff. Sept. 1, 1991.

Sec. 81.095. TESTING FOR ACCIDENTAL EXPOSURE. (a) In a case of accidental exposure of a health care worker to blood or other body fluids of a patient in a licensed hospital, the hospital, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B or hepatitis C.

(b) This subsection applies only in a case of accidental exposure of certified emergency medical services personnel, a firefighter, a peace officer, or a first responder who renders assistance at the scene of an emergency or during transport to the hospital to blood or other body fluids of a patient who is transported to a licensed hospital. The hospital receiving the

patient, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B or hepatitis C if the report shows there is significant risk to the person exposed. The organization that employs the person or for which the person works as a volunteer in connection with rendering the assistance is responsible for paying the costs of the test. The hospital shall provide the test results to the department or to the local health authority, which are responsible for following the procedures prescribed by Section 81.050(h) to inform the person exposed and, if applicable, the patient regarding the test results. The hospital shall follow applicable reporting requirements prescribed by Subchapter C. This subsection does not impose a duty on a hospital to provide any further testing, treatment, or services or to perform further procedures.

(c) A test conducted under this section may be performed without the patient's specific consent.

(d) The facility shall have a policy concerning the disclosure of the result of the testing as authorized or required by law.

(e) The facility shall abide by all patient confidentiality standards as set out in Section 81.046.

Added by Acts 1999, 76th Leg., ch. 1169, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 610, Sec. 1, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 835, Sec. 1, eff. June 20, 2003.

Sec. 81.0955. TESTING FOR ACCIDENTAL EXPOSURE INVOLVING A DECEASED PERSON. (a) This section applies only to the accidental exposure to the blood or other body fluids of a person who dies at the scene of an emergency or during transport to the hospital involving certified emergency medical services personnel, a firefighter, a peace officer, or a first responder who renders assistance at the scene of an emergency or during transport of a person to the hospital.

(b) A hospital, certified emergency medical services personnel, or a physician on behalf of the person exposed, following a report of the exposure incident, shall take reasonable steps to test the deceased person for communicable diseases. The

hospital, certified emergency medical services personnel, or physician shall provide the test results to the department or to the local health authority responsible for following the procedures prescribed by Section 81.050(h) to inform the person exposed and, if applicable, the next of kin of the deceased person regarding the test results. The hospital, certified emergency medical services personnel, or physician shall follow applicable reporting requirements prescribed by Subchapter C. This subsection does not impose a duty on a hospital, certified emergency medical services personnel, or a physician to provide any further testing, treatment, or services or to perform further procedures. The executive commissioner of the Health and Human Services Commission shall adopt rules to implement this subsection.

(c) The organization that employs the exposed person or for which the exposed person works as a volunteer in connection with rendering the assistance is responsible for paying the costs of the test.

(d) If the deceased person is delivered to a funeral establishment as defined in Section 651.001, Occupations Code, before a hospital, certified emergency medical services personnel, or a physician has tested the deceased person, the funeral establishment shall allow, if requested by the hospital, certified emergency medical services personnel, or a physician, access to the deceased person for testing under this section.

(e) A test conducted under this section may be performed without the consent of the next of kin of the deceased person being tested.

(f) A hospital, certified emergency medical services personnel, or a physician that conducts a test under this section must comply with the confidentiality requirements of Section 81.046 except as specifically provided by this section.

Added by Acts 2005, 79th Leg., Ch. 243, Sec. 3, eff. September 1, 2005.

SUBCHAPTER F. TESTS FOR ACQUIRED IMMUNE DEFICIENCY SYNDROME AND RELATED DISORDERS

Sec. 81.101. DEFINITIONS. In this subchapter:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

(2) "HIV" means human immunodeficiency virus.

(3) "Bona fide occupational qualification" means a qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a reasonable cause for believing that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety.

(4) "Blood bank" means a blood bank, blood center, regional collection center, tissue bank, transfusion service, or other similar facility licensed by the Bureau of Biologics of the United States Food and Drug Administration, accredited for membership in the American Association of Blood Banks, or qualified for membership in the American Association of Tissue Banks.

(5) "Test result" means any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.

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

Sec. 81.102. TESTS; CRIMINAL PENALTY. (a) A person may not require another person to undergo a medical procedure or test designed to determine or help determine if a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless:

(1) the medical procedure or test is required under Subsection (d), under Section 81.050, or under Article 21.31, Code of Criminal Procedure;

(2) the medical procedure or test is required under Section 81.090, and no objection has been made under Section 81.090(l);

(3) the medical procedure or test is authorized under Chapter 545, Insurance Code;

(4) a medical procedure is to be performed on the person that could expose health care personnel to AIDS or HIV infection, according to board guidelines defining the conditions that constitute possible exposure to AIDS or HIV infection, and there is sufficient time to receive the test result before the procedure is conducted; or

(5) the medical procedure or test is necessary:

(A) as a bona fide occupational qualification and there is not a less discriminatory means of satisfying the occupational qualification;

(B) to screen blood, blood products, body fluids, organs, or tissues to determine suitability for donation;

(C) in relation to a particular person under this chapter;

(D) to manage accidental exposure to blood or other body fluids, but only if the test is conducted under written infectious disease control protocols adopted by the health care agency or facility;

(E) to test residents and clients of residential facilities of the Texas Department of Mental Health and Mental Retardation, but only if:

(i) the test result would change the medical or social management of the person tested or others who associated with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the residential facility or the Texas Department of Mental Health and Mental Retardation and approved by the department; or

(F) to test residents and clients of residential facilities of the Texas Youth Commission, but only if:

(i) the test result would change the medical or social management of the person tested or others who associate with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the Texas Youth Commission.

(b) An employer who alleges that a test is necessary as a bona fide occupational qualification has the burden of proving that allegation.

(c) Protocols adopted under Subsection (a)(4)(D) must clearly establish procedural guidelines with criteria for testing that respect the rights of the person with the infection and the person who may be exposed to that infection. The protocols may not require the person who may have been exposed to be tested and must ensure the confidentiality of the person with the infection in accordance with this chapter.

(d) The board may adopt emergency rules for mandatory testing for HIV infection if the commissioner files a certificate of necessity with the board that contains supportive findings of medical and scientific fact and that declares a sudden and imminent threat to public health. The rules must provide for:

(1) the narrowest application of HIV testing necessary for the protection of the public health;

(2) procedures and guidelines to be followed by an affected entity or state agency that clearly specify the need and justification for the testing, specify methods to be used to assure confidentiality, and delineate responsibility and authority for carrying out the recommended actions;

(3) counseling of persons with seropositive test results; and

(4) confidentiality regarding persons tested and their test results.

(e) This section does not create a duty to test for AIDS and related disorders or a cause of action for failure to test for AIDS and related disorders.

(f) A person who requires a medical procedure or test in violation of this section commits an offense. An offense under this subsection is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 23, 24, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 805, Sec. 2, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 728, Sec. 11.126, eff. September 1,

2005.

Sec. 81.103. CONFIDENTIALITY; CRIMINAL PENALTY. (a) A test result is confidential. A person that possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by this section.

(b) A test result may be released to:

(1) the department under this chapter;

(2) a local health authority if reporting is required under this chapter;

(3) the Centers for Disease Control of the United States Public Health Service if reporting is required by federal law or regulation;

(4) the physician or other person authorized by law who ordered the test;

(5) a physician, nurse, or other health care personnel who have a legitimate need to know the test result in order to provide for their protection and to provide for the patient's health and welfare;

(6) the person tested or a person legally authorized to consent to the test on the person's behalf;

(7) the spouse of the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS;

(8) a person authorized to receive test results under Article 21.31, Code of Criminal Procedure, concerning a person who is tested as required or authorized under that article; and

(9) a person exposed to HIV infection as provided by Section 81.050.

(c) The court shall notify persons receiving test results under Subsection (b)(8) of the requirements of this section.

(d) A person tested or a person legally authorized to consent to the test on the person's behalf may voluntarily release or disclose that person's test results to any other person, and may authorize the release or disclosure of the test results. An authorization under this subsection must be in writing and signed

by the person tested or the person legally authorized to consent to the test on the person's behalf. The authorization must state the person or class of persons to whom the test results may be released or disclosed.

(e) A person may release or disclose a test result for statistical summary purposes only without the written consent of the person tested if information that could identify the person is removed from the report.

(f) A blood bank may report positive blood test results indicating the name of a donor with a possible infectious disease to other blood banks if the blood bank does not disclose the infectious disease that the donor has or is suspected of having. A report under this subsection is not a breach of any confidential relationship.

(g) A blood bank may report blood test results to the hospitals where the blood was transfused, to the physician who transfused the infected blood, and to the recipient of the blood. A blood bank may also report blood test results for statistical purposes. A report under this subsection may not disclose the name of the donor or person tested or any information that could result in the disclosure of the donor's or person's name, including an address, social security number, a designated recipient, or replacement information.

(h) A blood bank may provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing.

(i) An employee of a health care facility whose job requires the employee to deal with permanent medical records may view test results in the performance of the employee's duties under reasonable health care facility practices. The test results viewed are confidential under this chapter.

(j) A person commits an offense if, with criminal negligence and in violation of this section, the person releases or discloses a test result or other information or allows a test result or other information to become known. An offense under this subsection is a Class A misdemeanor.

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

by Acts 1991, 72nd Leg., ch. 14, Sec. 25, eff. Sept. 1, 1991.

Sec. 81.104. INJUNCTION; CIVIL LIABILITY. (a) A person may bring an action to restrain a violation or threatened violation of Section 81.102 or 81.103.

(b) A person who violates Section 81.102 or who is found in a civil action to have negligently released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:

(1) actual damages;

(2) a civil penalty of not more than $5,000; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action.

(c) A person who is found in a civil action to have wilfully released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:

(1) actual damages;

(2) a civil penalty of not less than $5,000 nor more than $10,000; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action.

(d) Each release or disclosure made, or allowance of a test result to become known, in violation of this subchapter constitutes a separate offense.

(e) A defendant in a civil action brought under this section is not entitled to claim any privilege as a defense to the action.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1213, Sec. 1, eff. Sept. 1, 1999.

Sec. 81.105. INFORMED CONSENT. (a) Except as otherwise provided by law, a person may not perform a test designed to identify HIV or its antigen or antibody without first obtaining the informed consent of the person to be tested.

(b) Consent need not be written if there is documentation in the medical record that the test has been explained and the consent has been obtained.
Added by Acts 1991, 72nd Leg., ch. 14, Sec. 26, eff. Sept. 1, 1991.

Sec. 81.106. GENERAL CONSENT. (a) A person who has signed a general consent form for the performance of medical tests or procedures is not required to also sign or be presented with a specific consent form relating to medical tests or procedures to determine HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS that will be performed on the person during the time in which the general consent form is in effect.

(b) Except as otherwise provided by this chapter, the result of a test or procedure to determine HIV infection, antibodies to HIV, or infection with any probable causative agent of AIDS performed under the authorization of a general consent form in accordance with this section may be used only for diagnostic or other purposes directly related to medical treatment.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 27, eff. Sept. 1, 1991.

Sec. 81.107. CONSENT TO TEST FOR CERTAIN ACCIDENTAL EXPOSURES. (a) In a case of accidental exposure to blood or other body fluids under Section 81.102(a)(4)(D), the health care agency or facility may test a person who may have exposed the health care worker to HIV without the person's specific consent to the test.

(b) A test under this section may be done only if:

(1) the test is done according to protocols established as provided by Section 81.102(c); and

(2) those protocols ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete and the person who may have been exposed is notified of the result.

(c) A test result under this section is subject to the confidentiality provisions of this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 28, eff. Sept. 1, 1991.

Sec. 81.108. TESTING BY INSURERS. The Insurance Code and any rules adopted by the State Board of Insurance exclusively govern all practices of insurers in testing applicants to show or help show whether a person has AIDS or HIV infection, antibodies to

HIV, or infection with any other probable causative agent of AIDS. Added by Acts 1991, 72nd Leg., ch. 14, Sec. 29, eff. Sept. 1, 1991.

Sec. 81.109. COUNSELING REQUIRED FOR POSITIVE TEST RESULTS. (a) A positive test result may not be revealed to the person tested without giving that person the immediate opportunity for individual, face-to-face post-test counseling about:

(1) the meaning of the test result;

(2) the possible need for additional testing;

(3) measures to prevent the transmission of HIV;

(4) the availability of appropriate health care services, including mental health care, and appropriate social and support services in the geographic area of the person's residence;

(5) the benefits of partner notification; and

(6) the availability of partner notification programs.

(b) Post-test counseling should:

(1) increase a person's understanding of HIV infection;

(2) explain the potential need for confirmatory testing;

(3) explain ways to change behavior conducive to HIV transmission;

(4) encourage the person to seek appropriate medical care; and

(5) encourage the person to notify persons with whom there has been contact capable of transmitting HIV.

(c) Subsection (a) does not apply if:

(1) a report of a test result is used for statistical or research purposes only and any information that could identify the person is removed from the report; or

(2) the test is conducted for the sole purpose of screening blood, blood products, bodily fluids, organs, or tissues to determine suitability for donation.

(d) A person who is injured by an intentional violation of this section may bring a civil action for damages and may recover for each violation from a person who violates this section:

(1) $1,000 or actual damages, whichever is greater; and

(2) reasonable attorney fees.

(e) This section does not prohibit disciplinary proceedings from being conducted by the appropriate licensing authorities for a health care provider's violation of this section.

(f) A person performing a test to show HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS is not liable under Subsection (d) for failing to provide post-test counseling if the person tested does not appear for the counseling.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 30, eff. Sept. 1, 1991.

SUBCHAPTER G. COURT ORDERS FOR MANAGEMENT OF PERSONS WITH COMMUNICABLE DISEASES

Sec. 81.151. APPLICATION FOR COURT ORDER. (a) At the request of the health authority, a municipal, county, or district attorney shall file a sworn written application for a court order for the management of a person with a communicable disease. At the request of the department, the attorney general shall file a sworn written application for a court order for the management of a person with a communicable disease.

(b) The application must be filed with the district court in the county in which the person:

(1) resides;

(2) is found; or

(3) is receiving court-ordered health services.

(c) If the application is not filed in the county in which the person resides, the court may, on request of the person or the person's attorney and if good cause is shown, transfer the application to that county.

(d) A copy of written orders made under Section 81.083, if applicable, and a medical evaluation must be filed with the application, except that a copy of the written orders need not be filed with an application for outpatient treatment.

(e) A single application may be filed for a group if:

(1) the department or health authority reasonably suspects that a group of five or more persons has been exposed to or infected with a communicable disease; and

(2) each person in the group meets the criteria of this chapter for court orders for the management of a person with a communicable disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 1, eff. May 23, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.186, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.03, eff. September 1, 2007.

Sec. 81.1511. APPLICABILITY OF SUBCHAPTER TO GROUP. To the extent possible, and except as otherwise provided, if a group application is filed under Section 81.151(e), the provisions of this subchapter apply to the group in the same manner as they apply to an individual, except that:

(1) except as provided by Subdivision (2), any statement or determination regarding the conduct or status of a person must be made in regard to the majority of the members of the group;

(2) any finding or statement related to compliance with orders under Section 81.083 must be made for the entire group;

(3) any notice required to be provided to a person must:

(A) in addition to being sent to each individual in the group for whom the department or health authority has an address, be published in a newspaper of general circulation in the county that includes the area of the suspected contamination and any other county in which the department or health authority suspects a member of the group resides;

(B) state that the group is appointed an attorney but that a member of the group is entitled to the member's own attorney on request; and

(C) include instructions for any person who reasonably suspects that the person was at the place of the

suspected exposure at the time of the suspected exposure to provide the person's name, address, and county of residence to the department or health authority; and

(4) an affidavit of medical evaluation for the group may be based on evaluation of one or more members of the group if the physician reasonably believes that the condition of the individual or individuals represents the condition of the majority of the members of the group.

Added by Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.04, eff. September 1, 2007.

Sec. 81.152. FORM OF APPLICATION. (a) An application for a court order for the management of a person with a communicable disease must be styled using the person's initials and not the person's full name.

(b) The application must state whether the application is for temporary or extended management of a person with a communicable disease.

(c) Any application must contain the following information according to the applicant's information and belief:

(1) the person's name and address;

(2) the person's county of residence in this state;

(3) a statement that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health and that the person meets the criteria of this chapter for court orders for the management of a person with a communicable disease; and

(4) a statement, to be included only in an application for inpatient treatment, that the person fails or refuses to comply with written orders of the department or health authority under Section 81.083, if applicable.

(d) A group application must contain the following information according to the applicant's information and belief:

(1) a description of the group and the location where the members of the group may be found;

(2) a narrative of how the group has been exposed or infected;

(3) an estimate of how many persons are included in the group;

(4) to the extent known, a list containing the name, address, and county of residence in this state of each member of the group;

(5) if the applicant is unable to obtain the name and address of each member of the group:

(A) a statement that the applicant has sought each of the unknown names and addresses; and

(B) the reason that the names and addresses are unavailable; and

(6) a statement, to be included only in an application for inpatient treatment, that the members of the group fail or refuse to comply with written orders of the department or health authority under Section 81.083, if applicable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 2, eff. May 23, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.187, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.05, eff. September 1, 2007.

Sec. 81.153. APPOINTMENT OF ATTORNEY. (a) The judge shall appoint an attorney to represent a person not later than the 24th hour after the time an application for a court order for the management of a person with a communicable disease is filed if the person does not have an attorney. The judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the person's primary language.

(b) The person's attorney shall receive all records and papers in the case and is entitled to have access to all hospital and physicians' records.

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

Sec. 81.1531. APPOINTMENT OF ATTORNEY FOR GROUP. (a) A judge shall appoint an attorney to represent a group identified in a group application under Section 81.151(e) and shall appoint an

attorney for each person who is listed in the application if requested by a person in the group who does not have an attorney.

(b) To the extent possible, the provisions of this chapter that apply to an individual's attorney apply to a group's attorney.
Added by Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.06, eff. September 1, 2007.

Sec. 81.154. SETTING ON APPLICATION. (a) The judge or a magistrate designated under this chapter shall set a date for a hearing to be held within 14 days after the date on which the application is served on the person.

(b) The hearing may not be held within the first three days after the application is filed if the person or the person's attorney objects.

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is served on the person.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 3, eff. May 23, 1997.

Sec. 81.155. NOTICE. (a) The person and the person's attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

(b) A copy of the application and the written notice shall be delivered in person or sent by certified mail to:

(1) the person's parent, if the person is a minor;

(2) the person's appointed guardian, if the person is the subject of a guardianship; or

(3) each managing and possessory conservator, that has been appointed for the person.

(c) The court shall appoint a guardian ad litem for a minor if the parent cannot be located and a guardian or conservator has not been appointed.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.156. DISCLOSURE OF INFORMATION. (a) The person's attorney may request information from the attorney general or the municipal, county, or district attorney, as appropriate, in accordance with this section if the attorney cannot otherwise obtain the information. The attorney must request the information at least 48 hours before the time set for the hearing.

(b) If the person's attorney requests the information in accordance with Subsection (a), the attorney general or the municipal, county, or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

(1) the provisions of this chapter that will be relied on at the hearing to establish that the person requires a court order for the temporary or extended management of a person with a communicable disease;

(2) the name, address, and telephone number of each witness who may testify at the hearing;

(3) a brief description of the reasons why temporary or extended management is required; and

(4) a list of any acts committed by the person that the applicant will attempt to prove at the hearing.

(c) At the hearing, the judge may admit evidence or testimony that relates to matters not disclosed under this chapter if the admission would not deprive the person of a fair opportunity to contest the evidence or testimony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 4, eff. May 23, 1997.

Sec. 81.157. DISTRICT COURT JURISDICTION. (a) A proceeding under this chapter must be held in a district court of the county in which the person is found, resides, or is receiving court-ordered health services.

(b) If a person subject to an order for temporary management is receiving services in a county other than the county in which the court that entered the temporary order is located and requires extended management, the county in which the temporary order was

issued shall pay the expenses of transporting the person back to the county for the hearing unless the court that entered the temporary order arranges with the appropriate court in the county in which the person is receiving services to hold the hearing on the application for extended order before the temporary order expires.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 5, eff. May 23, 1997.

Sec. 81.158. AFFIDAVIT OF MEDICAL EVALUATION. (a) An affidavit of medical evaluation must be dated and signed by the commissioner or the commissioner's designee, or by a health authority with the concurrence of the commissioner or the commissioner's designee. The certificate must include:

(1) the name and address of the examining physician, if applicable;

(2) the name and address of the person examined or to be examined;

(3) the date and place of the examination, if applicable;

(4) a brief diagnosis of the examined person's physical and mental condition, if applicable;

(5) the period, if any, during which the examined person has been under the care of the examining physician;

(6) an accurate description of the health treatment, if any, given by or administered under the direction of the examining physician; and

(7) the opinion of the health authority or department and the reason for that opinion, including laboratory reports, that:

(A) the examined person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health; and

(B) as a result of that communicable disease the examined person:

(i) is likely to cause serious harm to himself; or

(ii) will, if not examined, observed, or

treated, continue to endanger public health.

(b) The department or health authority must specify in the affidavit each criterion listed in Subsection (a)(7)(B) that in the opinion of the department or health authority applies to the person.

(c) If the affidavit is offered in support of an application for extended management, the affidavit must also include the department's or health authority's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the affidavit is offered in support of a motion for a protective custody order, the affidavit must also include the department's or health authority's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior to the extent that the examined person cannot remain at liberty.

(e) The affidavit must include the detailed basis for each of the department's or health authority's opinions under this section.

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

Sec. 81.159. DESIGNATION OF FACILITY. (a) The commissioner shall designate health care facilities throughout the state that are capable of providing services for the examination, observation, isolation, or treatment of persons having or suspected of having a communicable disease. However, the commissioner may not designate:

(1) a nursing home or custodial care home required to be licensed under Chapter 242; or

(2) an intermediate care facility for the mentally retarded required to be licensed under Chapter 252.

(b) The health authority shall select a designated facility in the county in which the application is filed. If no facility is designated in the county, the commissioner shall select the facility.

(c) This section does not relieve a county of its responsibility under other provisions of this chapter or applicable

law for providing health care services.

(d) A designated facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(e) This section does not apply to a person for whom treatment in a private health facility is proposed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 6, eff. May 23, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.07, eff. September 1, 2007.

Sec. 81.160. LIBERTY PENDING HEARING. The person who is the subject of an application for management is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this chapter.

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

Sec. 81.161. MOTION FOR ORDER OF PROTECTIVE CUSTODY. (a) A motion for an order of protective custody may be filed only in the court in which an application for a court order for the management of a person with a communicable disease is pending.

(b) The motion may be filed by the municipal, county, or district attorney on behalf of the health authority. The motion shall be filed by the attorney general at the request of the department.

(c) The motion must state that:

(1) the department or health authority has reason to believe and does believe that the person meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the conduct of the person who is the subject of the motion; or

(C) the circumstances under which the person is found.

(d) The motion must be accompanied by an affidavit of

medical evaluation.

(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 7, eff. May 23, 1997.

Sec. 81.162. ISSUANCE OF ORDER. (a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health; and

(2) that the person fails or refuses to comply with the written orders of the health authority or the department under Section 81.083, if applicable.

(b) Noncompliance with orders issued under Section 81.083 may be demonstrated by the person's behavior to the extent that the person cannot remain at liberty.

(c) The judge or magistrate may consider only the application and affidavit in making a determination that the person meets the criteria prescribed by Subsection (a). If only the application and certificate are considered the judge or magistrate must determine that the conclusions of the health authority or department are adequately supported by the information provided.

(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and affidavit only.

(e) The judge or magistrate may issue a protective custody order for a person who is charged with a criminal offense if the person meets the requirements of this section and the head of the facility designated to detain the person agrees to the detention.

(f) Notwithstanding Section 81.161 or Subsection (c), a judge or magistrate may issue a temporary protective custody order before the filing of an application for a court order for the

management of a person with a communicable disease under Section 81.151 if:

(1) the judge or magistrate takes testimony that an application under Section 81.151, together with a motion for protective custody under Section 81.161, will be filed with the court on the next business day; and

(2) the judge or magistrate determines based on evidence taken under Subsection (d) that there is probable cause to believe that the person presents a substantial risk of serious harm to himself or others to the extent that the person cannot be at liberty pending the filing of the application and motion.

(g) A temporary protective custody order issued under Subsection (f) may continue only until 4 p.m. on the first business day after the date the order is issued unless the application for a court order for the management of a person with a communicable disease and a motion for protective custody, as described by Subsection (f)(1), are filed at or before that time. If the application and motion are filed at or before 4 p.m. on the first business day after the date the order is issued, the temporary protective custody order may continue for the period reasonably necessary for the court to rule on the motion for protective custody.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.188, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.08, eff. September 1, 2007.

Sec. 81.163. APPREHENSION UNDER ORDER. (a) A protective custody order shall direct a peace officer to take the person who is the subject of the order into protective custody and transport the person immediately to an appropriate inpatient health facility that has been designated by the commissioner as a suitable place.

(b) If an appropriate inpatient health facility is not available, the person shall be transported to a facility considered suitable by the health authority.

(c) The person shall be detained in the facility until a

hearing is held under Section 81.165.

(d) A facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(e) A person may not be detained in a private health facility without the consent of the head of the facility.

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

Sec. 81.164. APPOINTMENT OF ATTORNEY. (a) The judge or designated magistrate shall appoint an attorney to represent a person who is the subject of a protective custody order who does not have an attorney when the order is signed.

(b) Within a reasonable time before a hearing is held under Section 81.165, the court that ordered the protective custody shall provide the person and the person's attorney with a written notice that states:

(1) that the person has been placed under a protective custody order;

(2) the grounds for the order; and

(3) the time and place of the hearing to determine probable cause.

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

Sec. 81.165. PROBABLE CAUSE HEARING. (a) A hearing must be held to determine if:

(1) there is probable cause to believe that a person under a protective custody order presents a substantial risk of serious harm to himself or others to the extent that the person cannot be at liberty pending the hearing on a court order for the management of a person with a communicable disease; and

(2) the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to public health.

(b) The hearing must be held not later than 72 hours after the time that the person was detained under the protective custody

order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions that threaten the safety of the person or another essential party to the hearing. If the area in which the person is found, or the area where the hearing will be held, is under a public health disaster, the judge or magistrate may postpone the hearing until the period of disaster is ended.

(c) A magistrate or a master appointed by the presiding judge shall conduct the hearing. The master is entitled to reasonable compensation.

(d) The person and his attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the person presents a substantial risk of serious harm to himself or others. If the health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge, jurors, or the public would jeopardize the health and safety of those persons and the public health, a magistrate or a master may order that a person entitled to a hearing for a protective custody order may not appear in person and may appear only by teleconference or another means the magistrate or master finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

(e) The magistrate or master may consider evidence that may not be admissible or sufficient in a subsequent commitment hearing, including letters, affidavits, and other material.

(f) The state may prove its case on the health authority's or department's affidavit of medical evaluation filed in support of the initial motion.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.09, eff. September 1, 2007.

Sec. 81.166. ORDER FOR CONTINUED DETENTION. (a) The

magistrate or master shall order that a person remain in protective custody if the magistrate or master determines after the hearing that an adequate factual basis exists for probable cause to believe that the person presents a substantial risk of serious harm to himself or others to the extent that the person cannot remain at liberty pending the hearing on the application.

(b) The magistrate or master shall arrange for the person to be returned to the health facility or other suitable place, along with copies of the affidavits and other material submitted as evidence in the hearing and the notification prepared as prescribed by Subsection (d).

(c) A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the district court that entered the original order of protective custody.

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 19__, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

The proposed patient and his or her attorney _____ have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on _____ (date of notice).

I have examined the affidavit of medical evaluation and _____ (other evidence considered). Based on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or herself (yes ____ or no ____) or others (yes ____ or no ____) such that (s)he cannot be at liberty pending final hearing because (s)he is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and (s)he has failed or refused to

comply with the orders of the health authority or the Texas Department of Health delivered on _____ (date of service) _____.

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

Sec. 81.167. DETENTION IN PROTECTIVE CUSTODY. (a) The head of a facility or the facility head's designee shall detain a person under a protective custody order in the facility pending a court order for the management of a person with a communicable disease or until the person is released or discharged under Section 81.168.

(b) A person under a protective custody order shall be detained in an appropriate inpatient health facility that has been designated by the commissioner or by a health authority and selected by the health authority under Section 81.159.

(c) A person under a protective custody order may be detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime only with the consent of the medical director of the facility and only if the facility has respiratory isolation capability for airborne communicable diseases. The person may not be detained in a nonmedical facility under this subsection for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, the period prescribed by Section 81.165(b) for an extreme weather emergency, and the duration of a public health disaster. The person must be isolated from any person who is charged with or convicted of a crime.

(d) The health authority shall ensure that proper isolation methods are used and medical care is made available to a person who is detained in a nonmedical facility under Subsection (c).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 8, eff. May 23, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.10, eff. September 1, 2007.

Sec. 81.168. RELEASE FROM DETENTION. (a) The magistrate or master shall order the release of a person under a protective

custody order if the magistrate or master determines after the hearing under Section 81.165 that no probable cause exists to believe that the person presents a substantial risk of serious harm to himself or others.

(b) Arrangements shall be made to return a person released under Subsection (a) to:

(1) the location at which the person was apprehended;

(2) the person's place of residence in this state; or

(3) another suitable location.

(c) The head of a facility shall discharge a person held under a protective custody order if:

(1) the head of the facility does not receive notice within 72 hours after detention begins, excluding Saturdays, Sundays, legal holidays, the period prescribed by Section 81.165(b) for an extreme weather emergency, and the duration of a public health disaster, that a probable cause hearing was held and the person's continued detention was authorized;

(2) a final court order for the management of a person with a communicable disease has not been entered within the time prescribed by Section 81.154; or

(3) the health authority or commissioner determines that the person no longer meets the criteria for protective custody prescribed by Section 81.162.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.11, eff. September 1, 2007.

Sec. 81.169. GENERAL PROVISIONS RELATING TO HEARING. (a) Except as provided by Subsection (b), the judge may hold a hearing on an application for a court order for the management of a person with a communicable disease at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the public or the person.

(b) On the request of the person or the person's attorney, the hearing on the application shall be held in the county courthouse.

(c) The health authority shall advise the court on appropriate control measures to prevent the transmission of the communicable disease alleged in the application.

(d) The person is entitled to be present at the hearing. The person or the person's attorney may waive this right.

(e) The hearing must be open to the public unless the person or the person's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(f) The Texas Rules of Evidence apply to the hearing unless the rules are inconsistent with this chapter.

(g) The court may consider the testimony of a nonphysician health professional in addition to medical testimony.

(h) The hearing is on the record, and the state must prove each element of the application criteria by clear and convincing evidence.

(i) Notwithstanding Subsection (d), if the health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge, jurors, or the public would jeopardize the health and safety of those persons and the public health, a judge may order that a person entitled to a hearing may not appear in person and may appear only by teleconference or another means that the judge finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.0001, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.12, eff. September 1, 2007.

Sec. 81.170. RIGHT TO JURY. (a) A hearing for temporary management must be before the court unless the person or the person's attorney requests a jury.

(b) A hearing for extended management must be before a jury unless the person or the person's attorney waives the right to a jury.

(c) A waiver of the right to a jury must be in writing, under

oath, and signed by the person and the person's attorney.

(d) The court may permit a waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made at least seven days before the date on which the hearing is scheduled.

(e) A court may not require a jury fee.

(f) The jury shall determine if the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has refused or failed to follow the orders of the health authority. The jury may not make a finding about the type of services to be provided to the person.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 9, eff. May 23, 1997.

Sec. 81.171. RELEASE AFTER HEARING. (a) The court shall enter an order denying an application for a court order for temporary or extended management if after a hearing the judge or jury fails to find, from clear and convincing evidence, that the person:

(1) is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health;

(2) has refused or failed to follow the orders of the health authority if the application is for inpatient treatment; and

(3) meets the applicable criteria for orders for the management of a person with a communicable disease.

(b) If the court denies the application, the court shall order the immediate release of a person who is not at liberty.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 10, eff. May 23, 1997.

Sec. 81.172. ORDER FOR TEMPORARY MANAGEMENT. (a) The judge or jury may determine that a person requires court-ordered examination, observation, isolation, or treatment only if the judge or jury finds, from clear and convincing evidence, that:

(1) the person is infected with or is reasonably

suspected of being infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed or refused to follow the orders of the health authority or department; and

(2) as a result of the communicable disease the person:

(A) is likely to cause serious harm to himself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger public health.

(b) The judge or jury must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(c) The person or the person's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and the court may admit, as evidence, the affidavit of medical evaluation. The affidavit admitted under this subsection constitutes competent medical testimony, and the court may make its findings solely from the affidavit.

(d) An order for temporary management shall state that examinations, treatment, and surveillance are authorized for a period not longer than 90 days.

(e) The department, with the cooperation of the head of the facility, shall submit to the court a general program of treatment to be provided. The program must be submitted not later than the 14th day after the date the order is issued and must be incorporated into the court order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 11, eff. May 23, 1997.

Sec. 81.173. ORDER FOR EXTENDED MANAGEMENT. (a) The jury, or the judge if the right to a jury is waived, may determine that a proposed patient requires court-ordered examination, observation, isolation, or treatment only if the jury or judge finds, from clear and convincing evidence, that:

(1) the person is infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed to follow the orders of the

health authority or department;

(2) as a result of that communicable disease the person:

(A) is likely to cause serious harm to himself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger public health; and

(3) the person's condition is expected to continue for more than 90 days.

(b) The jury or judge must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(c) The court may not make findings solely from the affidavit of medical evaluation, but shall hear testimony. The court may not enter an order for extended management unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical testimony.

(d) An order for extended management shall state that examination, treatment, and surveillance are authorized for not longer than 12 months.

(e) The department, with the cooperation of the head of the facility, shall submit to the court a general program of treatment to be provided. The program must be submitted not later than the 14th day after the date the order is issued and must be incorporated into the court order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 12, eff. May 23, 1997.

Sec. 81.174. ORDER OF CARE OR COMMITMENT. (a) The judge shall dismiss the jury, if any, after a hearing in which a person is found:

(1) to be infected with or reasonably suspected of being infected with a communicable disease;

(2) to have failed or refused to follow the orders of a health authority or the department if the application is for inpatient treatment; and

(3) to meet the criteria for orders for the management

of a patient with a communicable disease.

(b) The judge may hear additional evidence relating to alternative settings for examination, observation, treatment, or isolation before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for care the recommendation for the appropriate health care facility filed under this chapter.

(d) The judge may enter an order:

(1) committing the person to a health care facility for inpatient care; or

(2) requiring the person to participate in other communicable disease management programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 13, eff. May 23, 1997.

Sec. 81.175. COURT-ORDERED OUTPATIENT SERVICES. (a) The court, in an order that directs a person to participate in an outpatient communicable disease program, shall designate a health authority to monitor the person's compliance. The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority in implementing the court orders.

(b) The health authority or the department, with the cooperation of the head of the facility, shall submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. The program must be incorporated into the court order.

(c) The health authority or department shall inform the court:

(1) if the person fails to comply with the court order; and

(2) of any substantial change in the general program of treatment that occurs before the order expires.

(d) A facility must comply with this section to the extent that the commissioner determines that the designated facility has

sufficient resources to perform the necessary services.

(e) A person may not be detained in a private health care facility without the consent of the facility head.

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

Sec. 81.176. DESIGNATION OF FACILITY. In a court order for the temporary or extended management of a person with a communicable disease specifying inpatient care, the court shall commit the person to a health care facility designated by the commissioner or a health authority in accordance with Section 81.159.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.13, eff. September 1, 2007.

Sec. 81.177. COMMITMENT TO PRIVATE FACILITY. (a) The court may order a person committed to a private health care facility at no expense to the state if the court receives:

(1) an application signed by the person or the person's guardian or next friend requesting that the person be placed in a designated private health care facility at the person's or applicant's expense; and

(2) a written agreement from the head of the private health care facility to admit the person and to accept responsibility for the person in accordance with this chapter.

(b) Consistent with Subsection (a), the court may order a person committed to a private health care facility at no expense to the state, a county, a municipality, or a hospital district if:

(1) a state of disaster or a public health disaster has been declared or an area quarantine is imposed under Section 81.085;

(2) the health care facility is located within the disaster area or area quarantine, as applicable; and

(3) the judge determines that there is no public health care facility within the disaster area or area quarantine, as applicable, that has appropriate facilities and the capacity

available to receive and treat the person.

(c) Nothing in this section prevents a health care facility that accepts a person under this section from pursuing reimbursement from any appropriate source, such as a third-party public or private payor or disaster relief fund.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258, Sec. 14.14, eff. September 1, 2007.

Sec. 81.178. COMMITMENT TO FEDERAL FACILITY. (a) A court may order a person committed to a federal agency that operates a health care facility if the court receives written notice from the agency that facilities are available and that the person is eligible for care or treatment in the facility. The court may place the person in the agency's custody for transportation to the health care facility.

(b) A person admitted under court order to a health care facility operated by a federal agency, regardless of location, is subject to the agency's rules and regulations.

(c) The head of the health care facility has the same authority and responsibility with respect to the person as the head of a facility.

(d) The appropriate courts of this state retain jurisdiction to inquire at any time into the person's mental condition and the necessity of the person's continued commitment.

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

Sec. 81.179. TRANSPORTATION OF PERSON. (a) The court shall order the sheriff or constable to transport the person to the designated health care facility.

(b) A female shall be accompanied by a female attendant during conveyance to the health care facility.

(c) The health authority or department shall instruct the sheriff or constable on procedures that may be necessary in transporting the person to prevent the spread of the disease.

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

by Acts 1997, 75th Leg., ch. 242, Sec. 14, eff. May 23, 1997.

Sec. 81.180. WRIT OF COMMITMENT. The court shall direct the court clerk to issue to the individual authorized to transport the person two writs of commitment requiring the individual to take custody of and transport the person to the designated health care facility.

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

Sec. 81.181. ACKNOWLEDGEMENT OF DELIVERY. The head of the facility, after receiving a copy of the writ of commitment and after admitting the person, shall:

(1) give the individual transporting the person a written statement acknowledging acceptance of the person and of any personal property belonging to the person; and

(2) file a copy of the statement with the clerk of the committing court.

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

Sec. 81.182. MODIFICATION OF ORDER FOR INPATIENT TREATMENT. (a) At the request of the health authority, a municipal, county, or district attorney, as appropriate, shall request the court that entered the commitment order to modify the order to provide for outpatient care. At the request of the department, the attorney general shall request the court that entered the commitment order to modify the order to provide for outpatient care.

(b) The request must explain in detail the reason for the request. The request must be accompanied by an affidavit of a physician who examined the person during the preceding seven days.

(c) The person shall be given notice of the request.

(d) On the request of the person or any other interested individual, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the person at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 81.169. The person shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make the decision solely from the request and the supporting affidavit.

(f) If the court modifies the order, the court shall designate the health authority to monitor the person's compliance.

(g) The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority and shall comply with Section 81.175(b).

(h) A modified order may not extend beyond the term of the original order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 15, eff. May 23, 1997.

Sec. 81.183. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT. (a) The court that entered an order directing a person to participate in outpatient health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, on the motion of a municipal, county, or district attorney at the request of the health authority, on the motion of the attorney general at the request of the department, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the person if a hearing is scheduled. The person shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 81.155 for notice before a hearing on an application for court orders for the management of a person with a communicable disease.

(c) The hearing shall be held before the court, without a jury, and as prescribed by this chapter. The person shall be represented by an attorney and receive proper notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 16, eff. May 23, 1997.

Sec. 81.184. ORDER FOR TEMPORARY DETENTION. (a) At the request of the health authority, a municipal, county, or district

attorney, as appropriate, shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183. At the request of the department, the attorney general shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183.

(b) The application must state the applicant's opinion and detail the reason for the applicant's opinion that:

(1) the person meets the criteria described by this chapter; and

(2) detention in an inpatient health care facility is necessary to evaluate the appropriate setting for continued court-ordered care.

(c) The court shall decide from the information in the application. The court may issue an order for temporary detention if a modification hearing is set and the court finds that there is probable cause to believe that the opinions stated in the application are valid.

(d) The judge shall appoint an attorney to represent a person who does not have an attorney when the order for temporary detention is signed.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the person and the person's attorney a written notice that contains:

(1) a statement that the person has been placed under a temporary detention order;

(2) the grounds for the order; and

(3) the time and place of the modification hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 17, eff. May 23, 1997.

Sec. 81.185. APPREHENSION AND RELEASE UNDER ORDER FOR TEMPORARY DETENTION. (a) The order for temporary detention shall direct a peace officer to take the person into custody and immediately transport the person to an appropriate inpatient health care facility. The person shall be transported to a facility considered suitable by the health authority if an appropriate

inpatient health care facility is not available.

(b) A person may be detained under a temporary detention order for not longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 81.165(b) for an extreme weather emergency.

(c) A facility head shall immediately release a person held under an order for temporary detention if the facility head does not receive notice that a modification hearing was held within the time prescribed by Subsection (b) at which the patient's continued detention was authorized.

(d) A person released from custody under Subsection (c) continues to be subject to the terms of the outpatient orders for the management of the person issued before the order for temporary detention, if the orders have not expired.

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

Sec. 81.186. ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the person continues to meet the applicable criteria for court orders for the management of a person with a communicable disease and that:

(1) the person has not complied with the court's order; or

(2) the person's condition has deteriorated to the extent that outpatient services are no longer appropriate.

(b) The court's decision to modify an order must be supported by an affidavit of medical evaluation prepared by the health authority or department.

(c) A court may refuse to modify the order and may direct the person to continue to participate in outpatient health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient health services under the modified order, if a revised general program of treatment

was submitted to and accepted by the court; or

(2) providing for examination, observation, isolation, or treatment at an appropriate inpatient health care facility.

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

Sec. 81.187. RENEWAL OF ORDER FOR EXTENDED MANAGEMENT. (a) A municipal, county, or district attorney, as appropriate, at the request of the health authority, shall file an application to renew an order for extended management. At the request of the department, the attorney general shall file an application to renew an order for extended management.

(b) The application must explain in detail why the person requests renewal. An application to renew an order committing the person to extended inpatient services must also explain in detail why a less restrictive setting is not appropriate.

(c) The application must be accompanied by an affidavit of medical evaluation dated and signed by the health authority or department according to an examination conducted within the preceding 30 days.

(d) The court shall appoint an attorney to represent the person when an application is filed.

(e) The person or the person's attorney may request a hearing on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for a court order for the extended management of a person with a communicable disease.

(f) A court may not renew an order unless the court finds that the patient meets the criteria for extended management required by this chapter. The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g) The court may admit into evidence the affidavit of medical evaluation if a hearing is not requested or set. The affidavit constitutes competent medical testimony and the court may make its findings solely from the affidavit and the detailed

request for renewal.

(h) The court, after renewing an order for extended inpatient health services, may modify the order to provide for outpatient health services in accordance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 18, eff. May 23, 1997.

Sec. 81.188. MOTION FOR REHEARING. (a) The court may set aside an order for the management of a person with a communicable disease and grant a motion for rehearing for good cause shown.

(b) The court may stay the order and release the person from custody before the hearing if the court is satisfied that the person does not meet the criteria for protective custody under this chapter.

(c) The court may require an appearance bond in an amount set by the court.

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

Sec. 81.189. REQUEST FOR REEXAMINATION. (a) A person subject to an order for extended management, or any interested person on the person's behalf and with the person's consent, may file a request with a court for a reexamination and a hearing to determine if the person continues to meet the criteria for the court order.

(b) The request must be filed in the county in which the person is receiving the services.

(c) The court may, on good cause shown:

(1) require that the patient be reexamined;

(2) schedule a hearing on the request; and

(3) notify the health authority, department, and the head of the facility providing health services to the person.

(d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended management is entered or after a similar request is filed.

(e) The head of the facility shall arrange for the person to be reexamined after receiving the court's notice.

(f) The head of the facility shall immediately discharge the

person if the health authority or department determines that the person no longer meets the criteria for court-ordered extended health services.

(g) If the health authority or department determines that the person continues to meet the criteria for a court order for extended management, the health authority or department shall file an affidavit of medical evaluation with the court within 10 days after the request for reexamination and hearing is filed.

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

Sec. 81.190. HEARING ON REQUEST FOR REEXAMINATION. (a) A court that required a patient's reexamination under Section 81.189 may set a date and place for a hearing on the request if, not later than the 10th day after the request is filed:

(1) an affidavit of medical evaluation stating that the patient continues to meet the criteria for extended management has been filed; or

(2) an affidavit has not been filed and the person has not been discharged.

(b) When the hearing is set, the judge shall appoint an attorney to represent the person if the person does not already have an attorney. The judge shall also give notice of the hearing to the person, the person's attorney, the health authority or department, and the facility head.

(c) The judge shall appoint a physician who is not on the staff of the health care facility in which the person is receiving services to examine the person and file an affidavit with the court setting out the person's diagnosis and recommended treatment. The court shall ensure that the person may be examined by a physician of the person's choice and own expense if requested by the person.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for a court order for the management of a person with a communicable disease.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the person continues to meet the criteria for extended management.

(f) The judge shall order the head of the facility to discharge the person if the court fails to find from clear and convincing evidence that the person continues to meet the criteria.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.191. APPEAL. (a) An appeal from an order for the management of a person with a communicable disease, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) The trial judge in whose court the cause is pending may:

(1) stay the order and release the person from custody before the appeal if the judge is satisfied that the person does not meet the criteria for protective custody under this chapter; and

(2) if the person is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.192. CONTINUING CARE PLAN BEFORE DISCHARGE. The health authority or department, in consultation with the person, shall prepare a continuing care plan for a person who is scheduled to be discharged if the person requires continuing care.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.193. PASS FROM INPATIENT CARE. (a) The head of a facility may permit a person admitted to the facility under order for extended inpatient management of a person with a communicable disease to leave the facility under a pass.

(b) A pass authorizes the person to leave the facility for not more than 72 hours.

(c) The pass may be subject to specified conditions.

(d) A pass may not be authorized without the concurrence of the health authority or department.

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

Sec. 81.194. RETURN TO FACILITY. (a) If a person is permitted to leave a facility under Section 81.193, the head of the facility may have the person taken into custody, detained, and returned to the facility by:

(1) signing a certificate authorizing the person's return; or

(2) filing the certificate with a magistrate and requesting the magistrate to order the person's return.

(b) The health authority or department may also have a person returned by signing the certificate authorized by Subsection (a)(1).

(c) A magistrate may issue an order directing a peace officer to take a person into custody and return the person to the facility if the head of the facility, health authority, or department files the certificate as prescribed by this section.

(d) The head of the facility, health authority, or department may sign or file the certificate on a reasonable belief that:

(1) the person is absent without authority from the facility;

(2) the person has violated the conditions of a pass; or

(3) the person's condition has deteriorated to the extent that the person's continued absence from the facility under a pass is inappropriate.

(e) A peace officer shall take the person into custody and return the person to the facility as soon as possible if the person's return is authorized by the certificate or the court order.

(f) The peace officer may take the person into custody without having the certificate or court order in the officer's possession.

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

Sec. 81.195. DISCHARGE ON EXPIRATION OF COURT ORDER. The head of a facility to which a person was committed or from which a person was required to receive temporary or extended inpatient or outpatient health services shall discharge the person when the court order expires.

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

Sec. 81.196. DISCHARGE BEFORE EXPIRATION OF COURT ORDER. (a) The health authority or department may direct the head of a facility to which a person was committed for inpatient health services or that provides outpatient health services to discharge the person at any time before the court order expires if the health authority or department determines that the person no longer meets the criteria for court-ordered health services.

(b) The health authority or department shall consider before discharging the person whether the person should receive outpatient health services in accordance with:

(1) a court order; or

(2) a modified order under Section 81.182 that directs the person to participate in outpatient health services.

(c) A discharge under Subsection (a) terminates the court order.

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

Sec. 81.197. CERTIFICATE OF DISCHARGE. Before a person is discharged under Section 81.195 or 81.196, the health authority or department shall prepare a discharge certificate, file it with the court that entered the order, and notify the head of the facility.

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

Sec. 81.198. AUTHORIZATION FOR ADMISSION. The head of a health care facility may admit and detain a person under the procedures prescribed by this subchapter.

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

Sec. 81.199. TRANSFER TO FEDERAL FACILITY. The health authority or department may authorize the head of a health care facility to transfer a person to a federal agency if:

(1) the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in the facility;

(2) notice of the transfer is sent to the committing court; and

(3) the committing court enters an order approving the transfer.

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

Sec. 81.200. TRANSFER OF RECORDS. The head of the transferring inpatient health care facility shall send the person's appropriate medical records, or a copy of the records, to the head of the health care facility to which the person is transferred.

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

Sec. 81.201. WRIT OF HABEAS CORPUS. This subchapter does not limit a person's right to obtain a writ of habeas corpus.

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

Sec. 81.202. EFFECT ON GUARDIANSHIP. This subchapter, or an action taken or a determination made under this subchapter, does not affect a guardianship established under law.

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

Sec. 81.203. CONFIDENTIALITY OF RECORDS. Records of a health care facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by this chapter or other state law.

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

Sec. 81.204. RIGHTS SUBJECT TO LIMITATION BY HEAD OF FACILITY. (a) A person in an inpatient health care facility has the right to:

(1) receive visitors;

(2) communicate with a person outside the facility; and

(3) communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to facility rules. The head of the facility may restrict a right to the extent the head of the facility determines that the restriction is necessary to the public health or the person's welfare but may not restrict the right to communicate with legal counsel if an attorney-client relationship has been established.

(c) A restriction imposed by the head of the facility for the public health or the person's welfare and the reasons for the restriction shall be made a part of the person's clinical record.

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

Sec. 81.205. NOTIFICATION OF RIGHTS. A person receiving inpatient health services shall be informed of the rights provided by Section 81.206:

(1) orally, in simple, nontechnical terms;

(2) in writing that, if possible, is in the person's primary language; and

(3) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

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

Sec. 81.206. GENERAL RIGHTS RELATING TO TREATMENT. A person receiving health services under this subchapter has the right to:

(1) appropriate treatment for the person's illness in an appropriate setting consistent with the protection of the person and the community;

(2) not receive unnecessary or excessive medication;

(3) refuse to participate in a research program; and

(4) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for

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

Sec. 81.207. ADEQUACY OF TREATMENT. (a) The head of an inpatient health care facility shall provide adequate medical care and treatment to every patient in accordance with accepted standards of medical practice.

(b) The head of the facility is responsible for the detention of the patient and for providing suitable security to prevent the patient from transmitting the communicable disease.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 31, eff. Sept. 1, 1991.

Sec. 81.208. PERIODIC EXAMINATION. The head of a health care facility is responsible for the examination by a physician of each person admitted to the facility under this subchapter at least once every seven days and more frequently as necessary.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.209. USE OF PHYSICAL RESTRAINT. (a) A physical restraint may not be applied to a person unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 81.210. COSTS. (a) A county shall pay the costs for a hearing or proceeding under this subchapter if a health authority:

(1) initiates an application for a court order under Section 81.151; or

(2) has an application for court-ordered management transferred to it under Section 81.157.

(b) Costs under this section include:

(1) attorney's fees;

(2) physician examination fees;

(3) compensation for court-ordered personal services;

(4) security; and

(5) expenses of transportation to a designated facility.

(c) A county is entitled to reimbursement for costs actually paid by the county from:

(1) the person who is the subject of the application; or

(2) a person or estate liable for the person's support.

(d) The department shall pay the costs of returning a person absent without authorization unless the person is able to pay the costs.

Added by Acts 1997, 75th Leg., ch. 242, Sec. 19 eff. May 23, 1997.

Sec. 81.211. FILING AND STATUS OF FOREIGN COURT ORDERS. (a) In the case of a person who is not a resident of this state and who may be admitted to a state chest hospital in accordance with Section 13.046, the attorney general, at the request of the department, shall file a copy of an order issued by a court of another state that authorizes the commitment of the person to a health care facility for inpatient care in the manner provided by Chapter 35, Civil Practice and Remedies Code, for enforcement of foreign judgments.

(b) The application must be filed with the district court in the county in which the state chest hospital to which the person will be admitted is located.

(c) A filed foreign court order that authorizes the commitment of a person to a health care facility for inpatient care may be enforced in the same manner as a court order of the court in which it is filed.

(d) A foreign court order that authorizes the commitment of a person to a health care facility for inpatient care is subject to the contractual agreement with the foreign state entered into under Section 13.046.

Added by Acts 2003, 78th Leg., ch. 107, Sec. 4, eff. Sept. 1, 2003.

Sec. 81.301. DEFINITIONS. In this subchapter:

(1) "Bloodborne pathogens" means pathogenic microorganisms that are present in human blood and that can cause diseases in humans. The term includes hepatitis B virus, hepatitis C virus, and human immunodeficiency virus.

(2) "Engineered sharps injury protection" means:

(A) a physical attribute that is built into a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids and that effectively reduces the risk of an exposure incident by a mechanism such as barrier creation, blunting, encapsulation, withdrawal, retraction, destruction, or another effective mechanism; or

(B) a physical attribute built into any other type of needle device, into a nonneedle sharp, or into a nonneedle infusion safety securement device that effectively reduces the risk of an exposure incident.

(3) "Governmental unit" means:

(A) this state and any agency of the state, including a department, bureau, board, commission, or office;

(B) a political subdivision of this state, including any municipality, county, or special district; and

(C) any other institution of government, including an institution of higher education.

(4) "Needleless system" means a device that does not use a needle and that is used:

(A) to withdraw body fluids after initial venous or arterial access is established;

(B) to administer medication or fluids; or

(C) for any other procedure involving the potential for an exposure incident.

(5) "Sharp" means an object used or encountered in a health care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including a needle device, a scalpel, a lancet, a piece of broken glass, a broken capillary tube, an exposed end of a dental

wire, or a dental knife, drill, or bur.

(6) "Sharps injury" means any injury caused by a sharp, including a cut, abrasion, or needlestick.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.302. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a governmental unit that employs employees who:

(1) provide services in a public or private facility providing health care-related services, including a home health care organization; or

(2) otherwise have a risk of exposure to blood or other material potentially containing bloodborne pathogens in connection with exposure to sharps.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.303. EXPOSURE CONTROL PLAN. The department shall establish an exposure control plan designed to minimize exposure of employees described by Section 81.302 to bloodborne pathogens. In developing the plan, the department must consider:

(1) policies relating to occupational exposure to bloodborne pathogens;

(2) training and educational requirements for employees;

(3) measures to increase vaccinations of employees; and

(4) increased use of personal protective equipment by employees.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.304. MINIMUM STANDARDS. The board by rule shall adopt minimum standards to implement the exposure control plan and the other provisions of this subchapter. The rules shall be analogous to standards adopted by the federal Occupational Safety and Health Administration. Each governmental unit shall comply

with the minimum standards adopted under this subchapter.
Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.305. NEEDLELESS SYSTEMS. (a) The board by rule shall recommend that governmental units implement needleless systems and sharps with engineered sharps injury protection for employees.

(b) The recommendation adopted under Subsection (a) does not apply to the use of a needleless system or sharps with engineered sharps injury protection in circumstances and in a year in which an evaluation committee has established that the use of needleless systems and sharps with engineered sharps injury protection will jeopardize patient or employee safety with regard to a specific medical procedure or will be unduly burdensome. A report of the committee's decision shall be submitted to the department annually.

(c) At least half of the members of an evaluation committee established by a governmental unit to implement Subsection (b) must be employees who are health care workers who have direct contact with patients or provide services on a regular basis.
Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.306. SHARPS INJURY LOG. (a) The board by rule shall require that information concerning exposure incidents be recorded in a written or electronic sharps injury log to be maintained by a governmental unit. This information must be reported to the department and must include:

(1) the date and time of the exposure incident;

(2) the type and brand of sharp involved in the exposure incident; and

(3) a description of the exposure incident, including:

(A) the job classification or title of the exposed employee;

(B) the department or work area where the exposure incident occurred;

(C) the procedure that the exposed employee was performing at the time of the incident;

(D) how the incident occurred;

(E) the employee's body part that was involved in the exposure incident; and

(F) whether the sharp had engineered sharps injury protection and, if so, whether the protective mechanism was activated and whether the injury occurred before, during, or after the activation of the protective mechanism.

(b) Information regarding which recommendations under Section 81.305(a) were adopted by the governmental entity shall be included in the log.

(c) All information and materials obtained or compiled by the department in connection with a report under this section are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release by the department. The department shall make available, in aggregate form, the information described in Section 81.305(b) and this section, provided that the name and other information identifying the facility is deleted and the information is provided according to public health regions established by the department.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.307. DEVICE REGISTRATION. (a) The department, in accordance with rules adopted by the board, shall implement a registration program for existing needleless systems and sharps with engineered sharps injury protection.

(b) The department shall compile and maintain a list of existing needleless systems and sharps with engineered sharps injury protection that are available in the commercial marketplace and registered with the department to assist governmental units to comply with this subchapter.

(c) The department shall charge a fee to register a device in an amount established by the board. The fees collected under this section may be appropriated only to the department to

implement this subchapter.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

SUBCHAPTER I. ANIMAL-BORNE DISEASES

Sec. 81.351. DEFINITION. In this subchapter, "pet store" means a retail store that sells animals as pets.

Added by Acts 2001, 77th Leg., ch. 1228, Sec. 1, eff. Sept. 1, 2001.

Sec. 81.352. WARNING SIGN REQUIRED; RULES. (a) The owner or operator of a pet store that sells reptiles shall:

(1) post a sign warning of reptile-associated salmonellosis in accordance with department rules; and

(2) ensure that a written warning related to reptile-associated salmonellosis is provided to each purchaser of a reptile.

(b) The department shall adopt rules to govern:

(1) the form and content of the sign required by Subsection (a) and the manner and place of posting of the sign; and

(2) the form and content of the written warning required by Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1228, Sec. 1, eff. Sept. 1, 2001.

Sec. 81.353. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty if a person violates this section or a rule adopted under this section.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

(c) The penalty may not exceed $500 for each month a violation continues.

(d) The enforcement of the penalty may be stayed during the

time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the board to contest the affidavit as provided by those rules.

(e) The attorney general may sue to collect the penalty.

(f) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1228, Sec. 1, eff. Sept. 1, 2001.