

1-1 By: Wohlgemuth, Heflin (Senate Sponsor - Nelson) H.B. No. 2292
1-2 (In the Senate - Received from the House April 29, 2003;
1-3 April 30, 2003, read first time and referred to Committee on
1-4 Finance; May 26, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 3;
1-6 May 26, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2292 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the provision of health and human services in this
1-11 state, including the powers and duties of the Health and Human
1-12 Services Commission and other state agencies; providing penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 ARTICLE 1. ORGANIZATION OF THE HEALTH AND HUMAN SERVICES

1-15 COMMISSION AND HEALTH AND HUMAN SERVICES AGENCIES

1-16 SECTION 1.01. (a) Section 531.001(3), Government Code, is
1-17 amended to read as follows:

1-18 (3) "Executive commissioner" [~~"Commissioner"~~] means
1-19 the executive commissioner of the Health and Human Services
1-20 Commission [~~health and human services~~].

1-21 (b) Section 531.001(4), Government Code, as amended by
1-22 Chapters 53, 957, and 1420, Acts of the 77th Legislature, Regular
1-23 Session, 2001, is reenacted and amended to read as follows:

1-24 (4) "Health and human services agencies" includes the:

1-25 (A) Interagency Council on Early Childhood
1-26 Intervention;

1-27 (B) Texas Department on Aging;

1-28 (C) Texas Commission on Alcohol and Drug Abuse;

1-29 (D) Texas Commission for the Blind;

1-30 (E) Texas Commission for the Deaf and Hard of

1-31 Hearing;

1-32 (F) Texas Department of Health;

1-33 (G) Texas Department of Human Services;

1-34 (H) Texas Department of Mental Health and Mental

1-35 Retardation;

1-36 (I) Texas Rehabilitation Commission;

1-37 (J) Department of Family and Protective [~~and~~

1-38 Regulatory] Services; [~~and~~

1-39 (K) Texas Health Care Information Council;

1-40 (L) Department of Aging and Disability Services;

1-41 (M) Department of State Health Services; and

1-42 (N) Department of Assistive and Rehabilitative

1-43 Services.

1-44 (c) Effective on the date the agencies listed in Section
1-45 1.26 of this article are abolished as provided by that section,
1-46 Section 531.001(4), Government Code, as amended by Chapters 53,
1-47 957, and 1420, Acts of the 77th Legislature, Regular Session, 2001,
1-48 is reenacted and amended to read as follows:

1-49 (4) "Health and human services agencies" includes the:

1-50 (A) Department of Aging and Disability Services

1-51 [~~Interagency Council on Early Childhood Intervention~~];

1-52 (B) Department of State Health Services [~~Texas~~

1-53 ~~Department on Aging~~];

1-54 (C) Department of Assistive and Rehabilitative

1-55 Services [~~Texas Commission on Alcohol and Drug Abuse~~]; and

1-56 (D) [~~Texas Commission for the Blind,~~

1-57 [~~(E) Texas Commission for the Deaf and Hard of~~

1-58 ~~Hearing,~~

1-59 [~~(F) Texas Department of Health,~~

1-60 [~~(G) Texas Department of Human Services,~~

1-61 [~~(H) Texas Department of Mental Health and Mental~~

1-62 ~~Retardation,~~

1-63 [~~(I) Texas Rehabilitation Commission,~~

2-1 [~~(J)~~] Department of Family and Protective [~~and~~
2-2 Regulatory] Services [~~, and~~
2-3 [~~(K) Texas Health Care Information Council~~].

2-4 (d) A reference in law to the commissioner of health and
2-5 human services means the executive commissioner of the Health and
2-6 Human Services Commission.

2-7 SECTION 1.02. Section 531.004, Government Code, is amended
2-8 to read as follows:

2-9 Sec. 531.004. SUNSET PROVISION. The Health and Human
2-10 Services Commission is subject to Chapter 325 (Texas Sunset Act).
2-11 Unless continued in existence as provided by that chapter, the
2-12 commission is abolished and this chapter expires September 1, 2009
2-13 [~~2007~~].

2-14 SECTION 1.02A. Section 531.005, Government Code, is amended
2-15 to read as follows:

2-16 Sec. 531.005. EXECUTIVE COMMISSIONER. (a) The commission
2-17 is governed by an executive commissioner [~~a commissioner of health~~
2-18 ~~and human services~~] appointed by the governor with the advice and
2-19 consent of the senate.

2-20 (b) The executive commissioner shall be appointed without
2-21 regard to race, color, disability, sex, religion, age, or national
2-22 origin.

2-23 SECTION 1.03. Section 531.0055, Government Code, is amended
2-24 to read as follows:

2-25 Sec. 531.0055. EXECUTIVE COMMISSIONER: GENERAL
2-26 RESPONSIBILITY FOR [~~RELATING TO CERTAIN FUNCTIONS OF~~] HEALTH AND
2-27 HUMAN SERVICES AGENCIES. (a) In this section and in Section
2-28 531.0056, "agency director" [~~+~~

2-29 [~~(1) "Agency director"~~] means the [~~director,~~
2-30 ~~executive director, or~~] commissioner of a health and human services
2-31 agency.

2-32 [~~(2) "Policymaking body" means the board or commission~~
2-33 ~~with policymaking authority over a health and human services~~
2-34 ~~agency.~~]

2-35 (b) The commission shall:

2-36 (1) supervise the administration and operation of the
2-37 Medicaid program, including the administration and operation of the
2-38 Medicaid managed care system in accordance with Section 531.021;

2-39 (2) perform [~~supervise~~] information systems planning
2-40 and management for health and human services agencies under Section
2-41 531.0273, with:

2-42 (A) the provision of information technology
2-43 services at health and human services agencies considered to be a
2-44 centralized administrative support service either performed by
2-45 commission personnel or performed under a contract with the
2-46 commission; and

2-47 (B) an emphasis on research and implementation on
2-48 a demonstration or pilot basis of appropriate and efficient uses of
2-49 new and existing technology to improve the operation of health and
2-50 human services agencies and delivery of health and human services;

2-51 (3) monitor and ensure the effective use of all
2-52 federal funds received by a health and human services agency in
2-53 accordance with Section 531.028 and the General Appropriations Act;
2-54 [~~and~~]

2-55 (4) implement Texas Integrated Enrollment Services as
2-56 required by Subchapter F, except that notwithstanding Subchapter F,
2-57 determining eligibility for benefits under the following programs
2-58 is the responsibility of and must be centralized by the commission:

2-59 (A) the child health plan program;
2-60 (B) the financial assistance program under
2-61 Chapter 31, Human Resources Code;

2-62 (C) the medical assistance program under Chapter
2-63 32, Human Resources Code;

2-64 (D) the nutritional assistance programs under
2-65 Chapter 33, Human Resources Code;

2-66 (E) long-term care services, as defined by
2-67 Section 22.0011, Human Resources Code;

2-68 (F) community-based support services identified
2-69 or provided in accordance with Section 531.02481; and

3-1 (G) other health and human services programs, as
 3-2 appropriate; and

3-3 (5) implement programs intended to prevent family
 3-4 violence and provide services to victims of family violence.

3-5 (c) The [After implementation of the commission's duties
 3-6 under Subsection (b), the] commission shall implement the powers
 3-7 and duties given to the commission under Sections 531.0246,
 3-8 531.0247, 2155.144, [as added by Chapter 1045, Acts of the 75th
 3-9 Legislature, Regular Session, 1997,] and 2167.004.

3-10 (d) After implementation of the commission's duties under
 3-11 Subsections (b) and (c), the commission shall implement the powers
 3-12 and duties given to the commission under Section 531.0248. Nothing
 3-13 in the priorities established by this section is intended to limit
 3-14 the authority of the commission to work simultaneously to achieve
 3-15 the multiple tasks assigned to the commission in this section, when
 3-16 such an approach is beneficial in the judgment of the commission.
 3-17 The commission shall plan and implement an efficient and effective
 3-18 centralized system of administrative support services for health
 3-19 and human services agencies. The performance of administrative
 3-20 support services for health and human services agencies is the
 3-21 responsibility of the commission. The term "administrative support
 3-22 services" includes, but is not limited to, strategic planning and
 3-23 evaluation, audit, legal, human resources, information resources,
 3-24 purchasing, contract management, financial management, and
 3-25 accounting services.

3-26 (e) Notwithstanding any other law, the executive
 3-27 commissioner shall adopt rules and policies for the operation of
 3-28 and provision of health and human services by the health and human
 3-29 services agencies. In addition, the executive commissioner, as
 3-30 necessary to perform the functions described by Subsections (b),
 3-31 (c), and (d) in implementation of applicable [the] policies
 3-32 established for an agency by the executive commissioner [each
 3-33 agency's policymaking body], shall:

3-34 (1) manage and direct the operations of each health
 3-35 and human services agency; [and]

3-36 (2) supervise and direct the activities of each agency
 3-37 director; and

3-38 (3) be responsible for the administrative supervision
 3-39 of the internal audit program for all health and human services
 3-40 agencies, including:

3-41 (A) selecting the director of internal audit;

3-42 (B) ensuring that the director of internal audit
 3-43 reports directly to the executive commissioner; and

3-44 (C) ensuring the independence of the internal
 3-45 audit function.

3-46 (f) The operational authority and responsibility of the
 3-47 executive commissioner for purposes of Subsection (e) at each
 3-48 health and human services agency includes authority over and
 3-49 responsibility for the:

3-50 (1) management of the daily operations of the agency,
 3-51 including the organization and management of the agency and agency
 3-52 operating procedures;

3-53 (2) allocation of resources within the agency,
 3-54 including use of federal funds received by the agency;

3-55 (3) personnel and employment policies;

3-56 (4) contracting, purchasing, and related policies,
 3-57 subject to this chapter and other laws relating to contracting and
 3-58 purchasing by a state agency;

3-59 (5) information resources systems used by the agency;

3-60 (6) location of agency facilities; and

3-61 (7) coordination of agency activities with activities
 3-62 of other state agencies, including other health and human services
 3-63 agencies.

3-64 (g) Notwithstanding any other law, the operational
 3-65 authority and responsibility of the executive commissioner for
 3-66 purposes of Subsection (e) at each health and human services agency
 3-67 includes the authority and responsibility to adopt or approve,
 3-68 subject to applicable limitations, any rate of payment or similar
 3-69 provision required by law to be adopted or approved by the agency.

4-1 (h) For each health and human services agency, the executive
 4-2 commissioner shall implement a program to evaluate and supervise
 4-3 the daily operations of the agency. The program must include
 4-4 measurable performance objectives for each agency director and
 4-5 adequate reporting requirements to permit the executive
 4-6 commissioner to perform the duties assigned to the executive
 4-7 commissioner under this section.

4-8 (i) To facilitate the operations of a health and human
 4-9 services agency in accordance with this section, the executive
 4-10 commissioner may delegate a specific power or duty given under
 4-11 Subsection (f) or (g) to an agency director. The agency director
 4-12 acts on behalf of the executive commissioner in performing the
 4-13 delegated function and reports to the executive commissioner
 4-14 regarding the delegated function and any matter affecting agency
 4-15 programs and operations.

4-16 (j) The executive commissioner shall ~~may~~ adopt rules to
 4-17 implement the executive commissioner's authority under this
 4-18 section.

4-19 (k) The executive commissioner and each agency director
 4-20 shall enter into a memorandum of understanding in the manner
 4-21 prescribed by Section 531.0163 that:

4-22 (1) clearly defines the responsibilities of the agency
 4-23 director and the executive commissioner, including:

4-24 (A) the responsibility of the agency director to
 4-25 report to the governor and to report to and implement policies of
 4-26 the executive commissioner; and

4-27 (B) the extent to which the agency director acts
 4-28 as a liaison between the agency and the commission;

4-29 (2) establishes the program of evaluation and
 4-30 supervision of daily operations required by Subsection (h); and

4-31 (3) describes each delegation of a power or duty made
 4-32 under Subsection (i) or other law.

4-33 (1) Notwithstanding any other law, the executive
 4-34 commissioner ~~[provision of this section, a policymaking body]~~ has
 4-35 the authority ~~[provided by law]~~ to adopt policies and rules
 4-36 governing the delivery of services to persons who are served by each
 4-37 health and human services ~~[the]~~ agency and the rights and duties of
 4-38 persons who are served or regulated by each ~~[the]~~ agency. ~~[The~~
 4-39 ~~commissioner and each policymaking body shall enter into a~~
 4-40 ~~memorandum of understanding that clearly defines:~~

4-41 ~~[(1) the policymaking authority of the policymaking~~
 4-42 ~~body; and~~

4-43 ~~[(2) the operational authority of the commissioner.]~~

4-44 SECTION 1.04. Section 531.0056, Government Code, is amended
 4-45 to read as follows:

4-46 Sec. 531.0056. APPOINTMENT ~~[EMPLOYMENT]~~ OF AGENCY DIRECTOR
 4-47 BY EXECUTIVE COMMISSIONER. (a) The executive commissioner shall
 4-48 appoint an agency director for each health and human services
 4-49 agency with the approval of the governor. ~~[This section applies~~
 4-50 ~~only to an agency director employed by the commissioner.]~~

4-51 (b) An agency director appointed by the executive
 4-52 commissioner serves at the pleasure of the executive commissioner.
 4-53 ~~[An agency director employed by the commissioner may be employed~~
 4-54 ~~only with the concurrence of the agency's policymaking body and the~~
 4-55 ~~approval of the governor.]~~

4-56 (c) In addition to the requirements of ~~[As established in]~~
 4-57 Section 531.0055(k)(1), the memorandum of understanding required
 4-58 by that section must ~~[the commissioner and agency director shall~~
 4-59 ~~enter into a memorandum of understanding that]~~ clearly define
 4-60 ~~[defines]~~ the responsibilities of the agency director ~~[and may~~
 4-61 ~~establish terms and conditions of employment in the memorandum of~~
 4-62 ~~understanding].~~

4-63 (d) The terms of the memorandum of understanding shall
 4-64 outline specific performance objectives, as defined ~~[jointly]~~ by
 4-65 the executive commissioner ~~[and the policymaking body]~~, to be
 4-66 fulfilled by the agency director, including the performance
 4-67 objectives outlined in Section 531.0055(h).

4-68 (e) Based upon the performance objectives outlined in the
 4-69 memorandum of understanding, the executive commissioner shall

5-1 perform an employment evaluation of the agency director.

5-2 (f) The executive commissioner shall submit the
5-3 evaluation~~[, along with any recommendation regarding the~~
5-4 ~~employment of the agency director,]~~ to the ~~[agency's policymaking~~
5-5 ~~body and the]~~ governor not later than January 1 of each
5-6 even-numbered year.

5-7 ~~[(g) The policymaking body shall consider the evaluation in~~
5-8 ~~a meeting of the policymaking body and take necessary action, if~~
5-9 ~~any, not later than 90 days after the date of the receipt of the~~
5-10 ~~evaluation.~~

5-11 ~~[(h) An agency director employed by the commissioner serves~~
5-12 ~~at the pleasure of the commissioner but may be discharged only with~~
5-13 ~~the concurrence of the agency's policymaking body.]~~

5-14 SECTION 1.05. Section 531.008, Government Code, is amended
5-15 to read as follows:

5-16 Sec. 531.008. DIVISIONS OF COMMISSION. (a) Subject to
5-17 Subsection (c), the executive [The] commissioner may establish
5-18 divisions within the commission as necessary for effective
5-19 administration and for the discharge of the commission's functions.

5-20 (b) Subject to Subsection (c), the executive [The]
5-21 commissioner may allocate and reallocate functions among the
5-22 commission's divisions.

5-23 (c) The executive commissioner shall establish the
5-24 following divisions and offices within the commission:

5-25 (1) the eligibility services division to make
5-26 eligibility determinations for services provided through the
5-27 commission or a health and human services agency related to:

5-28 (A) the child health plan program;

5-29 (B) the financial assistance program under
5-30 Chapter 31, Human Resources Code;

5-31 (C) the medical assistance program under Chapter
5-32 32, Human Resources Code;

5-33 (D) the nutritional assistance programs under
5-34 Chapter 33, Human Resources Code;

5-35 (E) long-term care services, as defined by
5-36 Section 22.0011, Human Resources Code;

5-37 (F) community-based support services identified
5-38 or provided in accordance with Section 531.02481; and

5-39 (G) other health and human services programs, as
5-40 appropriate;

5-41 (2) the office of inspector general to perform fraud
5-42 and abuse investigation and enforcement functions as provided by
5-43 Subchapter C and other law;

5-44 (3) the office of the ombudsman to:

5-45 (A) provide dispute resolution services for the
5-46 commission and the health and human services agencies; and

5-47 (B) perform consumer protection functions
5-48 related to health and human services;

5-49 (4) a purchasing division as provided by Section
5-50 531.017; and

5-51 (5) an internal audit division to conduct a program of
5-52 internal auditing in accordance with Government Code, Chapter 2102.

5-53 SECTION 1.06. Subchapter A, Chapter 531, Government Code,
5-54 is amended by adding Sections 531.0161, 531.0162, and 531.0163 to
5-55 read as follows:

5-56 Sec. 531.0161. NEGOTIATED RULEMAKING AND ALTERNATIVE
5-57 DISPUTE PROCEDURES. (a) The commission shall develop and
5-58 implement a policy, for the commission and each health and human
5-59 services agency, to encourage the use of:

5-60 (1) negotiated rulemaking procedures under Chapter
5-61 2008 for the adoption of commission rules; and

5-62 (2) appropriate alternative dispute resolution
5-63 procedures under Chapter 2009 to assist in the resolution of
5-64 internal and external disputes under the commission's or agency's
5-65 jurisdiction.

5-66 (b) The procedures relating to alternative dispute
5-67 resolution must conform, to the extent possible, to any model
5-68 guidelines issued by the State Office of Administrative Hearings
5-69 for the use of alternative dispute resolution by state agencies.

6-1 Sec. 531.0162. USE OF TECHNOLOGY. (a) The commission shall
 6-2 develop and implement a policy requiring the commissioner of each
 6-3 health and human services agency and employees of each health and
 6-4 human services agency to research and propose appropriate
 6-5 technological solutions to improve the agency's ability to perform
 6-6 its functions. The technological solutions must:

6-7 (1) ensure that the public is able to easily find
 6-8 information about a health and human services agency on the
 6-9 Internet;

6-10 (2) ensure that persons who want to use a health and
 6-11 human services agency's services are able to:

6-12 (A) interact with the agency through the
 6-13 Internet; and

6-14 (B) access any service that can be provided
 6-15 effectively through the Internet;

6-16 (3) be cost-effective and developed through the
 6-17 commission's planning process; and

6-18 (4) meet federal accessibility standards for persons
 6-19 with disabilities.

6-20 (b) The commission shall develop and implement a policy
 6-21 described by Subsection (a) in relation to the commission's
 6-22 functions.

6-23 Sec. 531.0163. MEMORANDUM OF UNDERSTANDING. (a) The
 6-24 memorandum of understanding under Section 531.0055(k) must be
 6-25 adopted by the executive commissioner by rule in accordance with
 6-26 the procedures prescribed by Subchapter B, Chapter 2001, for
 6-27 adopting rules, except that the requirements of Section
 6-28 2001.033(a)(1)(A) or (C) do not apply with respect to any part of
 6-29 the memorandum of understanding that:

6-30 (1) concerns only internal management or organization
 6-31 within or among health and human services agencies and does not
 6-32 affect private rights or procedures; or

6-33 (2) relates solely to the internal personnel practices
 6-34 of health and human services agencies.

6-35 (b) The memorandum of understanding may be amended only by
 6-36 following the procedures prescribed under Subsection (a).

6-37 SECTION 1.07. Subchapter B, Chapter 531, Government Code,
 6-38 is amended by adding Section 531.0224 to read as follows:

6-39 Sec. 531.0224. PLANNING AND POLICY DIRECTION OF TEMPORARY
 6-40 ASSISTANCE FOR NEEDY FAMILIES PROGRAM. The commission shall:

6-41 (1) plan and direct the financial assistance program
 6-42 under Chapter 31, Human Resources Code, including the procurement,
 6-43 management, and monitoring of contracts necessary to implement the
 6-44 program;

6-45 (2) adopt rules and standards governing the financial
 6-46 assistance program under Chapter 31, Human Resources Code, in
 6-47 consultation with the policy councils of the agencies that operate
 6-48 the program, including rules for determining eligibility for and
 6-49 the amount and duration of an earned income disregard; and

6-50 (3) establish requirements for and define the scope of
 6-51 the ongoing evaluation of the financial assistance program under
 6-52 Chapter 31, Human Resources Code.

6-53 SECTION 1.08. Chapter 531, Government Code, is amended by
 6-54 adding Subchapter K to read as follows:

6-55 SUBCHAPTER K. HEALTH AND HUMAN SERVICES COUNCIL
 6-56 Sec. 531.401. DEFINITION. In this subchapter, "council"
 6-57 means the Health and Human Services Council.

6-58 Sec. 531.402. HEALTH AND HUMAN SERVICES COUNCIL. (a) The
 6-59 Health and Human Services Council is created to assist the
 6-60 executive commissioner in developing rules and policies for the
 6-61 commission.

6-62 (b) The council is composed of nine members of the public
 6-63 appointed by the governor with the advice and consent of the senate.
 6-64 To be eligible for appointment to the council, a person must have
 6-65 demonstrated an interest in and knowledge of problems and available
 6-66 services related to the child health plan program, the financial
 6-67 assistance program under Chapter 31, Human Resources Code, the
 6-68 medical assistance program under Chapter 32, Human Resources Code,
 6-69 or the nutritional assistance programs under Chapter 33, Human

7-1 Resources Code.
 7-2 (c) The council shall study and make recommendations to the
 7-3 executive commissioner regarding the management and operation of
 7-4 the commission, including policies and rules governing the delivery
 7-5 of services to persons who are served by the commission and the
 7-6 rights and duties of persons who are served or regulated by the
 7-7 commission.
 7-8 (d) Chapter 551 applies to the council.
 7-9 (e) Chapter 2110 does not apply to the council.
 7-10 (f) A majority of the members of the council constitute a
 7-11 quorum for the transaction of business.
 7-12 Sec. 531.403. APPOINTMENTS. (a) Appointments to the
 7-13 council shall be made without regard to the race, color,
 7-14 disability, sex, religion, age, or national origin of the
 7-15 appointees.
 7-16 (b) Appointments to the council shall be made so that each
 7-17 geographic area of the state is represented on the council.
 7-18 Notwithstanding Subsection (a), appointments to the council must
 7-19 reflect the ethnic diversity of this state.
 7-20 Sec. 531.404. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
 7-21 person who is appointed as a member of the council may not vote,
 7-22 deliberate, or be counted as a member in attendance at a meeting of
 7-23 the council until the person completes a training program that
 7-24 complies with this section.
 7-25 (b) The training program must provide the person with
 7-26 information regarding:
 7-27 (1) the legislation that created the commission and
 7-28 the council;
 7-29 (2) the programs operated by the commission;
 7-30 (3) the role and functions of the commission and the
 7-31 council, including detailed information regarding the advisory
 7-32 responsibilities of the council;
 7-33 (4) the rules of the executive commissioner applicable
 7-34 to the commission, with an emphasis on the rules that relate to
 7-35 disciplinary and investigatory authority;
 7-36 (5) the current budget for the commission;
 7-37 (6) the results of the most recent formal audit of the
 7-38 commission;
 7-39 (7) the requirements of:
 7-40 (A) the open meetings law, Chapter 551;
 7-41 (B) the public information law, Chapter 552;
 7-42 (C) the administrative procedure law, Chapter
 7-43 2001; and
 7-44 (D) other laws relating to public officials,
 7-45 including conflict-of-interest laws; and
 7-46 (8) any applicable ethics policies adopted by the
 7-47 executive commissioner or the Texas Ethics Commission.
 7-48 Sec. 531.405. TERMS. (a) Council members serve for
 7-49 staggered six-year terms with the terms of three members expiring
 7-50 February 1 of each odd-numbered year.
 7-51 (b) A member of the council may not serve more than two
 7-52 consecutive full terms as a council member.
 7-53 Sec. 531.406. VACANCY. The governor by appointment shall
 7-54 fill the unexpired term of a vacancy on the council.
 7-55 Sec. 531.407. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.
 7-56 (a) The governor shall designate a member of the council as the
 7-57 presiding officer to serve in that capacity at the pleasure of the
 7-58 governor.
 7-59 (b) The members of the council shall elect any other
 7-60 necessary officers.
 7-61 (c) The council shall meet quarterly and at other times at
 7-62 the call of the presiding officer. The council may hold meetings in
 7-63 different areas of the state.
 7-64 Sec. 531.408. REIMBURSEMENT FOR EXPENSES. A council member
 7-65 may not receive compensation for service as a member of the council
 7-66 but is entitled to reimbursement for travel expenses incurred by
 7-67 the member while conducting the business of the council as provided
 7-68 by the General Appropriations Act.
 7-69 Sec. 531.409. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

8-1 (a) The executive commissioner, with the advice of the council,
8-2 shall prepare information of public interest describing the
8-3 functions of the commission and the procedures by which complaints
8-4 are filed with and resolved by the commission. The commission shall
8-5 make the information available to the public and appropriate state
8-6 governmental entities.

8-7 (b) The executive commissioner by rule shall establish
8-8 methods by which consumers and service recipients are notified of
8-9 the name, mailing address, and telephone number of the commission
8-10 for directing complaints to the commission.

8-11 Sec. 531.410. PUBLIC ACCESS AND TESTIMONY. The executive
8-12 commissioner shall develop and implement policies that provide the
8-13 public with a reasonable opportunity to appear before the council
8-14 or executive commissioner and to speak on any issue under the
8-15 jurisdiction of the commission.

8-16 Sec. 531.411. POLICYMAKING AND MANAGEMENT
8-17 RESPONSIBILITIES. The executive commissioner, with the advice of
8-18 the council, shall develop and the commission shall implement
8-19 policies that clearly delineate the policymaking responsibilities
8-20 of the executive commissioner from the management responsibilities
8-21 of the commission and the staff of the commission.

8-22 SECTION 1.09. The Health and Safety Code is amended by
8-23 adding Title 12 to read as follows:

8-24 TITLE 12. HEALTH AND MENTAL HEALTH
8-25 CHAPTER 1001. DEPARTMENT OF STATE HEALTH SERVICES
8-26 SUBCHAPTER A. GENERAL PROVISIONS

8-27 Sec. 1001.001. DEFINITIONS. In this chapter:

8-28 (1) "Commission" means the Health and Human Services
8-29 Commission.

8-30 (2) "Commissioner" means the commissioner of state
8-31 health services.

8-32 (3) "Council" means the State Health Services Council.

8-33 (4) "Department" means the Department of State Health
8-34 Services.

8-35 (5) "Executive commissioner" means the executive
8-36 commissioner of the Health and Human Services Commission.

8-37 Sec. 1001.002. AGENCY. The department is an agency of the
8-38 state.

8-39 Sec. 1001.003. SUNSET PROVISION. The department is subject
8-40 to Chapter 325, Government Code (Texas Sunset Act). Unless
8-41 continued in existence as provided by that chapter, the department
8-42 is abolished and this chapter expires September 1, 2009.

8-43 [Sections 1001.004-1001.020 reserved for expansion]

8-44 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

8-45 Sec. 1001.021. STATE HEALTH SERVICES COUNCIL. (a) The
8-46 State Health Services Council is created to assist the executive
8-47 commissioner in developing rules and policies for the department.

8-48 (b) The council is composed of nine members of the public
8-49 appointed by the governor with the advice and consent of the senate.
8-50 To be eligible for appointment to the council, a person must have
8-51 demonstrated an interest in and knowledge of problems and available
8-52 services related to public health, mental health, or substance
8-53 abuse.

8-54 (c) The council shall study and make recommendations to the
8-55 executive commissioner regarding the management and operation of
8-56 the department, including policies and rules governing the delivery
8-57 of services to persons who are served by the department and the
8-58 rights and duties of persons who are served or regulated by the
8-59 department.

8-60 (d) Chapter 551, Government Code, applies to the council.

8-61 (e) Chapter 2110, Government Code, does not apply to the
8-62 council.

8-63 (f) A majority of the members of the council constitute a
8-64 quorum for the transaction of business.

8-65 Sec. 1001.022. APPOINTMENTS. (a) Appointments to the
8-66 council shall be made without regard to the race, color,
8-67 disability, sex, religion, age, or national origin of the
8-68 appointees.

8-69 (b) Appointments to the council shall be made so that each

9-1 geographic area of the state is represented on the council.
 9-2 Notwithstanding Subsection (a), appointments to the council must
 9-3 reflect the ethnic diversity of this state.

9-4 Sec. 1001.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
 9-5 person who is appointed as a member of the council may not vote,
 9-6 deliberate, or be counted as a member in attendance at a meeting of
 9-7 the council until the person completes a training program that
 9-8 complies with this section.

9-9 (b) The training program must provide the person with
 9-10 information regarding:

9-11 (1) the legislation that created the department and
 9-12 the council;

9-13 (2) the programs operated by the department;

9-14 (3) the role and functions of the department and the
 9-15 council, including detailed information regarding:

9-16 (A) the division of authority and of
 9-17 responsibility between the commissioner and the executive
 9-18 commissioner; and

9-19 (B) the advisory responsibilities of the
 9-20 council;

9-21 (4) the rules of the executive commissioner applicable
 9-22 to the department, with an emphasis on the rules that relate to
 9-23 disciplinary and investigatory authority;

9-24 (5) the current budget for the department;

9-25 (6) the results of the most recent formal audit of the
 9-26 department;

9-27 (7) the requirements of:

9-28 (A) the open meetings law, Chapter 551,
 9-29 Government Code;

9-30 (B) the public information law, Chapter 552,
 9-31 Government Code;

9-32 (C) the administrative procedure law, Chapter
 9-33 2001, Government Code; and

9-34 (D) other laws relating to public officials,
 9-35 including conflict-of-interest laws; and

9-36 (8) any applicable ethics policies adopted by the
 9-37 executive commissioner or the Texas Ethics Commission.

9-38 Sec. 1001.024. TERMS. (a) Council members serve for
 9-39 staggered six-year terms with the terms of three members expiring
 9-40 February 1 of each odd-numbered year.

9-41 (b) A member of the council may not serve more than two
 9-42 consecutive full terms as a council member.

9-43 Sec. 1001.025. VACANCY. The governor by appointment shall
 9-44 fill the unexpired term of a vacancy on the council.

9-45 Sec. 1001.026. PRESIDING OFFICER; OTHER OFFICERS;
 9-46 MEETINGS. (a) The governor shall designate a member of the council
 9-47 as the presiding officer to serve in that capacity at the pleasure
 9-48 of the governor.

9-49 (b) The members of the council shall elect any other
 9-50 necessary officers.

9-51 (c) The council shall meet quarterly and at other times at
 9-52 the call of the presiding officer. The council may hold meetings in
 9-53 different areas of the state.

9-54 Sec. 1001.027. REIMBURSEMENT FOR EXPENSES. A council
 9-55 member may not receive compensation for service as a member of the
 9-56 council but is entitled to reimbursement for travel expenses
 9-57 incurred by the member while conducting the business of the council
 9-58 as provided by the General Appropriations Act.

9-59 Sec. 1001.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS.
 9-60 (a) The executive commissioner, with the advice of the council,
 9-61 shall prepare information of public interest describing the
 9-62 functions of the department and the procedures by which complaints
 9-63 are filed with and resolved by the department. The commission shall
 9-64 make the information available to the public and appropriate state
 9-65 governmental entities.

9-66 (b) The executive commissioner by rule shall establish
 9-67 methods by which consumers and service recipients are notified of
 9-68 the name, mailing address, and telephone number of the department
 9-69 for directing complaints to the department.

10-1 Sec. 1001.029. PUBLIC ACCESS AND TESTIMONY. (a) The
 10-2 executive commissioner shall develop and implement policies that
 10-3 provide the public with a reasonable opportunity to appear before
 10-4 the commission or the executive commissioner and to speak on any
 10-5 issue under the jurisdiction of the department.

10-6 (b) The executive commissioner shall grant an opportunity
 10-7 for a public hearing before the council makes recommendations to
 10-8 the executive commissioner regarding a substantive rule if a public
 10-9 hearing is requested by:

10-10 (1) at least 25 persons;

10-11 (2) a governmental entity; or

10-12 (3) an association with at least 25 members.

10-13 (c) The executive commissioner shall consider fully all
 10-14 written and oral submissions about a proposed rule.

10-15 Sec. 1001.030. POLICYMAKING AND MANAGEMENT
 10-16 RESPONSIBILITIES. The executive commissioner, with the advice of
 10-17 the council, shall develop and the department shall implement
 10-18 policies that clearly delineate the policymaking responsibilities
 10-19 of the executive commissioner from the management responsibilities
 10-20 of the commission, the commissioner, and the staff of the
 10-21 department.

10-22 Sec. 1001.031. ANNUAL REPORT. (a) The commissioner shall
 10-23 file annually with the governor, the presiding officer of each
 10-24 house of the legislature, and the executive commissioner a complete
 10-25 and detailed written report accounting for all funds received and
 10-26 disbursed by the department during the preceding fiscal year.

10-27 (b) The annual report must be in the form and be reported in
 10-28 the time provided by the General Appropriations Act.

10-29 Sec. 1001.032. OFFICES. The department shall maintain its
 10-30 central office in Austin. The department may maintain offices in
 10-31 other areas of the state as necessary.

10-32 [Sections 1001.033-1001.050 reserved for expansion]

10-33 SUBCHAPTER C. PERSONNEL

10-34 Sec. 1001.051. COMMISSIONER. (a) The executive
 10-35 commissioner shall appoint a commissioner of the department with
 10-36 the approval of the governor. The commissioner is to be selected
 10-37 according to education, training, experience, and demonstrated
 10-38 ability.

10-39 (b) The commissioner serves at the pleasure of the executive
 10-40 commissioner.

10-41 (c) Subject to the control of the executive commissioner,
 10-42 the commissioner shall act as the department's chief administrative
 10-43 officer and as a liaison between the department and commission.

10-44 (d) The commissioner shall administer this chapter under
 10-45 operational policies established by the executive commissioner and
 10-46 in accordance with the memorandum of understanding under Section
 10-47 531.0055(k), Government Code, between the commissioner and the
 10-48 executive commissioner, as adopted by rule.

10-49 Sec. 1001.052. PERSONNEL. (a) The department may employ,
 10-50 compensate, and prescribe the duties of personnel necessary and
 10-51 suitable to administer this chapter.

10-52 (b) The executive commissioner shall prepare and by rule
 10-53 adopt personnel standards.

10-54 (c) A personnel position may be filled only by an individual
 10-55 selected and appointed on a nonpartisan merit basis.

10-56 (d) The executive commissioner, with the advice of the
 10-57 council, shall develop and the department shall implement policies
 10-58 that clearly define the responsibilities of the staff of the
 10-59 department.

10-60 Sec. 1001.053. INFORMATION ABOUT QUALIFICATIONS AND
 10-61 STANDARDS OF CONDUCT. The commissioner or the commissioner's
 10-62 designee shall provide to department employees, as often as
 10-63 necessary, information regarding the requirements for employment
 10-64 under this chapter or rules adopted by the executive commissioner,
 10-65 including information regarding a person's responsibilities under
 10-66 applicable laws relating to standards of conduct for state
 10-67 employees.

10-68 Sec. 1001.054. MERIT PAY. Subject to rules adopted by the
 10-69 executive commissioner, the commissioner or the commissioner's

11-1 designee shall develop a system of annual performance evaluations.
 11-2 All merit pay for department employees must be given under the
 11-3 system established under this section or under rules adopted by the
 11-4 executive commissioner.

11-5 Sec. 1001.055. CAREER LADDER. The commissioner or the
 11-6 commissioner's designee shall develop an intra-agency career
 11-7 ladder program. The program must require intra-agency postings of
 11-8 all nonentry-level positions concurrently with any public posting.

11-9 Sec. 1001.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
 11-10 Subject to rules adopted by the executive commissioner, the
 11-11 commissioner or the commissioner's designee shall prepare and
 11-12 maintain a written policy statement that implements a program of
 11-13 equal employment opportunity to ensure that all personnel decisions
 11-14 are made without regard to race, color, disability, sex, religion,
 11-15 age, or national origin.

11-16 (b) Unless the following are included in a policy statement
 11-17 adopted by the executive commissioner that is applicable to the
 11-18 department, the policy statement must include:

11-19 (1) personnel policies, including policies relating
 11-20 to recruitment, evaluation, selection, training, and promotion of
 11-21 personnel, that show the intent of the department to avoid the
 11-22 unlawful employment practices described by Chapter 21, Labor Code;
 11-23 and

11-24 (2) an analysis of the extent to which the composition
 11-25 of the department's personnel is in accordance with state and
 11-26 federal law and a description of reasonable methods to achieve
 11-27 compliance with state and federal law.

11-28 (c) The policy statement must be:

11-29 (1) updated annually;
 11-30 (2) reviewed by the state Commission on Human Rights
 11-31 for compliance with Subsection (b)(1); and
 11-32 (3) filed with the governor's office.

11-33 Sec. 1001.057. STATE EMPLOYEE INCENTIVE PROGRAM. The
 11-34 commissioner or the commissioner's designee shall provide to
 11-35 department employees information and training on the benefits and
 11-36 methods of participation in the state employee incentive program.

11-37 [Sections 1001.058-1001.070 reserved for expansion]

11-38 SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

11-39 Sec. 1001.071. GENERAL POWERS AND DUTIES OF DEPARTMENT
 11-40 RELATED TO HEALTH CARE. The department is responsible for
 11-41 administering human services programs regarding the public health,
 11-42 including:

11-43 (1) implementing the state's public health care
 11-44 delivery programs under the authority of the department;

11-45 (2) administering state health facilities, hospitals,
 11-46 and health care systems;

11-47 (3) developing and providing health care services, as
 11-48 directed by law;

11-49 (4) providing for the prevention and control of
 11-50 communicable diseases;

11-51 (5) providing public education on health-related
 11-52 matters, as directed by law;

11-53 (6) compiling and reporting health-related
 11-54 information, as directed by law;

11-55 (7) acting as the lead agency for implementation of
 11-56 state policies regarding the human immunodeficiency virus and
 11-57 acquired immunodeficiency syndrome and administering programs
 11-58 related to the human immunodeficiency virus and acquired
 11-59 immunodeficiency syndrome;

11-60 (8) investigating the causes of injuries and methods
 11-61 of prevention;

11-62 (9) administering a grant program to provide
 11-63 appropriated money to counties, municipalities, public health
 11-64 districts, and other political subdivisions for their use to
 11-65 provide or pay for essential public health services;

11-66 (10) administering the registration of vital
 11-67 statistics;

11-68 (11) licensing, inspecting, and enforcing regulations
 11-69 regarding health facilities, other than long-term care facilities

12-1 regulated by the Department of Aging and Disability Services;
 12-2 (12) implementing established standards and
 12-3 procedures for the management and control of sanitation and for
 12-4 health protection measures;

12-5 (13) enforcing regulations regarding radioactive
 12-6 materials;

12-7 (14) enforcing regulations regarding food, bottled
 12-8 and vended drinking water, drugs, cosmetics, and health devices;

12-9 (15) enforcing regulations regarding food service
 12-10 establishments, retail food stores, mobile food units, and roadside
 12-11 food vendors; and

12-12 (16) enforcing regulations controlling hazardous
 12-13 substances in households and workplaces.

12-14 Sec. 1001.072. GENERAL POWERS AND DUTIES OF DEPARTMENT
 12-15 RELATED TO MENTAL HEALTH. The department is responsible for
 12-16 administering human services programs regarding mental health,
 12-17 including:

12-18 (1) administering and coordinating mental health
 12-19 services at the local and state level;

12-20 (2) operating the state's mental health facilities;
 12-21 and

12-22 (3) inspecting, licensing, and enforcing regulations
 12-23 regarding mental health facilities, other than long-term care
 12-24 facilities regulated by the Department of Aging and Disability
 12-25 Services.

12-26 Sec. 1001.073. GENERAL POWERS AND DUTIES OF DEPARTMENT
 12-27 RELATED TO SUBSTANCE ABUSE. The department is responsible for
 12-28 administering human services programs regarding substance abuse,
 12-29 including:

12-30 (1) administering, coordinating, and contracting
 12-31 directly with public and private nonprofit community-based
 12-32 organizations for the delivery of substance abuse prevention and
 12-33 treatment programs at the state and local level;

12-34 (2) inspecting, licensing, and enforcing regulations
 12-35 regarding substance abuse treatment facilities; and

12-36 (3) providing public education on substance abuse
 12-37 issues, as directed by law.

12-38 Sec. 1001.074. INFORMATION REGARDING COMPLAINTS. (a) The
 12-39 department shall maintain a file on each written complaint filed
 12-40 with the department. The file must include:

12-41 (1) the name of the person who filed the complaint;

12-42 (2) the date the complaint is received by the
 12-43 department;

12-44 (3) the subject matter of the complaint;

12-45 (4) the name of each person contacted in relation to
 12-46 the complaint;

12-47 (5) a summary of the results of the review or
 12-48 investigation of the complaint; and

12-49 (6) an explanation of the reason the file was closed,
 12-50 if the department closed the file without taking action other than
 12-51 to investigate the complaint.

12-52 (b) The department shall provide to the person filing the
 12-53 complaint and to each person who is a subject of the complaint a
 12-54 copy of the executive commissioner's and the department's policies
 12-55 and procedures relating to complaint investigation and resolution.

12-56 (c) The department, at least quarterly until final
 12-57 disposition of the complaint, shall notify the person filing the
 12-58 complaint and each person who is a subject of the complaint of the
 12-59 status of the investigation unless the notice would jeopardize an
 12-60 undercover investigation.

12-61 Sec. 1001.075. RULES. The executive commissioner may adopt
 12-62 rules reasonably necessary for the department to administer this
 12-63 chapter, consistent with the memorandum of understanding under
 12-64 Section 531.0055(k), Government Code, between the commissioner and
 12-65 the executive commissioner, as adopted by rule.

12-66 SECTION 1.10. Section 40.001, Human Resources Code, is
 12-67 amended by adding Subdivisions (2-a) and (4-a) and amending
 12-68 Subdivision (4) to read as follows:

12-69 (2-a) "Council" means the Family and Protective

13-1 Services Council.

13-2 (4) "Commissioner" ["Executive director"] means the
 13-3 commissioner [~~executive director~~] of the Department of Family and
 13-4 Protective [and Regulatory] Services.

13-5 (4-a) "Executive commissioner" means the executive
 13-6 commissioner of the Health and Human Services Commission.

13-7 SECTION 1.11. Section 40.002, Human Resources Code, is
 13-8 amended to read as follows:

13-9 Sec. 40.002. DEPARTMENT OF FAMILY AND PROTECTIVE [AND
 13-10 REGULATORY] SERVICES; GENERAL DUTIES OF DEPARTMENT
 13-11 [RESPONSIBILITY]. (a) The Department of Family and Protective
 13-12 [and Regulatory] Services is composed of the council [board], the
 13-13 commissioner [executive director], an administrative staff, and
 13-14 other officers and employees necessary to efficiently carry out the
 13-15 purposes of this chapter.

13-16 (b) Notwithstanding any other law, the [The] department
 13-17 shall [is the state agency with primary responsibility for]:

13-18 (1) provide [providing] protective services for
 13-19 children and elderly and disabled persons, including
 13-20 investigations of alleged abuse, neglect, or exploitation in
 13-21 facilities of the Texas Department of Mental Health and Mental
 13-22 Retardation or its successor agency;

13-23 (2) provide [providing] family support and family
 13-24 preservation services that [which] respect the fundamental right of
 13-25 parents to control the education and upbringing of their children;

13-26 (3) license, register, and enforce regulations
 13-27 applicable to [regulating] child-care facilities and child-care
 13-28 administrators; and

13-29 (4) implement [implementing] and manage [managing]
 13-30 programs intended to provide early intervention or prevent at-risk
 13-31 behaviors that lead to child abuse, delinquency, running away,
 13-32 truancy, and dropping out of school.

13-33 (c) The department is the state agency designated to
 13-34 cooperate with the federal government in the administration of
 13-35 programs under:

13-36 (1) Parts B and E, Title IV, federal Social Security
 13-37 Act (42 U.S.C. Sections 620 et seq. and 670 et seq.); and

13-38 (2) other federal law for which the department has
 13-39 administrative responsibility.

13-40 (d) The department shall cooperate with the United States
 13-41 Department of Health and Human Services and other federal and state
 13-42 agencies in a reasonable manner and in conformity with the
 13-43 provisions of federal law and this subtitle to the extent necessary
 13-44 to qualify for federal assistance in the delivery of services.

13-45 (e) If the department determines that a provision of state
 13-46 law governing the department conflicts with a provision of federal
 13-47 law, the executive commissioner [department] may adopt policies and
 13-48 rules necessary to allow the state to receive and spend federal
 13-49 matching funds to the fullest extent possible in accordance with
 13-50 the federal statutes, this subtitle, and the state constitution and
 13-51 within the limits of appropriated funds.

13-52 SECTION 1.12. Sections 40.004, 40.021, 40.022, 40.0226,
 13-53 40.024, 40.025, 40.026, and 40.027, Human Resources Code, are
 13-54 amended to read as follows:

13-55 Sec. 40.004. PUBLIC INTEREST INFORMATION AND PUBLIC ACCESS.

13-56 (a) The executive commissioner [board] shall develop and implement
 13-57 policies that provide the public with a reasonable opportunity to
 13-58 appear before the commission or executive commissioner [board] and
 13-59 to speak on any issue under the jurisdiction of the department.

13-60 (b) The executive commissioner, with the advice of the
 13-61 council, [department] shall prepare information of public interest
 13-62 describing the functions of the department. The commission
 13-63 [department] shall make the information available to the public and
 13-64 appropriate state agencies.

13-65 (c) The executive commissioner shall grant an opportunity
 13-66 for a public hearing before the council makes recommendations to
 13-67 the executive commissioner regarding a substantive rule if a public
 13-68 hearing is requested by:

13-69 (1) at least 25 persons;

14-1 (2) a governmental entity; or

14-2 (3) an association with at least 25 members.

14-3 (d) The executive commissioner shall consider fully all
 14-4 written and oral submissions about a proposed rule.

14-5 Sec. 40.021. FAMILY AND [BOARD OF] PROTECTIVE [AND
 14-6 REGULATORY] SERVICES COUNCIL. (a) The Family and Protective
 14-7 Services Council is created to assist the executive commissioner in
 14-8 developing rules and policies for the department [board is composed
 14-9 of six members appointed by the governor with the advice and consent
 14-10 of the senate. The governor shall designate one member to be the
 14-11 presiding officer of the board to serve in that capacity at the
 14-12 pleasure of the governor].

14-13 (b) The council is composed of nine members of the public
 14-14 appointed by the governor with the advice and consent of the senate.
 14-15 To be eligible for appointment to the council, a person must have
 14-16 demonstrated an interest in and knowledge of problems and available
 14-17 services related to the functions of the department. [Four members
 14-18 of the board must have a demonstrated interest in the services
 14-19 provided by the department, and two members must represent the
 14-20 public.]

14-21 (c) The council shall study and make recommendations to the
 14-22 executive commissioner regarding the management and operation of
 14-23 the department, including policies and rules governing the delivery
 14-24 of services to persons who are served by the department and the
 14-25 rights and duties of persons who are served or regulated by the
 14-26 department.

14-27 (d) Chapter 551, Government Code, applies to the council.

14-28 (e) Chapter 2110, Government Code, does not apply to the
 14-29 council [board shall be appointed without regard to race, color,
 14-30 disability, sex, religion, age, or national origin].

14-31 (f) A majority of the members of the council constitute a
 14-32 quorum for the transaction of business.

14-33 Sec. 40.022. APPOINTMENTS [RESTRICTIONS ON BOARD
 14-34 APPOINTMENT OR MEMBERSHIP]. (a) Appointments to the council shall
 14-35 be made without regard to the race, color, disability, sex,
 14-36 religion, age, or national origin of the appointees. [A person is
 14-37 not eligible for appointment as a member of the board if the person
 14-38 or the person's spouse:

14-39 [(1) is a person who is employed by or participates in
 14-40 the management of a business entity or other organization regulated
 14-41 by the department or receiving funds from the department;

14-42 [(2) owns or controls, directly or indirectly, more
 14-43 than a 10 percent interest in a business entity or other
 14-44 organization that is regulated by the department or that receives
 14-45 funds from the department;

14-46 [(3) uses or receives a substantial amount of tangible
 14-47 goods, services, or money from the department, other than
 14-48 compensation or reimbursement authorized by law for board
 14-49 membership, attendance, or expenses, or as a client or a parent or
 14-50 guardian of a client receiving services from the department; or

14-51 [(4) is an employee, officer, or paid consultant of a
 14-52 trade association in a field under the jurisdiction of the
 14-53 department.]

14-54 (b) Appointments to the council shall be made so that each
 14-55 geographic area of the state is represented on the council.
 14-56 Notwithstanding Subsection (a), appointments to the council must
 14-57 reflect the ethnic diversity of this state. [In addition to the
 14-58 requirements of Subsection (a), a person is not eligible for
 14-59 appointment as a public member of the board if the person or the
 14-60 person's spouse is registered, certified, or licensed by an
 14-61 occupational regulatory agency in a field under the jurisdiction of
 14-62 the department.]

14-63 Sec. 40.0226. [BOARD MEMBER] TRAINING PROGRAM FOR COUNCIL
 14-64 MEMBERS. (a) A person who is appointed as a member of the council
 14-65 may not vote, deliberate, or be counted as a member in attendance at
 14-66 a meeting of the council until the person completes a training
 14-67 program that complies with [Before a member of the board may assume
 14-68 the member's duties and before the member may be confirmed by the
 14-69 senate, the member must complete at least one course of the training

15-1 ~~program established under~~] this section.

15-2 (b) The [A] training program must ~~[established under this~~
 15-3 ~~section shall]~~ provide information to the member regarding:

15-4 (1) the ~~[enabling]~~ legislation that created the
 15-5 department and the council ~~[board]~~;

15-6 (2) the programs operated by the department;

15-7 (3) the role and functions of the department and the
 15-8 council, including detailed information regarding:

15-9 (A) the division of authority and of
 15-10 responsibility between the commissioner and the executive
 15-11 commissioner; and

15-12 (B) the advisory responsibilities of the
 15-13 council;

15-14 (4) the rules of the executive commissioner applicable
 15-15 to the department, with an emphasis on the rules that relate to
 15-16 disciplinary and investigatory authority;

15-17 (5) the current budget for the department;

15-18 (6) the results of the most recent formal audit of the
 15-19 department;

15-20 (7) the requirements of the:

15-21 (A) open meetings law, Chapter 551, Government
 15-22 Code;

15-23 (B) public information ~~[open records]~~ law,
 15-24 Chapter 552, Government Code; and

15-25 (C) administrative procedure law, Chapter 2001,
 15-26 Government Code;

15-27 (8) the requirements of the conflict-of-interest laws
 15-28 and other laws relating to public officials; and

15-29 (9) any applicable ethics policies adopted by the
 15-30 executive commissioner ~~[board]~~ or the Texas Ethics Commission.

15-31 Sec. 40.024. [BOARD] TERMS; VACANCY. (a) Members of the
 15-32 council ~~[board]~~ serve for staggered six-year terms, with the terms
 15-33 of three ~~[two]~~ members expiring February 1 of each odd-numbered
 15-34 year.

15-35 (b) A member of the council may not serve more than two
 15-36 consecutive full terms as a council member.

15-37 (c) The governor by appointment shall fill the unexpired
 15-38 term of a vacancy on the council.

15-39 Sec. 40.025. REIMBURSEMENT FOR EXPENSES [BOARD PER DIEM].
 15-40 A council member may not receive compensation for service as a
 15-41 member of the council but is entitled to reimbursement for travel
 15-42 expenses incurred by the member while conducting the business of
 15-43 the council as provided ~~[While performing their duties, board~~
 15-44 ~~members are entitled to a per diem as prescribed]~~ by the General
 15-45 Appropriations Act.

15-46 Sec. 40.026. PRESIDING OFFICER; OTHER OFFICERS; [BOARD]
 15-47 MEETINGS[, QUORUM]. (a) The governor shall designate a member of
 15-48 the council as the presiding officer to serve in that capacity at
 15-49 the pleasure of the governor ~~[board shall meet at least quarterly~~
 15-50 ~~and at the call of the presiding officer].~~

15-51 (b) The members of the council shall elect any other
 15-52 necessary officers ~~[Four members of the board constitute a quorum].~~

15-53 (c) The council shall meet quarterly and at other times at
 15-54 the call of the presiding officer. The council may hold meetings in
 15-55 different areas of the state.

15-56 Sec. 40.027. COMMISSIONER [EXECUTIVE DIRECTOR]. (a) The
 15-57 executive commissioner ~~[of health and human services]~~ shall appoint
 15-58 a commissioner ~~[employ the executive director]~~ in accordance with
 15-59 Section 531.0056, Government Code. The commissioner is to be
 15-60 selected according to education, training, experience, and
 15-61 demonstrated ability.

15-62 (b) The commissioner serves at the pleasure of the executive
 15-63 commissioner.

15-64 (c) Subject to the control of the executive commissioner,
 15-65 the commissioner shall act as the department's chief administrative
 15-66 officer and as a liaison between the department and commission.

15-67 (d) The commissioner shall administer this chapter and
 15-68 other laws relating to the department under operational policies
 15-69 established ~~[executive director is the executive head of the~~

16-1 ~~department. The executive director shall perform the duties~~
16-2 ~~assigned] by the executive commissioner and in accordance with the~~
16-3 ~~memorandum of understanding under Section 531.0055(k), Government~~
16-4 ~~Code, between the commissioner and the executive commissioner, as~~
16-5 ~~adopted by rule [of health and human services and state law].~~

16-6 SECTION 1.13. Title 7, Human Resources Code, is amended by
16-7 adding Chapter 117 to read as follows:

16-8 CHAPTER 117. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

16-9 SUBCHAPTER A. GENERAL PROVISIONS

16-10 Sec. 117.001. DEFINITIONS. In this chapter:

16-11 (1) "Commission" means the Health and Human Services
16-12 Commission.

16-13 (2) "Commissioner" means the commissioner of
16-14 assistive and rehabilitative services.

16-15 (3) "Council" means the Assistive and Rehabilitative
16-16 Services Council.

16-17 (4) "Department" means the Department of Assistive and
16-18 Rehabilitative Services.

16-19 (5) "Executive commissioner" means the executive
16-20 commissioner of the Health and Human Services Commission.

16-21 Sec. 117.002. AGENCY. The department is an agency of the
16-22 state.

16-23 Sec. 117.003. SUNSET PROVISION. The department is subject
16-24 to Chapter 325, Government Code (Texas Sunset Act). Unless
16-25 continued in existence as provided by that chapter, the department
16-26 is abolished and this chapter expires September 1, 2009.

16-27 [Sections 117.004-117.020 reserved for expansion]

16-28 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

16-29 Sec. 117.021. ASSISTIVE AND REHABILITATIVE SERVICES
16-30 COUNCIL. (a) The Assistive and Rehabilitative Services Council is
16-31 created to assist the executive commissioner in developing rules
16-32 and policies for the department.

16-33 (b) The council is composed of nine members of the public
16-34 appointed by the governor with the advice and consent of the senate.
16-35 To be eligible for appointment to the council, a person must have
16-36 demonstrated an interest in and knowledge of problems and available
16-37 services related to early childhood intervention services or to
16-38 persons with disabilities other than developmental delay and mental
16-39 retardation and persons who are blind, deaf, or hard of hearing.

16-40 (c) The council shall study and make recommendations to the
16-41 executive commissioner regarding the management and operation of
16-42 the department, including policies and rules governing the delivery
16-43 of services to persons who are served by the department and the
16-44 rights and duties of persons who are served or regulated by the
16-45 department.

16-46 (d) Chapter 551, Government Code, applies to the council.

16-47 (e) Chapter 2110, Government Code, does not apply to the
16-48 council.

16-49 (f) A majority of the members of the council constitute a
16-50 quorum for the transaction of business.

16-51 Sec. 117.022. APPOINTMENTS. (a) Appointments to the
16-52 council shall be made without regard to the race, color,
16-53 disability, sex, religion, age, or national origin of the
16-54 appointees.

16-55 (b) Appointments to the council shall be made so that each
16-56 geographic area of the state is represented on the council.
16-57 Notwithstanding Subsection (a), appointments to the council must
16-58 reflect the ethnic diversity of this state.

16-59 Sec. 117.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
16-60 person who is appointed as a member of the council may not vote,
16-61 deliberate, or be counted as a member in attendance at a meeting of
16-62 the council until the person completes a training program that
16-63 complies with this section.

16-64 (b) The training program must provide the person with
16-65 information regarding:

16-66 (1) the legislation that created the department and
16-67 the council;

16-68 (2) the programs operated by the department;

16-69 (3) the role and functions of the department and the

17-1 council, including detailed information regarding:

17-2 (A) the division of authority and of
17-3 responsibility between the commissioner and the executive
17-4 commissioner; and

17-5 (B) the advisory responsibilities of the
17-6 council;

17-7 (4) the rules of the executive commissioner applicable
17-8 to the department, with an emphasis on the rules that relate to
17-9 disciplinary and investigatory authority;

17-10 (5) the current budget for the department;

17-11 (6) the results of the most recent formal audit of the
17-12 department;

17-13 (7) the requirements of:

17-14 (A) the open meetings law, Chapter 551,
17-15 Government Code;

17-16 (B) the public information law, Chapter 552,
17-17 Government Code;

17-18 (C) the administrative procedure law, Chapter
17-19 2001, Government Code; and

17-20 (D) other laws relating to public officials,
17-21 including conflict-of-interest laws; and

17-22 (8) any applicable ethics policies adopted by the
17-23 executive commissioner or the Texas Ethics Commission.

17-24 Sec. 117.024. TERMS. (a) Council members serve for
17-25 staggered six-year terms with the terms of three members expiring
17-26 February 1 of each odd-numbered year.

17-27 (b) A member of the council may not serve more than two
17-28 consecutive full terms as a council member.

17-29 Sec. 117.025. VACANCY. The governor by appointment shall
17-30 fill the unexpired term of a vacancy on the council.

17-31 Sec. 117.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.
17-32 (a) The governor shall designate a member of the council as the
17-33 presiding officer to serve in that capacity at the pleasure of the
17-34 governor.

17-35 (b) The members of the council shall elect any other
17-36 necessary officers.

17-37 (c) The council shall meet quarterly and at other times at
17-38 the call of the presiding officer. The council may hold meetings in
17-39 different areas of the state.

17-40 Sec. 117.027. REIMBURSEMENT FOR EXPENSES. A council member
17-41 may not receive compensation for service as a member of the council
17-42 but is entitled to reimbursement for travel expenses incurred by
17-43 the member while conducting the business of the council as provided
17-44 by the General Appropriations Act.

17-45 Sec. 117.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS.
17-46 (a) The executive commissioner, with the advice of the council,
17-47 shall prepare information of public interest describing the
17-48 functions of the department and the procedures by which complaints
17-49 are filed with and resolved by the department. The commission shall
17-50 make the information available to the public and appropriate state
17-51 governmental entities.

17-52 (b) The executive commissioner by rule shall establish
17-53 methods by which consumers and service recipients are notified of
17-54 the name, mailing address, and telephone number of the department
17-55 for directing complaints to the department.

17-56 Sec. 117.029. PUBLIC ACCESS AND TESTIMONY. (a) The
17-57 executive commissioner shall develop and implement policies that
17-58 provide the public with a reasonable opportunity to appear before
17-59 the commission or the executive commissioner and to speak on any
17-60 issue under the jurisdiction of the department.

17-61 (b) The executive commissioner shall grant an opportunity
17-62 for a public hearing before the council makes recommendations to
17-63 the executive commissioner regarding a substantive rule if a public
17-64 hearing is requested by:

17-65 (1) at least 25 persons;

17-66 (2) a governmental entity; or

17-67 (3) an association with at least 25 members.

17-68 (c) The executive commissioner shall consider fully all
17-69 written and oral submissions about a proposed rule.

18-1 Sec. 117.030. POLICYMAKING AND MANAGEMENT
 18-2 RESPONSIBILITIES. The executive commissioner, with the advice of
 18-3 the council, shall develop and the department shall implement
 18-4 policies that clearly delineate the policymaking responsibilities
 18-5 of the executive commissioner from the management responsibilities
 18-6 of the commission, the commissioner, and the staff of the
 18-7 department.

18-8 Sec. 117.031. ANNUAL REPORT. (a) The commissioner shall
 18-9 file annually with the governor, the presiding officer of each
 18-10 house of the legislature, and the executive commissioner a complete
 18-11 and detailed written report accounting for all funds received and
 18-12 disbursed by the department during the preceding fiscal year.

18-13 (b) The annual report must be in the form and be reported in
 18-14 the time provided by the General Appropriations Act.

18-15 Sec. 117.032. OFFICES. The department shall maintain its
 18-16 central office in Austin. The department may maintain offices in
 18-17 other areas of the state as necessary.

18-18 [Sections 117.033-117.050 reserved for expansion]

18-19 SUBCHAPTER C. PERSONNEL

18-20 Sec. 117.051. COMMISSIONER. (a) The executive
 18-21 commissioner shall appoint a commissioner of the department with
 18-22 the approval of the governor. The commissioner is to be selected
 18-23 according to education, training, experience, and demonstrated
 18-24 ability.

18-25 (b) The commissioner serves at the pleasure of the executive
 18-26 commissioner.

18-27 (c) Subject to the control of the executive commissioner,
 18-28 the commissioner shall act as the department's chief administrative
 18-29 officer and as a liaison between the department and commission.

18-30 (d) The commissioner shall administer this chapter under
 18-31 operational policies established by the executive commissioner and
 18-32 in accordance with the memorandum of understanding under Section
 18-33 531.0055(k), Government Code, between the commissioner and the
 18-34 executive commissioner, as adopted by rule.

18-35 Sec. 117.052. PERSONNEL. (a) The department may employ,
 18-36 compensate, and prescribe the duties of personnel necessary and
 18-37 suitable to administer this chapter.

18-38 (b) The executive commissioner shall prepare and by rule
 18-39 adopt personnel standards.

18-40 (c) A personnel position may be filled only by an individual
 18-41 selected and appointed on a nonpartisan, merit basis.

18-42 (d) The executive commissioner, with the advice of the
 18-43 council, shall develop and the department shall implement policies
 18-44 that clearly define the responsibilities of the staff of the
 18-45 department.

18-46 Sec. 117.053. INFORMATION ABOUT QUALIFICATIONS AND
 18-47 STANDARDS OF CONDUCT. The commissioner or the commissioner's
 18-48 designee shall provide to department employees, as often as
 18-49 necessary, information regarding the requirements for employment
 18-50 under this chapter or rules adopted by the executive commissioner,
 18-51 including information regarding a person's responsibilities under
 18-52 applicable laws relating to standards of conduct for state
 18-53 employees.

18-54 Sec. 117.054. MERIT PAY. Subject to rules adopted by the
 18-55 executive commissioner, the commissioner or the commissioner's
 18-56 designee shall develop a system of annual performance evaluations.
 18-57 All merit pay for department employees must be given under the
 18-58 system established under this section or under rules adopted by the
 18-59 executive commissioner.

18-60 Sec. 117.055. CAREER LADDER. The commissioner or the
 18-61 commissioner's designee shall develop an intra-agency career
 18-62 ladder program. The program must require intra-agency postings of
 18-63 all nonentry-level positions concurrently with any public posting.

18-64 Sec. 117.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
 18-65 Subject to rules adopted by the executive commissioner, the
 18-66 commissioner or the commissioner's designee shall prepare and
 18-67 maintain a written policy statement that implements a program of
 18-68 equal employment opportunity to ensure that all personnel decisions
 18-69 are made without regard to race, color, disability, sex, religion,

19-1 age, or national origin.

19-2 (b) Unless the following are included in a policy statement
 19-3 adopted by the executive commissioner that is applicable to the
 19-4 department, the policy statement must include:

19-5 (1) personnel policies, including policies relating
 19-6 to recruitment, evaluation, selection, training, and promotion of
 19-7 personnel, that show the intent of the department to avoid the
 19-8 unlawful employment practices described by Chapter 21, Labor Code;
 19-9 and

19-10 (2) an analysis of the extent to which the composition
 19-11 of the department's personnel is in accordance with state and
 19-12 federal law and a description of reasonable methods to achieve
 19-13 compliance with state and federal law.

19-14 (c) The policy statement must be:

19-15 (1) updated annually;
 19-16 (2) reviewed by the state Commission on Human Rights
 19-17 for compliance with Subsection (b)(1); and

19-18 (3) filed with the governor's office.

19-19 Sec. 117.057. STATE EMPLOYEE INCENTIVE PROGRAM. The
 19-20 commissioner or the commissioner's designee shall provide to
 19-21 department employees information and training on the benefits and
 19-22 methods of participation in the state employee incentive program.

19-23 [Sections 117.058-117.070 reserved for expansion]

19-24 SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

19-25 Sec. 117.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The
 19-26 department is responsible for administering human services
 19-27 programs to provide early childhood intervention services and
 19-28 rehabilitation and related services to persons with disabilities
 19-29 other than developmental delay or mental retardation and to persons
 19-30 who are blind, deaf, or hard of hearing.

19-31 Sec. 117.072. INFORMATION REGARDING COMPLAINTS. (a) The
 19-32 department shall maintain a file on each written complaint filed
 19-33 with the department. The file must include:

19-34 (1) the name of the person who filed the complaint;
 19-35 (2) the date the complaint is received by the
 19-36 department;

19-37 (3) the subject matter of the complaint;
 19-38 (4) the name of each person contacted in relation to
 19-39 the complaint;

19-40 (5) a summary of the results of the review or
 19-41 investigation of the complaint; and

19-42 (6) an explanation of the reason the file was closed,
 19-43 if the department closed the file without taking action other than
 19-44 to investigate the complaint.

19-45 (b) The department shall provide to the person filing the
 19-46 complaint and to each person who is a subject of the complaint a
 19-47 copy of the executive commissioner's and the department's policies
 19-48 and procedures relating to complaint investigation and resolution.

19-49 (c) The department, at least quarterly until final
 19-50 disposition of the complaint, shall notify the person filing the
 19-51 complaint and each person who is a subject of the complaint of the
 19-52 status of the investigation unless the notice would jeopardize an
 19-53 undercover investigation.

19-54 Sec. 117.073. RULES. The executive commissioner may adopt
 19-55 rules reasonably necessary for the department to administer this
 19-56 chapter, consistent with the memorandum of understanding under
 19-57 Section 531.0055(k), Government Code, between the commissioner and
 19-58 the executive commissioner, as adopted by rule.

19-59 SECTION 1.13A. The Human Resources Code is amended by
 19-60 adding Title 11 to read as follows:

19-61 TITLE 11. COMMUNITY-BASED AND LONG-TERM CARE SERVICES
 19-62 CHAPTER 161. DEPARTMENT OF AGING AND DISABILITY SERVICES
 19-63 SUBCHAPTER A. GENERAL PROVISIONS

19-64 Sec. 161.001. DEFINITIONS. In this chapter:

19-65 (1) "Commission" means the Health and Human Services
 19-66 Commission.

19-67 (2) "Commissioner" means the commissioner of aging and
 19-68 disability services.

19-69 (3) "Council" means the Aging and Disability Services

20-1 Council.

20-2 (4) "Department" means the Department of Aging and
 20-3 Disability Services.

20-4 (5) "Executive commissioner" means the executive
 20-5 commissioner of the Health and Human Services Commission.

20-6 Sec. 161.002. AGENCY. The department is an agency of the
 20-7 state.

20-8 Sec. 161.003. SUNSET PROVISION. The department is subject
 20-9 to Chapter 325, Government Code (Texas Sunset Act). Unless
 20-10 continued in existence as provided by that chapter, the department
 20-11 is abolished and this chapter expires September 1, 2009.

20-12 [Sections 161.004-161.020 reserved for expansion]

20-13 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

20-14 Sec. 161.021. AGING AND DISABILITY SERVICES COUNCIL. (a)
 20-15 The Aging and Disability Services Council is created to assist the
 20-16 executive commissioner in developing rules and policies for the
 20-17 department.

20-18 (b) The council is composed of nine members of the public
 20-19 appointed by the governor with the advice and consent of the senate.
 20-20 To be eligible for appointment to the council, a person must have
 20-21 demonstrated an interest in and knowledge of issues and available
 20-22 services related to the aging and persons with developmental
 20-23 disabilities or mental retardation.

20-24 (c) The council shall study and make recommendations to the
 20-25 executive commissioner regarding the management and operation of
 20-26 the department, including policies and rules governing the delivery
 20-27 of services to persons who are served by the department and the
 20-28 rights and duties of persons who are served or regulated by the
 20-29 department.

20-30 (d) Chapter 551, Government Code, applies to the council.

20-31 (e) Chapter 2110, Government Code, does not apply to the
 20-32 council.

20-33 (f) A majority of the members of the council constitute a
 20-34 quorum for the transaction of business.

20-35 Sec. 161.022. APPOINTMENTS. (a) Appointments to the
 20-36 council shall be made without regard to the race, color,
 20-37 disability, sex, religion, age, or national origin of the
 20-38 appointees.

20-39 (b) Appointments to the council shall be made so that each
 20-40 geographic area of the state is represented on the council.
 20-41 Notwithstanding Subsection (a), appointments to the council must
 20-42 reflect the ethnic diversity of this state.

20-43 Sec. 161.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A
 20-44 person who is appointed as a member of the council may not vote,
 20-45 deliberate, or be counted as a member in attendance at a meeting of
 20-46 the council until the person completes a training program that
 20-47 complies with this section.

20-48 (b) The training program must provide the person with
 20-49 information regarding:

20-50 (1) the legislation that created the department and
 20-51 the council;

20-52 (2) the programs operated by the department;

20-53 (3) the role and functions of the department and the
 20-54 council, including detailed information regarding:

20-55 (A) the division of authority and of
 20-56 responsibility between the commissioner and the executive
 20-57 commissioner; and

20-58 (B) the advisory responsibilities of the
 20-59 council;

20-60 (4) the rules of the executive commissioner applicable
 20-61 to the department, with an emphasis on the rules that relate to
 20-62 disciplinary and investigatory authority;

20-63 (5) the current budget for the department;

20-64 (6) the results of the most recent formal audit of the
 20-65 department;

20-66 (7) the requirements of:

20-67 (A) the open meetings law, Chapter 551,
 20-68 Government Code;

20-69 (B) the public information law, Chapter 552,

21-1 Government Code;

21-2 (C) the administrative procedure law, Chapter
21-3 2001, Government Code; and

21-4 (D) other laws relating to public officials,
21-5 including conflict-of-interest laws; and

21-6 (8) any applicable ethics policies adopted by the
21-7 executive commissioner or the Texas Ethics Commission.

21-8 Sec. 161.024. TERMS. (a) Council members serve for
21-9 staggered six-year terms with the terms of three members expiring
21-10 February 1 of each odd-numbered year.

21-11 (b) A member of the council may not serve more than two
21-12 consecutive full terms as a council member.

21-13 Sec. 161.025. VACANCY. The governor by appointment shall
21-14 fill the unexpired term of a vacancy on the council.

21-15 Sec. 161.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS.

21-16 (a) The governor shall designate a member of the council as the
21-17 presiding officer to serve in that capacity at the pleasure of the
21-18 governor.

21-19 (b) The members of the council shall elect any other
21-20 necessary officers.

21-21 (c) The council shall meet quarterly and at other times at
21-22 the call of the presiding officer. The council may hold meetings in
21-23 different areas of the state.

21-24 Sec. 161.027. REIMBURSEMENT FOR EXPENSES. A council member
21-25 may not receive compensation for service as a member of the council
21-26 but is entitled to reimbursement for travel expenses incurred by
21-27 the member while conducting the business of the council as provided
21-28 by the General Appropriations Act.

21-29 Sec. 161.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

21-30 (a) The executive commissioner, with the advice of the council,
21-31 shall prepare information of public interest describing the
21-32 functions of the department and the procedures by which complaints
21-33 are filed with and resolved by the department. The commission shall
21-34 make the information available to the public and appropriate state
21-35 governmental entities.

21-36 (b) The executive commissioner by rule shall establish
21-37 methods by which consumers and service recipients are notified of
21-38 the name, mailing address, and telephone number of the department
21-39 for directing complaints to the department.

21-40 Sec. 161.029. PUBLIC ACCESS AND TESTIMONY. (a) The
21-41 executive commissioner shall develop and implement policies that
21-42 provide the public with a reasonable opportunity to appear before
21-43 the commission or the executive commissioner and to speak on any
21-44 issue under the jurisdiction of the department.

21-45 (b) The executive commissioner shall grant an opportunity
21-46 for a public hearing before the council makes recommendations to
21-47 the executive commissioner regarding a substantive rule if a public
21-48 hearing is requested by:

21-49 (1) at least 25 persons;

21-50 (2) a governmental entity; or

21-51 (3) an association with at least 25 members.

21-52 (c) The executive commissioner shall consider fully all
21-53 written and oral submissions about a proposed rule.

21-54 Sec. 161.030. POLICYMAKING AND MANAGEMENT
21-55 RESPONSIBILITIES. The executive commissioner, with the advice of
21-56 the council, shall develop and the department shall implement
21-57 policies that clearly delineate the policymaking responsibilities
21-58 of the executive commissioner from the management responsibilities
21-59 of the commission, the commissioner, and the staff of the
21-60 department.

21-61 Sec. 161.031. ANNUAL REPORT. (a) The commissioner shall
21-62 file annually with the governor, the presiding officer of each
21-63 house of the legislature, and the executive commissioner a complete
21-64 and detailed written report accounting for all funds received and
21-65 disbursed by the department during the preceding fiscal year.

21-66 (b) The annual report must be in the form and be reported in
21-67 the time provided by the General Appropriations Act.

21-68 Sec. 161.032. OFFICES. The department shall maintain its
21-69 central office in Austin. The department may maintain offices in

22-1 other areas of the state as necessary.

22-2 [Sections 161.033-161.050 reserved for expansion]

22-3 SUBCHAPTER C. PERSONNEL

22-4 Sec. 161.051. COMMISSIONER. (a) The executive
 22-5 commissioner shall appoint a commissioner of the department with
 22-6 the approval of the governor. The commissioner is to be selected
 22-7 according to education, training, experience, and demonstrated
 22-8 ability.

22-9 (b) The commissioner serves at the pleasure of the executive
 22-10 commissioner.

22-11 (c) Subject to the control of the executive commissioner,
 22-12 the commissioner shall act as the department's chief administrative
 22-13 officer and as a liaison between the department and commission.

22-14 (d) The commissioner shall administer this chapter under
 22-15 operational policies established by the executive commissioner and
 22-16 in accordance with the memorandum of understanding under Section
 22-17 531.0055(k), Government Code, between the commissioner and the
 22-18 executive commissioner, as adopted by rule.

22-19 Sec. 161.052. PERSONNEL. (a) The department may employ,
 22-20 compensate, and prescribe the duties of personnel necessary and
 22-21 suitable to administer this chapter.

22-22 (b) The executive commissioner shall prepare and by rule
 22-23 adopt personnel standards.

22-24 (c) A personnel position may be filled only by an individual
 22-25 selected and appointed on a nonpartisan merit basis.

22-26 (d) The executive commissioner, with the advice of the
 22-27 council, shall develop and the department shall implement policies
 22-28 that clearly define the responsibilities of the staff of the
 22-29 department.

22-30 Sec. 161.053. INFORMATION ABOUT QUALIFICATIONS AND
 22-31 STANDARDS OF CONDUCT. The commissioner or the commissioner's
 22-32 designee shall provide to department employees, as often as
 22-33 necessary, information regarding the requirements for employment
 22-34 under this chapter or rules adopted by the executive commissioner,
 22-35 including information regarding a person's responsibilities under
 22-36 applicable laws relating to standards of conduct for state
 22-37 employees.

22-38 Sec. 161.054. MERIT PAY. Subject to rules adopted by the
 22-39 executive commissioner, the commissioner or the commissioner's
 22-40 designee shall develop a system of annual performance evaluations.
 22-41 All merit pay for department employees must be given under the
 22-42 system established under this section or under rules adopted by the
 22-43 executive commissioner.

22-44 Sec. 161.055. CAREER LADDER. The commissioner or the
 22-45 commissioner's designee shall develop an intra-agency career
 22-46 ladder program. The program must require intra-agency postings of
 22-47 all nonentry-level positions concurrently with any public posting.

22-48 Sec. 161.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
 22-49 Subject to rules adopted by the executive commissioner, the
 22-50 commissioner or the commissioner's designee shall prepare and
 22-51 maintain a written policy statement that implements a program of
 22-52 equal employment opportunity to ensure that all personnel decisions
 22-53 are made without regard to race, color, disability, sex, religion,
 22-54 age, or national origin.

22-55 (b) Unless the following are included in a policy statement
 22-56 adopted by the executive commissioner that is applicable to the
 22-57 department, the policy statement must include:

22-58 (1) personnel policies, including policies relating
 22-59 to recruitment, evaluation, selection, training, and promotion of
 22-60 personnel, that show the intent of the department to avoid the
 22-61 unlawful employment practices described by Chapter 21, Labor Code;
 22-62 and

22-63 (2) an analysis of the extent to which the composition
 22-64 of the department's personnel is in accordance with state and
 22-65 federal law and a description of reasonable methods to achieve
 22-66 compliance with state and federal law.

22-67 (c) The policy statement must be:

22-68 (1) updated annually;

22-69 (2) reviewed by the state Commission on Human Rights

23-1 for compliance with Subsection (b)(1); and
 23-2 (3) filed with the governor's office.

23-3 Sec. 161.057. STATE EMPLOYEE INCENTIVE PROGRAM. The
 23-4 commissioner or the commissioner's designee shall provide to
 23-5 department employees information and training on the benefits and
 23-6 methods of participation in the state employee incentive program.

23-7 [Sections 161.058-161.070 reserved for expansion]

23-8 SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

23-9 Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The
 23-10 department is responsible for administering human services
 23-11 programs for the aging and disabled, including:

23-12 (1) administering and coordinating programs to
 23-13 provide community-based care and support services to promote
 23-14 independent living for populations that would otherwise be
 23-15 institutionalized;

23-16 (2) providing institutional care services, including
 23-17 services through convalescent and nursing homes and related
 23-18 institutions under Chapter 242, Health and Safety Code;

23-19 (3) providing and coordinating programs and services
 23-20 for persons with disabilities, including programs for the
 23-21 treatment, rehabilitation, or benefit of persons with
 23-22 developmental disabilities or mental retardation;

23-23 (4) operating state facilities for the housing,
 23-24 treatment, rehabilitation, or benefit of persons with
 23-25 disabilities, including state schools for persons with mental
 23-26 retardation;

23-27 (5) serving as the state unit on aging required by the
 23-28 federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.)
 23-29 and its subsequent amendments, including performing the general
 23-30 functions under Section 101.022 to ensure:

23-31 (A) implementation of the federal Older
 23-32 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its
 23-33 subsequent amendments, including implementation of services and
 23-34 volunteer opportunities under that Act for older residents of this
 23-35 state through area agencies on aging;

23-36 (B) advocacy for residents of nursing facilities
 23-37 through the office of the state long-term care ombudsman;

23-38 (C) fostering of the state and community
 23-39 infrastructure and capacity to serve older residents of this state;
 23-40 and

23-41 (D) availability of a comprehensive resource for
 23-42 state government and the public on trends related to and services
 23-43 and programs for an aging population;

23-44 (6) performing all licensing and enforcement
 23-45 activities and functions related to long-term care facilities,
 23-46 including licensing and enforcement activities related to
 23-47 convalescent and nursing homes and related institutions under
 23-48 Chapter 242, Health and Safety Code;

23-49 (7) performing all licensing and enforcement
 23-50 activities related to assisted living facilities under Chapter 247,
 23-51 Health and Safety Code;

23-52 (8) performing all licensing and enforcement
 23-53 activities related to intermediate care facilities for persons with
 23-54 mental retardation under Chapter 252, Health and Safety Code; and

23-55 (9) performing all licensing and enforcement
 23-56 activities and functions related to home and community support
 23-57 services agencies under Chapter 142, Health and Safety Code.

23-58 Sec. 161.072. INFORMATION REGARDING COMPLAINTS. (a) The
 23-59 department shall maintain a file on each written complaint filed
 23-60 with the department. The file must include:

23-61 (1) the name of the person who filed the complaint;
 23-62 (2) the date the complaint is received by the
 23-63 department;

23-64 (3) the subject matter of the complaint;
 23-65 (4) the name of each person contacted in relation to
 23-66 the complaint;

23-67 (5) a summary of the results of the review or
 23-68 investigation of the complaint; and

23-69 (6) an explanation of the reason the file was closed,

24-1 if the department closed the file without taking action other than
 24-2 to investigate the complaint.

24-3 (b) The department shall provide to the person filing the
 24-4 complaint and to each person who is a subject of the complaint a
 24-5 copy of the executive commissioner's and the department's policies
 24-6 and procedures relating to complaint investigation and resolution.

24-7 (c) The department, at least quarterly until final
 24-8 disposition of the complaint, shall notify the person filing the
 24-9 complaint and each person who is a subject of the complaint of the
 24-10 status of the investigation unless the notice would jeopardize an
 24-11 undercover investigation.

24-12 Sec. 161.073. RULES. The executive commissioner may adopt
 24-13 rules reasonably necessary for the department to administer this
 24-14 chapter, consistent with the memorandum of understanding under
 24-15 Section 531.0055(k), Government Code, between the commissioner and
 24-16 the executive commissioner, as adopted by rule.

24-17 SECTION 1.14. APPOINTMENT OF COMMISSIONERS. (a) As soon as
 24-18 possible, the executive commissioner of the Health and Human
 24-19 Services Commission shall appoint the commissioners of:

24-20 (1) the Department of State Health Services in
 24-21 accordance with Chapter 1001, Health and Safety Code, as added by
 24-22 this article;

24-23 (2) the Department of Family and Protective Services
 24-24 in accordance with Chapter 40, Human Resources Code, as amended by
 24-25 this article;

24-26 (3) the Department of Assistive and Rehabilitative
 24-27 Services in accordance with Chapter 117, Human Resources Code, as
 24-28 added by this article; and

24-29 (4) the Department of Aging and Disability Services in
 24-30 accordance with Chapter 161, Human Resources Code, as added by this
 24-31 article.

24-32 (b) The executive commissioner of the Health and Human
 24-33 Services Commission shall make the appointments of the
 24-34 commissioners required by this section so that the ethnic diversity
 24-35 of this state is reflected in those appointments.

24-36 SECTION 1.15. APPOINTMENTS OF COUNCIL MEMBERS. (a) As soon
 24-37 as possible, the governor shall appoint the members of the State
 24-38 Health Services Council in accordance with Chapter 1001, Health and
 24-39 Safety Code, as added by this article. In making the initial
 24-40 appointments, the governor shall designate three members for terms
 24-41 expiring February 1, 2005, three members for terms expiring
 24-42 February 1, 2007, and three members for terms expiring February 1,
 24-43 2009.

24-44 (b) As soon as possible, the governor shall appoint the
 24-45 members of the Family and Protective Services Council in accordance
 24-46 with Chapter 40, Human Resources Code, as amended by this article.
 24-47 In making the initial appointments, the governor shall designate
 24-48 three members for terms expiring February 1, 2005, three members
 24-49 for terms expiring February 1, 2007, and three members for terms
 24-50 expiring February 1, 2009.

24-51 (c) As soon as possible, the governor shall appoint the
 24-52 members of the Assistive and Rehabilitative Services Council in
 24-53 accordance with Chapter 117, Human Resources Code, as added by this
 24-54 article. In making the initial appointments, the governor shall
 24-55 designate three members for terms expiring February 1, 2005, three
 24-56 members for terms expiring February 1, 2007, and three members for
 24-57 terms expiring February 1, 2009.

24-58 (d) As soon as possible, the governor shall appoint the
 24-59 members of the Aging and Disability Services Council in accordance
 24-60 with Chapter 161, Human Resources Code, as added by this article.
 24-61 In making the initial appointments, the governor shall designate
 24-62 three members for terms expiring February 1, 2005, three members
 24-63 for terms expiring February 1, 2007, and three members for terms
 24-64 expiring February 1, 2009.

24-65 (e) As soon as possible, the governor shall appoint the
 24-66 members of the Health and Human Services Council in accordance with
 24-67 Chapter 531, Government Code, as amended by this article. In making
 24-68 the initial appointments, the governor shall designate three
 24-69 members for terms expiring February 1, 2005, three members for

25-1 terms expiring February 1, 2007, and three members for terms
 25-2 expiring February 1, 2009.

25-3 SECTION 1.16. LIMITATION ON ACTIVITIES. A state agency
 25-4 created under this article may, before the date specified in the
 25-5 transition plan required under Section 1.23 of this article,
 25-6 perform only those powers, duties, functions, programs, and
 25-7 activities that relate to preparing for the transfer of powers,
 25-8 duties, functions, programs, and activities to that agency in
 25-9 accordance with this article. A state agency created under this
 25-10 article may not operate all or any part of a health and human
 25-11 services program before the date specified in the transition plan
 25-12 required under Section 1.23 of this article.

25-13 SECTION 1.17. INITIAL COUNCIL MEETINGS. The presiding
 25-14 officers of the councils for each state agency created under this
 25-15 article, the Family and Protective Services Council, the Health and
 25-16 Human Services Council, and the Health and Human Services
 25-17 Transition Council shall call the initial meeting of the applicable
 25-18 council as soon as possible after the council members are
 25-19 appointed.

25-20 SECTION 1.18. TRANSFERS TO THE HEALTH AND HUMAN SERVICES
 25-21 COMMISSION. (a) On the date specified in the transition plan
 25-22 required under Section 1.23 of this article, the following powers,
 25-23 duties, functions, programs, and activities are transferred to the
 25-24 Health and Human Services Commission:

25-25 (1) all powers, duties, functions, programs, and
 25-26 activities related to administrative support services, such as
 25-27 strategic planning and evaluation, audit, legal, human resources,
 25-28 information resources, accounting, purchasing, financial
 25-29 management, and contract management services, of a state agency or
 25-30 entity abolished by Section 1.26 of this article;

25-31 (2) all powers, duties, functions, programs, and
 25-32 activities of the Texas Department of Human Services related to:

25-33 (A) determining eligibility for long-term care
 25-34 services and community-based support services;

25-35 (B) the financial assistance program under
 25-36 Chapter 31, Human Resources Code;

25-37 (C) the nutritional assistance programs under
 25-38 Chapter 33, Human Resources Code;

25-39 (D) preventing family violence and providing
 25-40 services to victims of family violence; and

25-41 (E) the Texas Department of Human Services office
 25-42 of inspector general;

25-43 (3) all powers, duties, functions, programs, and
 25-44 activities related to the following programs administered by a
 25-45 state agency or entity abolished by Section 1.26 of this article:

25-46 (A) the state child health plan program under
 25-47 Chapters 62 and 63, Health and Safety Code; and

25-48 (B) the medical assistance program under Chapter
 25-49 32, Human Resources Code; and

25-50 (4) all rulemaking and policymaking authority for the
 25-51 provision of health and human services in this state.

25-52 (b) On the date specified by Subsection (a) of this section:

25-53 (1) all obligations and contracts of a state agency or
 25-54 entity abolished by Section 1.26 of this article that are related to
 25-55 a power, duty, function, program, or activity transferred under
 25-56 Subsection (a) of this section are transferred to the Health and
 25-57 Human Services Commission;

25-58 (2) all property and records in the custody of a state
 25-59 agency or entity abolished by Section 1.26 of this article that are
 25-60 related to a power, duty, function, program, or activity
 25-61 transferred under Subsection (a) of this section and all funds
 25-62 appropriated by the legislature for the power, duty, function,
 25-63 program, or activity shall be transferred to the Health and Human
 25-64 Services Commission; and

25-65 (3) all complaints, investigations, or contested
 25-66 cases that are pending before a state agency or entity abolished by
 25-67 Section 1.26 of this article or the governing body of the agency or
 25-68 entity and that are related to a power, duty, function, program, or
 25-69 activity transferred under Subsection (a) of this section are

26-1 transferred without change in status to the Health and Human
26-2 Services Commission.

26-3 (c) A rule or form adopted by a state agency or entity
26-4 abolished by Section 1.26 of this article that relates to a power,
26-5 duty, function, program, or activity transferred under Subsection
26-6 (a) of this section is a rule or form of the Health and Human
26-7 Services Commission and remains in effect until altered by the
26-8 commission.

26-9 (d) A reference in law to a state agency or entity abolished
26-10 by Section 1.26 of this article, or to the governing body of the
26-11 agency or entity, that relates to a power, duty, function, program,
26-12 or activity transferred under Subsection (a) of this section means
26-13 the Health and Human Services Commission.

26-14 (e) A license, permit, or certification in effect that was
26-15 issued by a state agency or entity abolished by Section 1.26 of this
26-16 article and that relates to a power, duty, function, program, or
26-17 activity transferred under Subsection (a) of this section is
26-18 continued in effect as a license, permit, or certification of the
26-19 Health and Human Services Commission.

26-20 (f) All powers, duties, functions, programs, and activities
26-21 relating to the Texas Department of Human Services office of
26-22 inspector general transferred to the Health and Human Services
26-23 Commission under Subsection (a)(2)(D) of this section, shall be
26-24 assumed by the commission's office of inspector general.
26-25 Notwithstanding any other provision of law, a reference in law to
26-26 the Texas Department of Human Services office of inspector general
26-27 means the commission's office of inspector general.

26-28 SECTION 1.19. TRANSFERS TO THE DEPARTMENT OF STATE HEALTH
26-29 SERVICES. (a) On the date specified in the transition plan
26-30 required under Section 1.23 of this article, the following powers,
26-31 duties, functions, programs, and activities, other than those
26-32 related to rulemaking or policymaking or administrative support
26-33 services such as strategic planning and evaluation, audit, legal,
26-34 human resources, information resources, accounting, purchasing,
26-35 financial management, and contract management services, are
26-36 transferred to the Department of State Health Services:

26-37 (1) except as provided by Section 1.18 of this
26-38 article, all powers, duties, functions, programs, and activities of
26-39 the Texas Department of Health;

26-40 (2) all powers, duties, functions, programs, and
26-41 activities of the Texas Department of Mental Health and Mental
26-42 Retardation relating to providing mental health services;

26-43 (3) all powers, duties, functions, programs, and
26-44 activities of the Texas Commission on Alcohol and Drug Abuse; and

26-45 (4) all powers, duties, functions, programs, and
26-46 activities of the Texas Health Care Information Council.

26-47 (b) On the date specified by Subsection (a) of this section:

26-48 (1) all obligations and contracts of an entity listed
26-49 in Subsection (a) of this section that are related to a power, duty,
26-50 function, program, or activity transferred under that subsection
26-51 are transferred to the Department of State Health Services;

26-52 (2) all property and records in the custody of an
26-53 entity listed in Subsection (a) of this section that are related to
26-54 a power, duty, function, program, or activity transferred under
26-55 that subsection and all funds appropriated by the legislature for
26-56 the power, duty, function, program, or activity shall be
26-57 transferred to the Department of State Health Services; and

26-58 (3) all complaints, investigations, or contested
26-59 cases that are pending before an entity or the governing body of an
26-60 entity listed in Subsection (a) of this section and that are related
26-61 to a power, duty, function, program, or activity transferred under
26-62 that subsection are transferred without change in status to the
26-63 Department of State Health Services.

26-64 (c) A rule or form adopted by an entity listed in Subsection
26-65 (a) of this section that relates to a power, duty, function,
26-66 program, or activity transferred under that subsection is a rule or
26-67 form of the Department of State Health Services and remains in
26-68 effect until altered by the executive commissioner of the Health
26-69 and Human Services Commission.

27-1 (d) A reference in law to an entity listed in Subsection (a)
 27-2 of this section that relates to a power, duty, function, program, or
 27-3 activity transferred under that subsection means the Department of
 27-4 State Health Services. A reference in law to the governing body of
 27-5 an entity listed in Subsection (a) of this section means the Health
 27-6 and Human Services Commission or the executive commissioner of the
 27-7 Health and Human Services Commission.

27-8 (e) A license, permit, or certification in effect that was
 27-9 issued by an entity listed in Subsection (a) of this section and
 27-10 that relates to a power, duty, function, program, or activity
 27-11 transferred under that subsection is continued in effect as a
 27-12 license, permit, or certification of the Department of State Health
 27-13 Services.

27-14 SECTION 1.20. TRANSFERS TO THE DEPARTMENT OF AGING AND
 27-15 DISABILITY SERVICES. (a) On the date specified in the transition
 27-16 plan required under Section 1.23 of this article, the following
 27-17 powers, duties, functions, programs, and activities, other than
 27-18 those related to rulemaking or policymaking or administrative
 27-19 support services such as strategic planning and evaluation, audit,
 27-20 legal, human resources, information resources, accounting,
 27-21 purchasing, financial management, and contract management
 27-22 services, are transferred to the Department of Aging and Disability
 27-23 Services:

27-24 (1) all powers, duties, functions, programs, and
 27-25 activities of the Texas Department on Aging;

27-26 (2) except as provided by Section 1.18 of this
 27-27 article, from the Texas Department of Human Services, all powers,
 27-28 duties, functions, programs, and activities related to providing
 27-29 long-term care services and community-based support and services,
 27-30 licensing and enforcing regulations applicable to long-term care
 27-31 facilities, and licensing and enforcing regulations applicable to
 27-32 home and community support services agencies; and

27-33 (3) all powers, duties, functions, programs, and
 27-34 activities of the Texas Department of Mental Health and Mental
 27-35 Retardation related to providing mental retardation services,
 27-36 including state school administration and services and community
 27-37 residential services.

27-38 (b) On the date specified by Subsection (a) of this section:

27-39 (1) all obligations and contracts of an entity listed
 27-40 in Subsection (a) of this section that are related to a power, duty,
 27-41 function, program, or activity transferred under that subsection
 27-42 are transferred to the Department of Aging and Disability Services;

27-43 (2) all property and records in the custody of an
 27-44 entity listed in Subsection (a) of this section that are related to
 27-45 a power, duty, function, program, or activity transferred under
 27-46 that subsection and all funds appropriated by the legislature for
 27-47 the power, duty, function, program, or activity shall be
 27-48 transferred to the Department of Aging and Disability Services; and

27-49 (3) all complaints, investigations, or contested
 27-50 cases that are pending before an entity or the governing body of an
 27-51 entity listed in Subsection (a) of this section and that are related
 27-52 to a power, duty, function, program, or activity transferred under
 27-53 that subsection are transferred without change in status to the
 27-54 Department of Aging and Disability Services.

27-55 (c) A rule or form adopted by an entity listed in Subsection
 27-56 (a) of this section that relates to a power, duty, function,
 27-57 program, or activity transferred under that subsection is a rule or
 27-58 form of the Department of Aging and Disability Services and remains
 27-59 in effect until altered by the executive commissioner of the Health
 27-60 and Human Services Commission.

27-61 (d) A reference in law to an entity listed in Subsection (a)
 27-62 of this section that relates to a power, duty, function, program, or
 27-63 activity transferred under that subsection means the Department of
 27-64 Aging and Disability Services. A reference in law to the governing
 27-65 body of an entity listed in Subsection (a) of this section means the
 27-66 Health and Human Services Commission or the executive commissioner
 27-67 of the Health and Human Services Commission.

27-68 (e) A license, permit, or certification in effect that was
 27-69 issued by an entity listed in Subsection (a) of this section and

28-1 that relates to a power, duty, function, program, or activity
 28-2 transferred under that subsection is continued in effect as a
 28-3 license, permit, or certification of the Department of Aging and
 28-4 Disability Services.

28-5 SECTION 1.21. TRANSFERS TO THE DEPARTMENT OF ASSISTIVE AND
 28-6 REHABILITATIVE SERVICES. (a) On the date specified in the
 28-7 transition plan required under Section 1.23 of this article, the
 28-8 following powers, duties, functions, programs, and activities,
 28-9 other than those related to rulemaking or policymaking or
 28-10 administrative support services such as strategic planning and
 28-11 evaluation, audit, legal, human resources, information resources,
 28-12 accounting, purchasing, financial management, and contract
 28-13 management services, are transferred to the Department of Assistive
 28-14 and Rehabilitative Services:

28-15 (1) all powers, duties, functions, programs, and
 28-16 activities of the Texas Rehabilitation Commission;

28-17 (2) all powers, duties, functions, programs, and
 28-18 activities of the Interagency Council on Early Childhood
 28-19 Intervention;

28-20 (3) all powers, duties, functions, programs, and
 28-21 activities of the Texas Commission for the Blind; and

28-22 (4) all powers, duties, functions, programs, and
 28-23 activities of the Texas Commission for the Deaf and Hard of Hearing.

28-24 (b) On the date specified by Subsection (a) of this section:

28-25 (1) all obligations and contracts of an entity listed
 28-26 in Subsection (a) of this section that are related to a power, duty,
 28-27 function, program, or activity transferred under that subsection
 28-28 are transferred to the Department of Assistive and Rehabilitative
 28-29 Services;

28-30 (2) all property and records in the custody of an
 28-31 entity listed in Subsection (a) of this section that are related to
 28-32 a power, duty, function, program, or activity transferred under
 28-33 that subsection and all funds appropriated by the legislature for
 28-34 the power, duty, function, program, or activity shall be
 28-35 transferred to the Department of Assistive and Rehabilitative
 28-36 Services; and

28-37 (3) all complaints, investigations, or contested
 28-38 cases that are pending before an entity or the governing body of an
 28-39 entity listed in Subsection (a) of this section and that are related
 28-40 to a power, duty, function, program, or activity transferred under
 28-41 that subsection are transferred without change in status to the
 28-42 Department of Assistive and Rehabilitative Services.

28-43 (c) A rule or form adopted by an entity listed in Subsection
 28-44 (a) of this section that relates to a power, duty, function,
 28-45 program, or activity transferred under that subsection is a rule or
 28-46 form of the Department of Assistive and Rehabilitative Services and
 28-47 remains in effect until altered by the executive commissioner of
 28-48 the Health and Human Services Commission.

28-49 (d) A reference in law to an entity listed in Subsection (a)
 28-50 of this section that relates to a power, duty, function, program, or
 28-51 activity transferred under that subsection means the Department of
 28-52 Assistive and Rehabilitative Services. A reference in law to the
 28-53 governing body of an entity listed in Subsection (a) of this section
 28-54 means the Health and Human Services Commission or the executive
 28-55 commissioner of the Health and Human Services Commission.

28-56 (e) A license, permit, or certification in effect that was
 28-57 issued by an entity listed in Subsection (a) of this section and
 28-58 that relates to a power, duty, function, program, or activity
 28-59 transferred under that subsection is continued in effect as a
 28-60 license, permit, or certification of the Department of Assistive
 28-61 and Rehabilitative Services.

28-62 SECTION 1.22. FACILITATION OF TRANSFERS BY HEALTH AND HUMAN
 28-63 SERVICES TRANSITION COUNCIL. (a) The Health and Human Services
 28-64 Transition Council is created to facilitate the transfer of powers,
 28-65 duties, functions, programs, and activities among the state's
 28-66 health and human services agencies and the Health and Human
 28-67 Services Commission as provided by this article with a minimal
 28-68 negative effect on the delivery of those services in this state.

28-69 (b) The council is composed of 10 members, as follows:

29-1 (1) the executive commissioner of the Health and Human
29-2 Services Commission;

29-3 (2) two members of the senate, appointed by the
29-4 lieutenant governor not later than October 1, 2003;

29-5 (3) two members of the house of representatives,
29-6 appointed by the speaker of the house of representatives not later
29-7 than October 1, 2003; and

29-8 (4) five members of the public, appointed by the
29-9 governor not later than October 1, 2003.

29-10 (c) The executive commissioner of the Health and Human
29-11 Services Commission serves as presiding officer. The members of
29-12 the council shall elect any other necessary officers.

29-13 (d) The council shall meet at the call of the presiding
29-14 officer.

29-15 (e) A member of the council serves at the will of the
29-16 appointing official.

29-17 (f) A member of the council may not receive compensation for
29-18 serving on the council but is entitled to reimbursement for travel
29-19 expenses incurred by the member while conducting the business of
29-20 the council as provided by the General Appropriations Act.

29-21 (g) The council, with assistance from the Health and Human
29-22 Services Commission and the health and human services agencies,
29-23 shall advise the executive commissioner of the Health and Human
29-24 Services Commission concerning:

29-25 (1) the powers, duties, functions, programs, and
29-26 activities transferred under this article and the funds and
29-27 obligations that are related to the powers, duties, functions,
29-28 programs, or activities; and

29-29 (2) the transfer of the powers, duties, functions,
29-30 programs, activities, records, property, funds, obligations, and
29-31 employees by the entities listed in Sections 1.18, 1.19, 1.20, and
29-32 1.21 of this article in accordance with this article.

29-33 (h) The council shall fully consider all written and oral
29-34 submissions made on any matter or issue under the council's
29-35 jurisdiction.

29-36 (i) Chapter 551, Government Code, applies to the council.

29-37 (j) The council is abolished December 31, 2004.

29-38 SECTION 1.23. TRANSITION PLAN. (a) The transfer of powers,
29-39 duties, functions, programs, and activities under Sections 1.18,
29-40 1.19, 1.20, and 1.21 of this article to the Health and Human
29-41 Services Commission, the Department of State Health Services, the
29-42 Department of Aging and Disability Services, and the Department of
29-43 Assistive and Rehabilitative Services, respectively, must be
29-44 accomplished in accordance with a schedule included in a transition
29-45 plan developed by the executive commissioner of the Health and
29-46 Human Services Commission and submitted to the governor and the
29-47 Legislative Budget Board not later than December 1, 2003. The
29-48 executive commissioner shall provide to the governor and the
29-49 Legislative Budget Board transition plan status reports and updates
29-50 on at least a quarterly basis following submission of the initial
29-51 transition plan. The transition plan must be made available to the
29-52 public.

29-53 (b) Not later than November 1, 2003, the Health and Human
29-54 Services Commission shall hold a public hearing and accept public
29-55 comment regarding the transition plan required to be developed by
29-56 the executive commissioner of the Health and Human Services
29-57 Commission under Subsection (a) of this section.

29-58 (c) In developing the transition plan, the executive
29-59 commissioner of the Health and Human Services Commission shall hold
29-60 public hearings in various geographic areas in this state before
29-61 submitting the plan to the governor and the Legislative Budget
29-62 Board as required by this section.

29-63 SECTION 1.24. APPLICABILITY OF FORMER LAW. An action
29-64 brought or proceeding commenced before the date of a transfer
29-65 prescribed by this article in accordance with the transition plan
29-66 required under Section 1.23 of this article, including a contested
29-67 case or a remand of an action or proceeding by a reviewing court, is
29-68 governed by the laws and rules applicable to the action or
29-69 proceeding before the transfer.

SECTION 1.25. WORK PLAN FOR HEALTH AND HUMAN SERVICES AGENCIES. (a) The Health and Human Services Commission, the Department of Family and Protective Services, and each health and human services agency created under this article shall implement the powers, duties, functions, programs, and activities assigned to the agency under this article in accordance with a work plan designed by the commission to ensure that the transfer and provision of health and human services in this state are accomplished in a careful and deliberative manner.

(b) A work plan designed by the commission under this section must include the following phases:

(1) a planning phase, during which the agency will focus on and stabilize the organization of the agency's powers, duties, functions, programs, and activities, and which must include:

(A) initiation of recommendations made by the Health and Human Services Transition Council;

(B) creation of interagency and intra-agency steering committees;

(C) development of global visions, goals, and organizational strategies; and

(D) development of communications and risk management plans;

(2) an integration phase, during which the agency will identify opportunities and problems and design customized solutions for those problems, and which must include:

(A) identification of key issues for the agency relating to the Texas Integrated Eligibility Redesign System, waivers needed from federal agencies, costs, or legal requirements for other agency activities;

(B) planning for daily operations;

(C) validation of fiscal and program synergies;

(D) definition and building of a program management office; and

(E) development of performance measures, related tracking measures and tools, and risk mitigation initiatives;

(3) an optimization phase, during which the agency will complete and expand on the initial health and human services transitions, and which must include:

(A) optimization of initial implementation initiatives;

(B) use of enterprise teaming operations;

(C) building infrastructures to support and facilitate changes in the delivery of health and human services; and

(D) identification and use of beneficial assets management and facilities approaches; and

(4) a transformation phase, during which the agency will continue implementing initial and additional changes to the delivery of health and human services, and which must include:

(A) implementation of changes in agency management activities;

(B) continuation of risk assessments; and

(C) conducting a transformation review of the changes to the delivery of health and human services.

SECTION 1.26. ABOLITION OF STATE AGENCIES AND ENTITIES. (a) The following state agencies and entities are abolished on the date on which their respective powers, duties, functions, programs, and activities are transferred under this article:

(1) the Interagency Council on Early Childhood Intervention;

(2) the Texas Commission for the Blind;

(3) the Texas Commission for the Deaf and Hard of Hearing;

(4) the Texas Commission on Alcohol and Drug Abuse;

(5) the Texas Department of Health;

(6) the Texas Department of Human Services;

(7) the Texas Department of Mental Health and Mental Retardation;

- 31-1 (8) the Texas Department on Aging;
 31-2 (9) the Texas Health Care Information Council; and
 31-3 (10) the Texas Rehabilitation Commission.

31-4 (b) The abolition of a state agency or entity listed in
 31-5 Subsection (a) of this section and the transfer of its powers,
 31-6 duties, functions, programs, activities, obligations, rights,
 31-7 contracts, records, property, funds, and employees as provided by
 31-8 this article do not affect or impair an act done, any obligation,
 31-9 right, order, permit, certificate, rule, criterion, standard, or
 31-10 requirement existing, or any penalty accrued under former law, and
 31-11 that law remains in effect for any action concerning those matters.

31-12 SECTION 1.27. A reference in law to the Department of
 31-13 Protective and Regulatory Services means the Department of Family
 31-14 and Protective Services.

31-15 SECTION 1.28. REPEAL. The following are repealed:

31-16 (1) Sections 531.0057, 531.034, and 531.0345,
 31-17 Government Code;

31-18 (2) Sections 40.0225 and 40.023, Human Resources Code;
 31-19 and

31-20 (3) Article 2, Chapter 1505, Acts of the 76th
 31-21 Legislature, Regular Session, 1999.

31-22 SECTION 1.29. EFFECTIVE DATE. (a) Except as provided by
 31-23 Subsection (b) of this section, this article takes effect September
 31-24 1, 2003.

31-25 (b) The Department of State Health Services, the Department
 31-26 of Assistive and Rehabilitative Services, and the Department of
 31-27 Aging and Disability Services are created on the date the executive
 31-28 commissioner of the Health and Human Services Commission appoints
 31-29 the commissioner of the respective agency.

31-30 ARTICLE 2. ADMINISTRATION, OPERATION, AND FINANCING OF

31-31 HEALTH AND HUMAN SERVICES PROGRAMS AND PROVISION OF

31-32 HEALTH AND HUMAN SERVICES

31-33 SECTION 2.01. Section 531.001, Government Code, is amended
 31-34 by adding Subdivision (1-a) to read as follows:

31-35 (1-a) "Child health plan program" means the child
 31-36 health plan program established under Chapters 62 and 63, Health
 31-37 and Safety Code.

31-38 SECTION 2.02. (a) Subchapter A, Chapter 531, Government
 31-39 Code, is amended by adding Sections 531.017 and 531.018 to read as
 31-40 follows:

31-41 Sec. 531.017. PURCHASING DIVISION. (a) The commission
 31-42 shall establish a purchasing division for the management of
 31-43 administrative activities related to the purchasing functions of
 31-44 the commission and the health and human services agencies.

31-45 (b) The purchasing division shall:

31-46 (1) seek to achieve targeted cost reductions, increase
 31-47 process efficiencies, improve technological support and customer
 31-48 services, and enhance purchasing support for each health and human
 31-49 services agency; and

31-50 (2) if cost-effective, contract with private entities
 31-51 to perform purchasing functions for the commission and the health
 31-52 and human services agencies.

31-53 Sec. 531.018. EMPLOYEE WELLNESS PROGRAM. (a) The
 31-54 commission and each health and human services agency shall
 31-55 designate an individual as the wellness coordinator for their
 31-56 respective agencies. The wellness coordinator may collaborate with
 31-57 other agencies and sources to provide information and resources to
 31-58 employees through bulletin boards and e-mail. The employee
 31-59 wellness program may include:

31-60 (1) an agency wellness center staffed by a nurse
 31-61 practitioner who provides employees with services such as blood
 31-62 pressure monitoring and annual health assessments;

31-63 (2) ergonomic office equipment;

31-64 (3) nutrition education; and

31-65 (4) smoking cessation programs.

31-66 (b) A health and human services agency with fewer than 100
 31-67 employees may join with the commission or a health and human
 31-68 services agency with 100 employees or more to create a program under
 31-69 this section and to share resources under the program.

(b) Not later than January 1, 2004, the Health and Human Services Commission shall develop and implement a plan to consolidate the purchasing functions of the commission and health and human services agencies in a purchasing division under Section 531.017, Government Code, as added by this section.

SECTION 2.03. Section 531.021, Government Code, is amended by adding Subsections (c)-(e) to read as follows:

(c) The commission in its adoption of reasonable rules and standards under Subsection (b)(2) shall include financial performance standards that, in the event of a proposed rate reduction, provide private ICF-MR facilities and home and community-based services providers with flexibility in determining how to use medical assistance payments to provide services in the most cost-effective manner while continuing to meet the state and federal requirements of the Medicaid program.

(d) In adopting rules and standards required by Subsection (b)(2), the commission may provide for payment of fees, charges, and rates in accordance with:

(1) formulas, procedures, or methodologies prescribed by the commission's rules;

(2) applicable state or federal law, policies, rules, regulations, or guidelines;

(3) economic conditions that substantially and materially affect provider participation in the Medicaid program, as determined by the commissioner; or

(4) available levels of appropriated state and federal funds.

(e) Notwithstanding any other provision of Chapter 32, Human Resources Code, Chapter 533, or this chapter, the commission may adjust the fees, charges, and rates paid to Medicaid providers as necessary to achieve the objectives of the Medicaid program in a manner consistent with the considerations described by Subsection (d).

SECTION 2.04. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0335 to read as follows:

Sec. 531.0335. PROHIBITION ON PUNITIVE ACTION FOR FAILURE TO IMMUNIZE. (a) In this section:

(1) "Person responsible for a child's care, custody, or welfare" has the meaning assigned by Section 261.001, Family Code.

(2) "Punitive action" includes the initiation of an investigation of a person responsible for a child's care, custody, or welfare for alleged or suspected abuse or neglect of a child.

(b) The commissioner by rule shall prohibit a health and human services agency from taking a punitive action against a person responsible for a child's care, custody, or welfare for failure of the person to ensure that the child receives the immunization series prescribed by Section 161.004, Health and Safety Code.

(c) This section does not affect a law, including Chapter 31, Human Resources Code, that specifically provides a punitive action for failure to ensure that a child receives the immunization series prescribed by Section 161.004, Health and Safety Code.

SECTION 2.05. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0392 to read as follows:

Sec. 531.0392. RECOVERY OF CERTAIN THIRD-PARTY REIMBURSEMENTS UNDER MEDICAID. (a) In this section, "dually eligible individual" means an individual who is eligible to receive health care benefits under both the Medicaid and Medicare programs.

(b) The commission shall obtain Medicaid reimbursement from each fiscal intermediary who makes a payment to a service provider on behalf of the Medicare program, including a reimbursement for a payment made to a home health services provider or nursing facility for services rendered to a dually eligible individual.

SECTION 2.06. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.063 to read as follows:

Sec. 531.063. CALL CENTERS. (a) The commission, by rule, shall establish at least one but not more than four call centers for purposes of determining and certifying or recertifying a person's

33-1 eligibility and need for services related to the programs listed
 33-2 under Section 531.008(c), if cost-effective. The commission must
 33-3 conduct a public hearing before establishing the initial call
 33-4 center.

33-5 (b) The commission shall contract with at least one but not
 33-6 more than four private entities for the operation of call centers
 33-7 required by this section unless the commission determines that
 33-8 contracting would not be cost-effective.

33-9 (c) Each call center required by this section must be
 33-10 located in this state. This subsection does not prohibit a call
 33-11 center located in this state from processing overflow calls through
 33-12 a center located in another state.

33-13 (d) Each call center required by this section shall provide
 33-14 translation services as required by federal law for clients unable
 33-15 to speak, hear, or comprehend the English language.

33-16 (e) The commission shall develop consumer service and
 33-17 performance standards for the operation of each call center
 33-18 required by this section. The standards shall address a call
 33-19 center's:

33-20 (1) ability to serve its consumers in a timely manner,
 33-21 including consideration of the consumers' ability to access the
 33-22 call center, whether the call center has toll-free telephone
 33-23 access, the average amount of time a consumer spends on hold, the
 33-24 frequency of call transfers, whether a consumer is able to
 33-25 communicate with a live person at the call center, and whether the
 33-26 call center makes mail correspondence available;

33-27 (2) staff, including employee courtesy, friendliness,
 33-28 training, and knowledge about the programs listed under Section
 33-29 531.008(c); and

33-30 (3) complaint handling procedures, including the
 33-31 level of difficulty involved in filing a complaint and whether the
 33-32 call center's complaint responses are timely.

33-33 (f) The commission shall make available to the public the
 33-34 standards developed under Subsection (e).

33-35 (g) The commission shall develop:

33-36 (1) mechanisms for measuring consumer service
 33-37 satisfaction; and

33-38 (2) performance measures to evaluate whether each call
 33-39 center meets the standards developed under Subsection (e).

33-40 (h) The commission may inspect each call center and analyze
 33-41 its consumer service performance through use of a consumer service
 33-42 evaluator who poses as a consumer of the call center.

33-43 (i) Notwithstanding Subsection (a), the commissioner shall
 33-44 develop and implement policies that provide an applicant for
 33-45 services related to the programs listed under Section 531.008(c)
 33-46 with an opportunity to appear in person to establish initial
 33-47 eligibility or to comply with periodic eligibility recertification
 33-48 requirements if the applicant requests a personal interview. In
 33-49 implementing the policies, the commission shall maintain
 33-50 sufficient offices in each of the commission's service areas to
 33-51 serve applicants for whom telephone, electronic, or mail
 33-52 communication is a barrier to enrollment. This subsection does not
 33-53 affect a law or rule that requires an applicant to appear in person
 33-54 to establish initial eligibility or to comply with periodic
 33-55 eligibility recertification requirements.

33-56 SECTION 2.07. (a) Subchapter B, Chapter 531, Government
 33-57 Code, is amended by adding Section 531.065 to read as follows:

33-58 Sec. 531.065. CONSOLIDATION AND COORDINATION OF HEALTH
 33-59 INSURANCE PREMIUM PAYMENT REIMBURSEMENT PROGRAMS. (a) The
 33-60 commission shall develop and implement a plan to consolidate and
 33-61 coordinate the administration of the health insurance premium
 33-62 payment reimbursement programs prescribed by Section 62.059,
 33-63 Health and Safety Code, and Section 32.0422, Human Resources Code.

33-64 (b) If cost-effective, the commission may contract with a
 33-65 private entity to assist the commission in developing and
 33-66 implementing a plan required by this section.

33-67 (b) Section 62.059(i), Health and Safety Code, and Section
 33-68 32.0422(m), Human Resources Code, are repealed.

33-69 (c) Not later than January 1, 2004, the Health and Human

34-1 Services Commission shall develop and implement a plan to
34-2 consolidate and coordinate the administration of health insurance
34-3 premium payment reimbursement programs as required by Section
34-4 531.065, Government Code, as added by this section.

34-5 SECTION 2.08. Subchapter B, Chapter 531, Government Code,
34-6 is amended by adding Section 531.067 to read as follows:

34-7 Sec. 531.067. PUBLIC ASSISTANCE HEALTH BENEFIT REVIEW AND
34-8 DESIGN COMMITTEE. (a) The commission shall appoint a Public
34-9 Assistance Health Benefit Review and Design Committee. The
34-10 committee consists of nine representatives of health care providers
34-11 and health plan providers participating in the Medicaid program or
34-12 the child health plan program, or both, including at least one
34-13 health plan provider participating in the Medicaid program and one
34-14 health plan provider participating in the child health plan
34-15 program. The committee membership must include at least three
34-16 representatives from each program.

34-17 (b) The commissioner shall designate one member to serve as
34-18 presiding officer for a term of two years.

34-19 (c) The committee shall meet at the call of the presiding
34-20 officer.

34-21 (d) The committee shall review and provide recommendations
34-22 to the commission regarding health benefits and coverages provided
34-23 under the state Medicaid program, the child health plan program,
34-24 and any other income-based health care program administered by the
34-25 commission or a health and human services agency. In performing its
34-26 duties under this subsection, the committee must:

34-27 (1) review benefits provided under each of the
34-28 programs; and

34-29 (2) review procedures for addressing high utilization
34-30 of benefits by recipients.

34-31 (e) The commission shall provide administrative support and
34-32 resources as necessary for the committee to perform its duties
34-33 under this section.

34-34 (f) Section 2110.008 does not apply to the committee.

34-35 (g) In performing the duties under this section, the
34-36 commission may design and implement a program to improve and
34-37 monitor clinical and functional outcomes of a recipient of services
34-38 under the state child health plan or medical assistance program.
34-39 The program may use financial, clinical, and other criteria based
34-40 on pharmacy, medical services, and other claims data related to the
34-41 child health plan or the state medical assistance program. The
34-42 commission must report to the committee on the fiscal impact,
34-43 including any savings associated with the strategies utilized under
34-44 this section.

34-45 SECTION 2.09. Subchapter B, Chapter 531, Government Code,
34-46 is amended by adding Section 531.068 to read as follows:

34-47 Sec. 531.068. MEDICAID OR OTHER HEALTH BENEFIT COVERAGE.
34-48 In adopting rules or standards governing the state Medicaid program
34-49 or rules or standards for the development or implementation of
34-50 health benefit coverage for a program administered by the
34-51 commission or a health and human services agency, the commission
34-52 and each health and human services agency, as appropriate, may take
34-53 into consideration any recommendation made with respect to health
34-54 benefits provided under their respective programs or the state
34-55 Medicaid program by the Public Assistance Health Benefit Review and
34-56 Design Committee established under Section 531.067.

34-57 SECTION 2.10. Subchapter B, Chapter 531, Government Code,
34-58 is amended by adding Section 531.069 to read as follows:

34-59 Sec. 531.069. PERIODIC REVIEW OF VENDOR DRUG PROGRAM. (a)
34-60 The commission shall periodically review all purchases made under
34-61 the vendor drug program to determine the cost-effectiveness of
34-62 including a component for prescription drug benefits in any
34-63 capitation rate paid by the state under a Medicaid managed care
34-64 program or the child health plan program.

34-65 (b) In making the determination required by Subsection (a),
34-66 the commission shall consider the value of any prescription drug
34-67 rebates received by the state.

34-68 SECTION 2.11. (a) Subchapter B, Chapter 531, Government
34-69 Code, is amended by adding Section 531.070 to read as follows:

Sec. 531.070. SUPPLEMENTAL REBATES. (a) In this section:(1) "Labeler" means a person that:(A) has a labeler code from the United States Food and Drug Administration under 21 C.F.R. Section 207.20; and(B) receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale.(2) "Manufacturer" means a manufacturer of prescription drugs as defined by 42 U.S.C. Section 1396r-8(k)(5) and its subsequent amendments, including a subsidiary or affiliate of a manufacturer.(3) "Wholesaler" means a person licensed under Subchapter I, Chapter 431, Health and Safety Code.(b) For purposes of this section, the term "supplemental rebates" means cash rebates paid by a manufacturer to the state on the basis of appropriate quarterly health and human services program utilization data relating to the manufacturer's products, pursuant to a state supplemental rebate agreement negotiated with the manufacturer and, if necessary, approved by the federal government under Section 1927 of the federal Social Security Act.(c) The commission may enter into a written agreement with a manufacturer to accept certain program benefits in lieu of supplemental rebates, as defined by this section, only if:(1) the program benefit yields savings that are at least equal to the amount the manufacturer would have provided under a state supplemental rebate agreement during the current biennium as determined by the written agreement;(2) the manufacturer posts a performance bond guaranteeing savings to the state, and agrees that if the savings are not achieved in accordance with the written agreement, the manufacturer will forfeit the bond to the state less any savings that were achieved; and(3) the program benefit is in addition to other program benefits currently offered by the manufacturer to recipients of medical assistance or related programs.(d) For purposes of this section, a program benefit may mean disease management programs authorized under this title, drug product donation programs, drug utilization control programs, prescriber and beneficiary counseling and education, fraud and abuse initiatives, and other services or administrative investments with guaranteed savings to a program operated by a health and human services agency.(e) Other than as required to satisfy the provisions of this section, the program benefits shall be deemed an alternative to, and not the equivalent of, supplemental rebates and shall be treated in the state's submissions to the federal government (including, as appropriate, waiver requests and quarterly Medicaid claims) so as to maximize the availability of federal matching payments.(f) Agreements by the commission to accept program benefits as defined by this section:(1) may not prohibit the commission from entering into similar agreements related to different drug classes with other entities;(2) shall be limited to a time period expressly determined by the commission; and(3) may only cover products that have received approval by the Federal Drug Administration at the time of the agreement, and new products approved after the agreement may be incorporated only under an amendment to the agreement.(g) For purposes of this section, the commission may consider a monetary contribution or donation to the arrangements described in Subsection (c) for the purpose of offsetting expenditures to other state health care programs, but which funding may not be used to offset expenditures for covered outpatient drugs as defined by 42 U.S.C. Section 1396r-8(k)(2) under the vendor drug program. An arrangement under this subsection may not yield less than the amount the state would have benefited under a supplemental rebate. The commission may consider an arrangement under this

36-1 section as satisfying the requirements related to Section
 36-2 531.072(b).

36-3 (h) Subject to Subsection (i), the commission shall
 36-4 negotiate with manufacturers and labelers, including generic
 36-5 manufacturers and labelers, to obtain supplemental rebates for
 36-6 prescription drugs provided under:

36-7 (1) the Medicaid vendor drug program in excess of the
 36-8 Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its
 36-9 subsequent amendments;

36-10 (2) the child health plan program; and

36-11 (3) any other state program administered by the
 36-12 commission or a health and human services agency, including
 36-13 community mental health centers and state mental health hospitals.

36-14 (i) The commission may by contract authorize a private
 36-15 entity to negotiate with manufacturers and labelers on behalf of
 36-16 the commission.

36-17 (j) A manufacturer or labeler that sells prescription drugs
 36-18 in this state may voluntarily negotiate with the commission and
 36-19 enter into an agreement to provide supplemental rebates for
 36-20 prescription drugs provided under:

36-21 (1) the Medicaid vendor drug program in excess of the
 36-22 Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its
 36-23 subsequent amendments;

36-24 (2) the child health plan program; and

36-25 (3) any other state program administered by the
 36-26 commission or a health and human services agency, including
 36-27 community mental health centers and state mental health hospitals.

36-28 (k) In negotiating terms for a supplemental rebate amount,
 36-29 the commission shall consider:

36-30 (1) rebates calculated under the Medicaid rebate
 36-31 program in accordance with 42 U.S.C. Section 1396r-8 and its
 36-32 subsequent amendments;

36-33 (2) any other available information on prescription
 36-34 drug prices or rebates; and

36-35 (3) other program benefits as specified in Subsection
 36-36 (c).

36-37 (1) Each year the commission shall provide a written report
 36-38 to the legislature and the governor. The report shall cover:

36-39 (1) the cost of administering the preferred drug lists
 36-40 adopted under Section 531.072;

36-41 (2) an analysis of the utilization trends for medical
 36-42 services provided by the state and any correlation to the preferred
 36-43 drug lists;

36-44 (3) an analysis of dispensing fee costs to the state
 36-45 resulting from the limitations on drug supply imposed by Section
 36-46 32.024(z)(2), Human Resources Code, and Section 62.151(f)(2),
 36-47 Health and Safety Code;

36-48 (4) an analysis of the effect on health outcomes and
 36-49 results for recipients; and

36-50 (5) statistical information related to the number of
 36-51 approvals granted or denied.

36-52 (m) In negotiating terms for a supplemental rebate, the
 36-53 commission shall use the average manufacturer price (AMP), as
 36-54 defined in Section 1396r-8(k)(1) of the Omnibus Budget
 36-55 Reconciliation Act of 1990, as the cost basis for the product.

36-56 (b) Not later than January 1, 2004, the Health and Human
 36-57 Services Commission shall implement Section 531.070, Government
 36-58 Code, as added by this section.

36-59 SECTION 2.12. Subchapter B, Chapter 531, Government Code,
 36-60 is amended by adding Section 531.071 to read as follows:

36-61 Sec. 531.071. CONFIDENTIALITY OF INFORMATION REGARDING
 36-62 DRUG REBATES, PRICING, AND NEGOTIATIONS. (a) Notwithstanding any
 36-63 other state law, information obtained or maintained by the
 36-64 commission regarding prescription drug rebate negotiations or a
 36-65 supplemental medical assistance or other rebate agreement,
 36-66 including trade secrets, rebate amount, rebate percentage, and
 36-67 manufacturer or labeler pricing, is confidential and not subject to
 36-68 disclosure under Chapter 552.

36-69 (b) Information that is confidential under Subsection (a)

37-1 includes information described by Subsection (a) that is obtained
 37-2 or maintained by the commission in connection with the Medicaid
 37-3 vendor drug program, the child health plan program, the kidney
 37-4 health care program, the children with special health care needs
 37-5 program, or another state program administered by the commission or
 37-6 a health and human services agency.

37-7 (c) General information about the aggregate costs of
 37-8 different classes of drugs is not confidential under Subsection
 37-9 (a).

37-10 SECTION 2.13. (a) Subchapter B, Chapter 531, Government
 37-11 Code, is amended by adding Section 531.072 to read as follows:

37-12 Sec. 531.072. PREFERRED DRUG LISTS. (a) In a manner that
 37-13 complies with applicable state and federal law, the commission
 37-14 shall adopt preferred drug lists for the Medicaid vendor drug
 37-15 program and for prescription drugs purchased through the child
 37-16 health plan program. The commission may adopt preferred drug lists
 37-17 for community mental health centers, state mental health hospitals,
 37-18 and any other state program administered by the commission or a
 37-19 state health and human services agency.

37-20 (b) The preferred drug lists may contain only drugs provided
 37-21 by a manufacturer or labeler that reaches an agreement with the
 37-22 commission on supplemental rebates under Section 531.070.

37-23 (c) In making a decision regarding the placement of a drug
 37-24 on each of the preferred drug lists, the commission shall consider:

37-25 (1) the recommendations of the Pharmaceutical and
 37-26 Therapeutics Committee established under Section 531.074;

37-27 (2) the clinical efficacy of the drug;

37-28 (3) the price of competing drugs after deducting any
 37-29 federal and state rebate amounts; and

37-30 (4) program benefit offerings solely or in conjunction
 37-31 with rebates and other pricing information.

37-32 (d) The commission shall provide for the distribution of
 37-33 current copies of the preferred drug lists by posting the list on
 37-34 the Internet. In addition, the commission shall mail copies of the
 37-35 lists to any health care provider on request of that provider.

37-36 (e) In this subsection, "labeler" and "manufacturer" have
 37-37 the meanings assigned by Section 531.070. The commission shall
 37-38 ensure that:

37-39 (1) a manufacturer or labeler may submit written
 37-40 evidence supporting the inclusion of a drug on the preferred drug
 37-41 lists before a supplemental agreement is reached with the
 37-42 commission; and

37-43 (2) any drug that has been approved or has had any of
 37-44 its particular uses approved by the United States Food and Drug
 37-45 Administration under a priority review classification will be
 37-46 reviewed by the Pharmaceutical and Therapeutics Committee at the
 37-47 next regularly scheduled meeting of the committee. On receiving
 37-48 notice from a manufacturer or labeler of the availability of a new
 37-49 product, the commission, to the extent possible, shall schedule a
 37-50 review for the product at the next regularly scheduled meeting of
 37-51 the committee.

37-52 (f) A recipient of drug benefits under the Medicaid vendor
 37-53 drug program may appeal a denial of prior authorization under
 37-54 Section 531.073 of a covered drug or covered dosage through the
 37-55 Medicaid fair hearing process.

37-56 (b) Not later than March 1, 2004, the Health and Human
 37-57 Services Commission shall adopt the preferred drug lists as
 37-58 required by Section 531.072, Government Code, as added by this
 37-59 section.

37-60 SECTION 2.14. Subchapter B, Chapter 531, Government Code,
 37-61 is amended by adding Section 531.073 to read as follows:

37-62 Sec. 531.073. PRIOR AUTHORIZATION FOR CERTAIN PRESCRIPTION
 37-63 DRUGS. (a) The commission, in its rules and standards governing
 37-64 the Medicaid vendor drug program and the child health plan program,
 37-65 shall require prior authorization for the reimbursement of a drug
 37-66 that is not included in the appropriate preferred drug list adopted
 37-67 under Section 531.072, except for any drug exempted from prior
 37-68 authorization requirements by federal law. The commission may
 37-69 require prior authorization for the reimbursement of a drug

38-1 provided through any other state program administered by the
 38-2 commission or a state health and human services agency, including a
 38-3 community mental health center and a state mental health hospital
 38-4 if the commission adopts preferred drug lists under Section 531.072
 38-5 that apply to those facilities and the drug is not included in the
 38-6 appropriate list. The commission shall require that the prior
 38-7 authorization be obtained by the prescribing physician or
 38-8 prescribing practitioner.

38-9 (a-1) The commission shall delay requiring prior
 38-10 authorization for drugs that are used to treat patients with
 38-11 life-threatening and chronic illnesses that require complex
 38-12 medical management strategies until the commission has completed a
 38-13 study evaluating the impact of a requirement of prior authorization
 38-14 on recipients. The commission shall report its findings from the
 38-15 study to the 79th Legislature or a subsequent legislature of this
 38-16 state.

38-17 (b) The commission shall establish procedures for the prior
 38-18 authorization requirement under the Medicaid vendor drug program to
 38-19 ensure that the requirements of 42 U.S.C. Section 1396r-8(d)(5) and
 38-20 its subsequent amendments are met. Specifically, the procedures
 38-21 must ensure that:

38-22 (1) a prior authorization requirement is not imposed
 38-23 for a drug before the drug has been considered at a meeting of the
 38-24 Pharmaceutical and Therapeutics Committee established under
 38-25 Section 531.074;

38-26 (2) there will be a response to a request for prior
 38-27 authorization by telephone or other telecommunications device
 38-28 within 24 hours after receipt of a request for prior authorization;
 38-29 and

38-30 (3) a 72-hour supply of the drug prescribed will be
 38-31 provided in an emergency or if the commission does not provide a
 38-32 response within the time required by Subdivision (2).

38-33 (c) The commission shall ensure that a prescription drug
 38-34 prescribed before implementation of a prior authorization
 38-35 requirement for that drug for a recipient under the child health
 38-36 plan program, the Medicaid program, or another state program
 38-37 administered by the commission or a health and human services
 38-38 agency or for a person who becomes eligible under the child health
 38-39 plan program, the Medicaid program, or another state program
 38-40 administered by the commission or a health and human services
 38-41 agency is not subject to any requirement for prior authorization
 38-42 under this section unless the recipient has exhausted all the
 38-43 prescription, including any authorized refills, or a period
 38-44 prescribed by the commission has expired, whichever occurs first.

38-45 (d) The commission shall implement procedures to ensure
 38-46 that a recipient under the child health plan program, the Medicaid
 38-47 program, or another state program administered by the commission or
 38-48 a person who becomes eligible under the child health plan program,
 38-49 the Medicaid program, or another state program administered by the
 38-50 commission or a health and human services agency receives
 38-51 continuity of care in relation to certain prescriptions identified
 38-52 by the commission.

38-53 (e) The commission may by contract authorize a private
 38-54 entity to administer the prior authorization requirements imposed
 38-55 by this section on behalf of the commission.

38-56 (f) The commission shall ensure that the prior
 38-57 authorization requirements are implemented in a manner that
 38-58 minimizes the cost to the state and any administrative burden
 38-59 placed on providers.

38-60 SECTION 2.15. (a) Subchapter B, Chapter 531, Government
 38-61 Code, is amended by adding Section 531.074 to read as follows:

38-62 Sec. 531.074. PHARMACEUTICAL AND THERAPEUTICS COMMITTEE.
 38-63 (a) The Pharmaceutical and Therapeutics Committee is established
 38-64 for the purposes of developing recommendations for preferred drug
 38-65 lists adopted by the commission under Section 531.072.

38-66 (b) The committee consists of the following members
 38-67 appointed by the governor:

38-68 (1) six physicians licensed under Subtitle B, Title 3,
 38-69 Occupations Code, and participating in the Medicaid program, at

39-1 least one of whom is a licensed physician who is actively engaged in
 39-2 mental health providing care and treatment to persons with severe
 39-3 mental illness and who has practice experience in the state
 39-4 Medicaid plan; and

39-5 (2) five pharmacists licensed under Subtitle J, Title
 39-6 3, Occupations Code, and participating in the Medicaid vendor drug
 39-7 program.

39-8 (c) In making appointments to the committee under
 39-9 Subsection (b), the governor shall ensure that the committee
 39-10 includes physicians and pharmacists who:

39-11 (1) represent different specialties and provide
 39-12 services to all segments of the Medicaid program's diverse
 39-13 population;

39-14 (2) have experience in either developing or practicing
 39-15 under a preferred drug list; and

39-16 (3) do not have contractual relationships, ownership
 39-17 interests, or other conflicts of interest with a pharmaceutical
 39-18 manufacturer or labeler or with an entity engaged by the commission
 39-19 to assist in the development of the preferred drug lists or the
 39-20 administration of the prior authorization system.

39-21 (d) A member of the committee is appointed for a two-year
 39-22 term and may serve more than one term.

39-23 (e) The governor shall appoint a physician to be the
 39-24 presiding officer of the committee. The presiding officer serves
 39-25 at the pleasure of the governor.

39-26 (f) The committee shall meet at least monthly during the
 39-27 six-month period following establishment of the committee to enable
 39-28 the committee to develop recommendations for the initial preferred
 39-29 drug lists. After that period, the committee shall meet at least
 39-30 quarterly and at other times at the call of the presiding officer or
 39-31 a majority of the committee members.

39-32 (g) A member of the committee may not receive compensation
 39-33 for serving on the committee but is entitled to reimbursement for
 39-34 reasonable and necessary travel expenses incurred by the member
 39-35 while conducting the business of the committee, as provided by the
 39-36 General Appropriations Act.

39-37 (h) In developing its recommendations for the preferred
 39-38 drug lists, the committee shall consider the clinical efficacy,
 39-39 safety, and cost-effectiveness and any program benefit associated
 39-40 with a product.

39-41 (i) The commission shall adopt rules governing the
 39-42 operation of the committee, including rules governing the
 39-43 procedures used by the committee for providing notice of a meeting
 39-44 and rules prohibiting the committee from discussing confidential
 39-45 information described by Section 531.071 in a public meeting. The
 39-46 committee shall comply with the rules adopted under this
 39-47 subsection.

39-48 (j) To the extent feasible, the committee shall review all
 39-49 drug classes included in the preferred drug lists adopted under
 39-50 Section 531.072 at least once every 12 months and may recommend
 39-51 inclusions to and exclusions from the lists to ensure that the lists
 39-52 provide for cost-effective medically appropriate drug therapies
 39-53 for Medicaid recipients, children receiving health benefits
 39-54 coverage under the child health plan program, and any other
 39-55 affected individuals.

39-56 (k) The commission shall provide administrative support and
 39-57 resources as necessary for the committee to perform its duties.

39-58 (l) Chapter 2110 does not apply to the committee.

39-59 (b) Not later than November 1, 2003, the governor shall
 39-60 appoint members to the Pharmaceutical and Therapeutics Committee
 39-61 established under Section 531.074, Government Code, as added by
 39-62 this section.

39-63 (c) Not later than January 1, 2004, the Pharmaceutical and
 39-64 Therapeutics Committee established under Section 531.074,
 39-65 Government Code, as added by this section, shall submit
 39-66 recommendations for the preferred drug lists the committee is
 39-67 required to develop under that section to the Health and Human
 39-68 Services Commission.

39-69 SECTION 2.16. Subchapter B, Chapter 531, Government Code,

is amended by adding Section 531.075 to read as follows:

Sec. 531.075. PRIOR AUTHORIZATION FOR HIGH-COST MEDICAL SERVICES. The commission may evaluate and implement, as appropriate, procedures, policies, and methodologies to require prior authorization for high-cost medical services and procedures and may contract with qualified service providers or organizations to perform those functions. Any such program shall recognize any prohibitions in state or federal law on limits in the amount, duration, or scope of medically necessary services for children on Medicaid.

SECTION 2.17. (a) Section 531.101, Government Code, is amended to read as follows:

Sec. 531.101. AWARD FOR REPORTING MEDICAID FRAUD, ABUSE, OR OVERCHARGES. (a) The commission may grant an award to an individual who reports activity that constitutes fraud or abuse of funds in the state Medicaid program or reports overcharges in the program if the commission determines that the disclosure results in the recovery of an administrative penalty imposed under Section 32.039, Human Resources Code. The commission may not grant an award to an individual in connection with a report if the commission or attorney general had independent knowledge of the activity reported by the individual [overcharge or in the termination of the fraudulent activity or abuse of funds].

(b) The commission shall determine the amount of an award. The award may not exceed five [must be equal to not less than 10] percent of the amount of the administrative penalty imposed under Section 32.039, Human Resources Code, [savings to this state] that resulted [result] from the individual's disclosure. In determining the amount of the award, the commission shall consider how important the disclosure is in ensuring the fiscal integrity of the program. The commission may also consider whether the individual participated in the fraud, abuse, or overcharge.

~~(c) [An award under this section is subject to appropriation. The award must be paid from money appropriated to or otherwise available to the commission, and additional money may not be appropriated to the commission for the purpose of paying the award.]~~

~~[(d) Payment of an award under this section from federal funds is subject to the permissible use under federal law of funds for this purpose.]~~

~~[(e)] A person who brings an action under Subchapter C, Chapter 36, Human Resources Code, is not eligible for an award under this section.~~

(b) Section 531.101, Government Code, as amended by this section, applies only to a report that occurs on or after the effective date of this section. A report that occurs before the effective date of this section is governed by the law in effect at the time of the report, and the former law is continued in effect for that purpose.

SECTION 2.18. (a) Section 531.102, Government Code, is amended to read as follows:

Sec. 531.102. [INVESTIGATIONS AND ENFORCEMENT] OFFICE OF INSPECTOR GENERAL. (a) The commission, through the commission's office of inspector general [investigations and enforcement], is responsible for the investigation of fraud and abuse in the provision of health and human services and the enforcement of state law relating to the provision of those services. The commission may obtain any information or technology necessary to enable the office to meet its responsibilities under this subchapter or other law.

(a-1) The governor shall appoint an inspector general to serve as director of the office. The inspector general serves a one-year term that expires on February 1.

(b) The commission, in consultation with the inspector general, shall set clear objectives, priorities, and performance standards for the office that emphasize:

(1) coordinating investigative efforts to aggressively recover money;

(2) allocating resources to cases that have the strongest supportive evidence and the greatest potential for

41-1 recovery of money; and

41-2 (3) maximizing opportunities for referral of cases to
41-3 the office of the attorney general in accordance with Section
41-4 531.103.

41-5 (c) The commission shall train office staff to enable the
41-6 staff to pursue priority Medicaid and other health and human
41-7 services [welfare] fraud and abuse cases as necessary.

41-8 (d) The commission may require employees of health and human
41-9 services agencies to provide assistance to the office [commission]
41-10 in connection with the office's [commission's] duties relating to
41-11 the investigation of fraud and abuse in the provision of health and
41-12 human services. The office is entitled to access to any information
41-13 maintained by a health and human services agency, including
41-14 internal records, relevant to the functions of the office.

41-15 (e) The commission, in consultation with the inspector
41-16 general, by rule shall set specific claims criteria that, when met,
41-17 require the office to begin an investigation.

41-18 (f)(1) If the commission receives a complaint of Medicaid
41-19 fraud or abuse from any source, the office must conduct an integrity
41-20 review to determine whether there is sufficient basis to warrant a
41-21 full investigation. An integrity review must begin not later than
41-22 the 30th day after the date the commission receives a complaint or
41-23 has reason to believe that fraud or abuse has occurred. An
41-24 integrity review shall be completed not later than the 90th day
41-25 after it began.

41-26 (2) If the findings of an integrity review give the
41-27 office reason to believe that an incident of fraud or abuse
41-28 involving possible criminal conduct has occurred in the Medicaid
41-29 program, the office must take the following action, as appropriate,
41-30 not later than the 30th day after the completion of the integrity
41-31 review:

41-32 (A) if a provider is suspected of fraud or abuse
41-33 involving criminal conduct, the office must refer the case to the
41-34 state's Medicaid fraud control unit, provided that the criminal
41-35 referral does not preclude the office from continuing its
41-36 investigation of the provider, which investigation may lead to the
41-37 imposition of appropriate administrative or civil sanctions; or

41-38 (B) if there is reason to believe that a
41-39 recipient has defrauded the Medicaid program, the office may
41-40 conduct a full investigation of the suspected fraud.

41-41 (g)(1) Whenever the office learns or has reason to suspect
41-42 that a provider's records are being withheld, concealed, destroyed,
41-43 fabricated, or in any way falsified, the office shall immediately
41-44 refer the case to the state's Medicaid fraud control unit. However,
41-45 such criminal referral does not preclude the office from continuing
41-46 its investigation of the provider, which investigation may lead to
41-47 the imposition of appropriate administrative or civil sanctions.

41-48 (2) In addition to other instances authorized under
41-49 state or federal law, the office shall impose without prior notice a
41-50 hold on payment of claims for reimbursement submitted by a provider
41-51 to compel production of records or when requested by the state's
41-52 Medicaid fraud control unit, as applicable. The office must notify
41-53 the provider of the hold on payment not later than the fifth working
41-54 day after the date the payment hold is imposed.

41-55 (3) On timely written request by a provider subject to
41-56 a hold on payment under Subdivision (2), other than a hold requested
41-57 by the state's Medicaid fraud control unit, the office shall file a
41-58 request with the State Office of Administrative Hearings for an
41-59 expedited administrative hearing regarding the hold. The provider
41-60 must request an expedited hearing under this subdivision not later
41-61 than the 10th day after the date the provider receives notice from
41-62 the office under Subdivision (2).

41-63 (4) The commission shall adopt rules that allow a
41-64 provider subject to a hold on payment under Subdivision (2), other
41-65 than a hold requested by the state's Medicaid fraud control unit, to
41-66 seek an informal resolution of the issues identified by the office
41-67 in the notice provided under that subdivision. A provider must seek
41-68 an informal resolution under this subdivision not later than the
41-69 deadline prescribed by Subdivision (3). A provider's decision to

42-1 seek an informal resolution under this subdivision does not extend
 42-2 the time by which the provider must request an expedited
 42-3 administrative hearing under Subdivision (3). However, a hearing
 42-4 initiated under Subdivision (3) shall be stayed at the office's
 42-5 request until the informal resolution process is completed.

42-6 (5) The office shall, in consultation with the state's
 42-7 Medicaid fraud control unit, establish guidelines under which holds
 42-8 on payment or program exclusions:

42-9 (A) may permissively be imposed on a provider; or
 42-10 (B) shall automatically be imposed on a provider.

42-11 (h) In addition to performing functions and duties
 42-12 otherwise provided by law, the office may:

42-13 (1) assess administrative penalties otherwise
 42-14 authorized by law on behalf of the commission or a health and human
 42-15 services agency;

42-16 (2) request that the attorney general obtain an
 42-17 injunction to prevent a person from disposing of an asset
 42-18 identified by the office as potentially subject to recovery by the
 42-19 office due to the person's fraud or abuse;

42-20 (3) provide for coordination between the office and
 42-21 special investigative units formed by managed care organizations
 42-22 under Section 531.113 or entities with which managed care
 42-23 organizations contract under that section;

42-24 (4) audit the use and effectiveness of state or
 42-25 federal funds, including contract and grant funds, administered by
 42-26 a person or state agency receiving the funds from a health and human
 42-27 services agency;

42-28 (5) conduct investigations relating to the funds
 42-29 described by Subdivision (4); and

42-30 (6) recommend policies promoting economical and
 42-31 efficient administration of the funds described by Subdivision (4)
 42-32 and the prevention and detection of fraud and abuse in
 42-33 administration of those funds.

42-34 (i) Notwithstanding any other provision of law, a reference
 42-35 in law or rule to the commission's office of investigations and
 42-36 enforcement means the office of inspector general established under
 42-37 this section.

42-38 (b) As soon as possible after the effective date of this
 42-39 section, the governor shall appoint a person to serve as inspector
 42-40 general in accordance with Section 531.102, Government Code, as
 42-41 amended by this section. The initial term of the person appointed
 42-42 in accordance with this subsection expires February 1, 2005.

42-43 SECTION 2.19. Subchapter C, Chapter 531, Government Code,
 42-44 is amended by adding Section 531.1021 to read as follows:

42-45 Sec. 531.1021. SUBPOENAS. (a) The office of inspector
 42-46 general may request that the commissioner or the commissioner's
 42-47 designee approve the issuance by the office of a subpoena in
 42-48 connection with an investigation conducted by the office. If the
 42-49 request is approved, the office may issue a subpoena to compel the
 42-50 attendance of a relevant witness or the production, for inspection
 42-51 or copying, of relevant evidence that is in this state.

42-52 (b) A subpoena may be served personally or by certified
 42-53 mail.

42-54 (c) If a person fails to comply with a subpoena, the office,
 42-55 acting through the attorney general, may file suit to enforce the
 42-56 subpoena in a district court in this state.

42-57 (d) On finding that good cause exists for issuing the
 42-58 subpoena, the court shall order the person to comply with the
 42-59 subpoena. The court may punish a person who fails to obey the court
 42-60 order.

42-61 (e) The office shall pay a reasonable fee for photocopies
 42-62 subpoenaed under this section in an amount not to exceed the amount
 42-63 the office may charge for copies of its records.

42-64 (f) The reimbursement of the expenses of a witness whose
 42-65 attendance is compelled under this section is governed by Section
 42-66 2001.103.

42-67 (g) All information and materials subpoenaed or compiled by
 42-68 the office in connection with an investigation are confidential and
 42-69 not subject to disclosure under Chapter 552, and not subject to

43-1 disclosure, discovery, subpoena, or other means of legal compulsion
43-2 for their release to anyone other than the office or its employees
43-3 or agents involved in the investigation conducted by the office,
43-4 except that this information may be disclosed to the office of the
43-5 attorney general and law enforcement agencies.

43-6 SECTION 2.20. (a) Section 531.103, Government Code, is
43-7 amended to read as follows:

43-8 Sec. 531.103. INTERAGENCY COORDINATION. (a) The
43-9 commission, acting through the commission's office of inspector
43-10 general, and the office of the attorney general shall enter into a
43-11 memorandum of understanding to develop and implement joint written
43-12 procedures for processing cases of suspected fraud, waste, or
43-13 abuse, as those terms are defined by state or federal law, or other
43-14 violations of state or federal law under the state Medicaid program
43-15 or other program administered by the commission or a health and
43-16 human services agency, including the financial assistance program
43-17 under Chapter 31, Human Resources Code, a nutritional assistance
43-18 program under Chapter 33, Human Resources Code, and the child
43-19 health plan program. The memorandum of understanding shall
43-20 require:

43-21 (1) the office of inspector general [commission] and
43-22 the office of the attorney general to set priorities and guidelines
43-23 for referring cases to appropriate state agencies for
43-24 investigation, prosecution, or other disposition to enhance
43-25 deterrence of fraud, waste, [~~or~~] abuse, or other violations of
43-26 state or federal law, including a violation of Chapter 102,
43-27 Occupations Code, in the programs [~~program~~] and maximize the
43-28 imposition of penalties, the recovery of money, and the successful
43-29 prosecution of cases;

43-30 (1-a) the office of inspector general to refer each
43-31 case of suspected provider fraud, waste, or abuse to the office of
43-32 the attorney general not later than the 30th business day after the
43-33 date the office of inspector general determines that the existence
43-34 of fraud, waste, or abuse is reasonably indicated;

43-35 (1-b) the office of the attorney general to take
43-36 appropriate action in response to each case referred to the
43-37 attorney general, which action may include direct initiation of
43-38 prosecution, with the consent of the appropriate local district or
43-39 county attorney, direct initiation of civil litigation, referral to
43-40 an appropriate United States attorney, a district attorney, or a
43-41 county attorney, or referral to a collections agency for initiation
43-42 of civil litigation or other appropriate action;

43-43 (2) the office of inspector general [commission] to
43-44 keep detailed records for cases processed by that office [the
43-45 commission] or the office of the attorney general, including
43-46 information on the total number of cases processed and, for each
43-47 case:

43-48 (A) the agency and division to which the case is
43-49 referred for investigation;

43-50 (B) the date on which the case is referred; and

43-51 (C) the nature of the suspected fraud, waste, or
43-52 abuse;

43-53 (3) the office of inspector general [commission] to
43-54 notify each appropriate division of the office of the attorney
43-55 general of each case referred by the office of inspector general
43-56 [commission];

43-57 (4) the office of the attorney general to ensure that
43-58 information relating to each case investigated by that office is
43-59 available to each division of the office with responsibility for
43-60 investigating suspected fraud, waste, or abuse;

43-61 (5) the office of the attorney general to notify the
43-62 office of inspector general [commission] of each case the attorney
43-63 general declines to prosecute or prosecutes unsuccessfully;

43-64 (6) representatives of the office of inspector general
43-65 [commission] and of the office of the attorney general to meet not
43-66 less than quarterly to share case information and determine the
43-67 appropriate agency and division to investigate each case; and

43-68 (7) the office of inspector general [commission] and
43-69 the office of the attorney general to submit information requested

44-1 by the comptroller about each resolved case for the comptroller's
44-2 use in improving fraud detection.

44-3 (b) An exchange of information under this section between
44-4 the office of the attorney general and the commission, the office of
44-5 inspector general, or a health and human services agency does not
44-6 affect whether the information is subject to disclosure under
44-7 Chapter 552.

44-8 (c) The commission and the office of the attorney general
44-9 shall jointly prepare and submit a semiannual report to the
44-10 governor, lieutenant governor, ~~and~~ speaker of the house of
44-11 representatives, and comptroller concerning the activities of
44-12 those agencies in detecting and preventing fraud, waste, and abuse
44-13 under the state Medicaid program or other program administered by
44-14 the commission or a health and human services agency. The report
44-15 may be consolidated with any other report relating to the same
44-16 subject matter the commission or office of the attorney general is
44-17 required to submit under other law.

44-18 (d) The commission and the office of the attorney general
44-19 may not assess or collect investigation and attorney's fees on
44-20 behalf of any state agency unless the office of the attorney general
44-21 or other state agency collects a penalty, restitution, or other
44-22 reimbursement payment to the state.

44-23 (e) In addition to the provisions required by Subsection
44-24 (a), the memorandum of understanding required by this section must
44-25 also ensure that no barriers to direct fraud referrals to the office
44-26 of the attorney general's Medicaid fraud control unit or
44-27 unreasonable impediments to communication between Medicaid agency
44-28 employees and the Medicaid fraud control unit are imposed, and must
44-29 include procedures to facilitate the referral of cases directly to
44-30 the office of the attorney general. ~~[The commission shall refer a~~
44-31 ~~case of suspected fraud, waste, or abuse under the state Medicaid~~
44-32 ~~program to the appropriate district attorney, county attorney, city~~
44-33 ~~attorney, or private collection agency if the attorney general~~
44-34 ~~fails to act within 30 days of referral of the case to the office of~~
44-35 ~~the attorney general. A failure by the attorney general to act~~
44-36 ~~within 30 days constitutes approval by the attorney general under~~
44-37 ~~Section 2107.003.]~~

44-38 (f) A ~~The~~ district attorney, county attorney, city
44-39 attorney, or private collection agency may collect and retain costs
44-40 associated with a ~~the~~ case referred to the attorney or agency in
44-41 accordance with procedures adopted under this section and 20
44-42 percent of the amount of the penalty, restitution, or other
44-43 reimbursement payment collected.

44-44 (b) Not later than December 1, 2003, the office of the
44-45 attorney general and the Health and Human Services Commission shall
44-46 amend the memorandum of understanding required by Section 531.103,
44-47 Government Code, as necessary to comply with that section, as
44-48 amended by this section.

44-49 SECTION 2.21. Section 531.104(b), Government Code, is
44-50 amended to read as follows:

44-51 (b) The memorandum of understanding must specify the type,
44-52 scope, and format of the investigative support provided to the
44-53 attorney general under this section ~~[provide that the commission is~~
44-54 ~~not required to provide investigative support in more than 100 open~~
44-55 ~~investigations in a fiscal year].~~

44-56 SECTION 2.22. (a) Subchapter C, Chapter 531, Government
44-57 Code, is amended by adding Section 531.1063 to read as follows:

44-58 Sec. 531.1063. MEDICAID FRAUD PILOT PROGRAM. (a) The
44-59 commission, with cooperation from the Texas Department of Human
44-60 Services, shall develop and implement a front-end Medicaid fraud
44-61 reduction pilot program in one or more counties in this state to
44-62 address provider fraud and appropriate cases of third-party and
44-63 recipient fraud.

44-64 (b) The program must be designed to reduce:
44-65 (1) the number of fraud cases arising from
44-66 authentication fraud and abuse;

44-67 (2) the total amount of Medicaid expenditures; and
44-68 (3) the number of fraudulent participants.

44-69 (c) The program must include:

45-1 (1) participant smart cards and biometric readers that
 45-2 reside at the point of contact with Medicaid providers, recipients,
 45-3 participating pharmacies, hospitals, and appropriate third-party
 45-4 participants;

45-5 (2) a secure finger-imaging system that is compliant
 45-6 with the Health Insurance Portability and Accountability Act
 45-7 (HIPAA) and the use of any existing state database of fingerprint
 45-8 images developed in connection with the financial assistance
 45-9 program under Chapter 31, Human Resources Code; fingerprint images
 45-10 collected as part of the program shall only be placed on the smart
 45-11 card; and

45-12 (3) a monitoring system.

45-13 (d) In implementing the program, the commission may:

45-14 (1) exempt recipients who are children or who are
 45-15 elderly or disabled; and

45-16 (2) obtain a fingerprint image from a parent or
 45-17 caretaker of a recipient who is a child, regardless of whether the
 45-18 parent or caretaker is a recipient.

45-19 (e) The commission must ensure that the procedures for
 45-20 obtaining fingerprint images of participating recipients and
 45-21 parents and caretakers who are not recipients are designed in a
 45-22 flexible manner that gives consideration to transportation
 45-23 barriers and work schedules of those individuals.

45-24 (f) To ensure reliability, the program and all associated
 45-25 hardware and software must easily integrate into participant
 45-26 settings and must be initially tested in a physician environment in
 45-27 this state and determined to be successful in authenticating
 45-28 recipients, providers, and provider staff members before the
 45-29 program is implemented throughout the program area.

45-30 (g) The commission may extend the program to additional
 45-31 counties if the commission determines that expansion would be
 45-32 cost-effective.

45-33 (b) Not later than January 1, 2004, the Health and Human
 45-34 Services Commission shall begin implementation of the program
 45-35 required by Section 531.1063, Government Code, as added by this
 45-36 section.

45-37 (c) Not later than February 1, 2005, the Health and Human
 45-38 Services Commission shall report to the governor, the lieutenant
 45-39 governor, and the speaker of the house of representatives regarding
 45-40 the program required by Section 531.1063, Government Code, as added
 45-41 by this section. The report must include:

45-42 (1) an identification and evaluation of the benefits
 45-43 of the program; and

45-44 (2) recommendations regarding expanding the program
 45-45 statewide.

45-46 SECTION 2.23. Section 531.107(b), Government Code, is
 45-47 amended to read as follows:

45-48 (b) The task force is composed of a representative of the:

45-49 (1) attorney general's office, appointed by the
 45-50 attorney general;

45-51 (2) comptroller's office, appointed by the
 45-52 comptroller;

45-53 (3) Department of Public Safety, appointed by the
 45-54 public safety director;

45-55 (4) state auditor's office, appointed by the state
 45-56 auditor;

45-57 (5) commission, appointed by the commissioner of
 45-58 health and human services;

45-59 (6) Texas Department of Human Services, appointed by
 45-60 the commissioner of human services; ~~and~~

45-61 (7) Texas Department of Insurance, appointed by the
 45-62 commissioner of insurance; and

45-63 (8) Texas Department of Health, appointed by the
 45-64 commissioner of public health.

45-65 SECTION 2.24. (a) Subchapter C, Chapter 531, Government
 45-66 Code, is amended by adding Section 531.113 to read as follows:

45-67 Sec. 531.113. MANAGED CARE ORGANIZATIONS: SPECIAL
 45-68 INVESTIGATIVE UNITS OR CONTRACTS. (a) Each managed care
 45-69 organization that provides or arranges for the provision of health

46-1 care services to an individual under a government-funded program,
 46-2 including the Medicaid program and the child health plan program,
 46-3 shall:

46-4 (1) establish and maintain a special investigative
 46-5 unit within the managed care organization to investigate fraudulent
 46-6 claims and other types of program abuse by recipients and service
 46-7 providers; or

46-8 (2) contract with another entity for the investigation
 46-9 of fraudulent claims and other types of program abuse by recipients
 46-10 and service providers.

46-11 (b) Each managed care organization subject to this section
 46-12 shall adopt a plan to prevent and reduce fraud and abuse and
 46-13 annually file that plan with the commission's office of inspector
 46-14 general for approval. The plan must include:

46-15 (1) a description of the managed care organization's
 46-16 procedures for detecting and investigating possible acts of fraud
 46-17 or abuse;

46-18 (2) a description of the managed care organization's
 46-19 procedures for the mandatory reporting of possible acts of fraud or
 46-20 abuse to the commission's office of inspector general;

46-21 (3) a description of the managed care organization's
 46-22 procedures for educating and training personnel to prevent fraud
 46-23 and abuse;

46-24 (4) the name, address, telephone number, and fax
 46-25 number of the individual responsible for carrying out the plan;

46-26 (5) a description or chart outlining the
 46-27 organizational arrangement of the managed care organization's
 46-28 personnel responsible for investigating and reporting possible
 46-29 acts of fraud or abuse;

46-30 (6) a detailed description of the results of
 46-31 investigations of fraud and abuse conducted by the managed care
 46-32 organization's special investigative unit or the entity with which
 46-33 the managed care organization contracts under Subsection (a)(2);
 46-34 and

46-35 (7) provisions for maintaining the confidentiality of
 46-36 any patient information relevant to an investigation of fraud or
 46-37 abuse.

46-38 (c) If a managed care organization contracts for the
 46-39 investigation of fraudulent claims and other types of program abuse
 46-40 by recipients and service providers under Subsection (a)(2), the
 46-41 managed care organization shall file with the commission's office
 46-42 of inspector general:

46-43 (1) a copy of the written contract;

46-44 (2) the names, addresses, telephone numbers, and fax
 46-45 numbers of the principals of the entity with which the managed care
 46-46 organization has contracted; and

46-47 (3) a description of the qualifications of the
 46-48 principals of the entity with which the managed care organization
 46-49 has contracted.

46-50 (d) The commission's office of inspector general may review
 46-51 the records of a managed care organization to determine compliance
 46-52 with this section.

46-53 (e) The commissioner shall adopt rules as necessary to
 46-54 accomplish the purposes of this section.

46-55 (b) A managed care organization subject to Section 531.113,
 46-56 Government Code, as added by this section, shall comply with the
 46-57 requirements of that section not later than September 1, 2004.

46-58 SECTION 2.25. (a) Subchapter C, Chapter 531, Government
 46-59 Code, is amended by adding Section 531.114 to read as follows:

46-60 Sec. 531.114. FINANCIAL ASSISTANCE FRAUD. (a) For
 46-61 purposes of establishing or maintaining the eligibility of a person
 46-62 and the person's family for financial assistance under Chapter 31,
 46-63 Human Resources Code, or for purposes of increasing or preventing a
 46-64 reduction in the amount of that assistance, a person may not
 46-65 intentionally:

46-66 (1) make a statement that the person knows is false or
 46-67 misleading;

46-68 (2) misrepresent, conceal, or withhold a fact; or

46-69 (3) knowingly misrepresent a statement as being true.

47-1 (b) If after an investigation the commission determines
47-2 that a person violated Subsection (a), the commission shall:

47-3 (1) notify the person of the alleged violation not
47-4 later than the 30th day after the date the commission completes the
47-5 investigation and provide the person with an opportunity for a
47-6 hearing on the matter; or

47-7 (2) refer the matter to the appropriate prosecuting
47-8 attorney for prosecution.

47-9 (c) If a person waives the right to a hearing or if a hearing
47-10 officer at an administrative hearing held under this section
47-11 determines that a person violated Subsection (a), the person is
47-12 ineligible to receive financial assistance as provided by
47-13 Subsection (d). A person who a hearing officer determines violated
47-14 Subsection (a) may appeal that determination by filing a petition
47-15 in the district court in the county in which the violation occurred
47-16 not later than the 30th day after the date the hearing officer made
47-17 the determination.

47-18 (d) A person determined under Subsection (c) to have
47-19 violated Subsection (a) is not eligible for financial assistance:

47-20 (1) before the first anniversary of the date of that
47-21 determination, if the person has no previous violations; and

47-22 (2) permanently, if the person was previously
47-23 determined to have committed a violation.

47-24 (e) If a person is convicted of a state or federal offense
47-25 for conduct described by Subsection (a), or if the person is granted
47-26 deferred adjudication or placed on community supervision for that
47-27 conduct, the person is permanently disqualified from receiving
47-28 financial assistance.

47-29 (f) This section does not affect the eligibility for
47-30 financial assistance of any other member of the household of a
47-31 person ineligible as a result of Subsection (d) or (e).

47-32 (g) The commission shall adopt rules as necessary to
47-33 implement this section.

47-34 (b) Section 531.114, Government Code, as added by this
47-35 section, applies only to conduct occurring on or after the
47-36 effective date of this section. Conduct occurring before the
47-37 effective date of this section is governed by the law in effect on
47-38 the date the conduct occurred, and the former law is continued in
47-39 effect for that purpose.

47-40 SECTION 2.26. Subchapter C, Chapter 531, Government Code,
47-41 is amended by adding Section 531.115 to read as follows:

47-42 Sec. 531.115. FEDERAL FELONY MATCH. The commission shall
47-43 develop and implement a system to cross-reference data collected
47-44 for the programs listed under Section 531.008(c) with the list of
47-45 fugitive felons maintained by the federal government.

47-46 SECTION 2.27. Subchapter C, Chapter 531, Government Code,
47-47 is amended by adding Section 531.116 to read as follows:

47-48 Sec. 531.116. COMPLIANCE WITH LAW PROHIBITING
47-49 SOLICITATION. A provider who furnishes services under the Medicaid
47-50 program or child health plan program is subject to Chapter 102,
47-51 Occupations Code, and the provider's compliance with that chapter
47-52 is a condition of the provider's eligibility to participate as a
47-53 provider under those programs.

47-54 SECTION 2.28. Subchapter A, Chapter 533, Government Code,
47-55 is amended by adding Section 533.0025 to read as follows:

47-56 Sec. 533.0025. DELIVERY OF SERVICES. (a) In this section,
47-57 "medical assistance" has the meaning assigned by Section 32.003,
47-58 Human Resources Code.

47-59 (b) Except as otherwise provided by this section and
47-60 notwithstanding any other law, the commission shall provide medical
47-61 assistance for acute care through the most cost-effective model of
47-62 Medicaid managed care as determined by the commission. If the
47-63 commission determines that it is more cost-effective, the
47-64 commission may provide medical assistance for acute care in a
47-65 certain part of this state or to a certain population of recipients
47-66 using:

47-67 (1) a health maintenance organization model,
47-68 including the acute care portion of Medicaid Star + Plus pilot
47-69 programs;

- 48-1 (2) a primary care case management model;
- 48-2 (3) a prepaid health plan model;
- 48-3 (4) an exclusive provider organization model; or
- 48-4 (5) another Medicaid managed care model or
- 48-5 arrangement.

48-6 (c) In determining whether a model or arrangement described
 48-7 by Subsection (b) is more cost-effective, the commissioner must
 48-8 consider:

48-9 (1) the scope, duration, and types of health benefits
 48-10 or services to be provided in a certain part of this state or to a
 48-11 certain population of recipients;

48-12 (2) administrative costs necessary to meet federal and
 48-13 state statutory and regulatory requirements;

48-14 (3) the anticipated effect of market competition
 48-15 associated with the configuration of Medicaid service delivery
 48-16 models determined by the commission; and

48-17 (4) the gain or loss to this state of a tax collected
 48-18 under Article 4.11, Insurance Code.

48-19 (d) If the commission determines that it is not more
 48-20 cost-effective to use a Medicaid managed care model to provide
 48-21 certain types of medical assistance for acute care in a certain area
 48-22 or to certain medical assistance recipients as prescribed by this
 48-23 section, the commission shall provide medical assistance for acute
 48-24 care through a traditional fee-for-service arrangement.

48-25 SECTION 2.29. Subchapter A, Chapter 533, Government Code,
 48-26 is amended by adding Section 533.0132 to read as follows:

48-27 Sec. 533.0132. STATE TAXES. The commission shall ensure
 48-28 that any experience rebate or profit sharing for managed care
 48-29 organizations is calculated by treating premium, maintenance, and
 48-30 other taxes under the Insurance Code and any other taxes payable to
 48-31 this state as allowable expenses for purposes of determining the
 48-32 amount of the experience rebate or profit sharing.

48-33 SECTION 2.30. Sections 403.105(a) and (c), Government Code,
 48-34 are amended to read as follows:

48-35 (a) The permanent fund for health and tobacco education and
 48-36 enforcement is a dedicated account in the general revenue fund. The
 48-37 fund is composed of:

48-38 (1) money transferred to the fund at the direction of
 48-39 the legislature;

48-40 (2) gifts and grants contributed to the fund; and

48-41 (3) the available earnings of the fund determined in
 48-42 accordance with Section 403.1068.

48-43 (c) The available earnings of the fund may be appropriated
 48-44 to the Texas Department of Health for:

48-45 (1) programs to reduce the use of cigarettes and
 48-46 tobacco products in this state, including:

48-47 (A) [~~(1)~~] smoking cessation programs;

48-48 (B) [~~(2)~~] enforcement of Subchapters H, K, and N,
 48-49 Chapter 161, Health and Safety Code, or other laws relating to
 48-50 distribution of cigarettes or tobacco products to minors or use of
 48-51 cigarettes or tobacco products by minors;

48-52 (C) [~~(3)~~] public awareness programs relating to
 48-53 use of cigarettes and tobacco products, including general
 48-54 educational programs and programs directed toward youth; and

48-55 (D) [~~(4)~~] specific programs for communities
 48-56 traditionally targeted, by advertising and other means, by
 48-57 companies that sell cigarettes or tobacco products; and

48-58 (2) the provision of coordinated essential public
 48-59 health services administered by the department.

48-60 SECTION 2.31. The heading to Section 403.105, Government
 48-61 Code, is amended to read as follows:

48-62 Sec. 403.105. PERMANENT FUND FOR HEALTH AND TOBACCO
 48-63 EDUCATION AND ENFORCEMENT.

48-64 SECTION 2.32. Section 403.1055(c), Government Code, is
 48-65 amended to read as follows:

48-66 (c) The available earnings of the fund may be appropriated
 48-67 to:

48-68 (1) the Texas Department of Health for the purpose of:

48-69 (A) developing and demonstrating cost-effective

49-1 prevention and intervention strategies for improving health
49-2 outcomes for children and the public;

49-3 (B) ~~[and for]~~ providing grants to local
49-4 communities to address specific public health priorities,
49-5 including sickle cell anemia, diabetes, high blood pressure,
49-6 cancer, heart attack, stroke, keloid tissue and scarring, and
49-7 respiratory disease; ~~[r]~~ and

49-8 (C) ~~[for]~~ providing grants to local communities
49-9 for essential public health services as defined in the Health and
49-10 Safety Code; and

49-11 (2) the Interagency Council on Early Childhood
49-12 Intervention to provide intervention services for children with
49-13 developmental delay or who have a high probability of developing
49-14 developmental delay and the families of those children.

49-15 SECTION 2.33. (a) Effective September 1, 2003, Section
49-16 466.408(b), Government Code, is amended to read as follows:

49-17 (b) If a claim is not made for prize money on or before the
49-18 180th day after the date on which the winner was selected, the prize
49-19 money shall be used in the following order of priority:

49-20 (1) \$20 million in prize money each year shall be
49-21 deposited to the credit of the Texas Department of Health
49-22 state-owned multicategorical teaching hospital account, which is
49-23 an account in the general revenue fund;

49-24 (2) \$5 million in prize money each year shall be used
49-25 by the Health and Human Services Commission to support the
49-26 provision of inpatient hospital services in hospitals located in
49-27 the 15 counties that comprise the Texas-Mexico border area, with
49-28 payment for those services to be not less than the amount
49-29 established under the Tax Equity and Fiscal Responsibility Act of
49-30 1982 (TEFRA) cost reimbursement methodology for the hospital
49-31 providing the services; and

49-32 (3) all remaining prize money subject to this section
49-33 shall be deposited in the tertiary care facility account and may be
49-34 appropriated only for purposes specified in Chapter 46 or 61,
49-35 Health and Safety Code [shall be deposited to the credit of the
49-36 Texas Department of Health state-owned multicategorical teaching
49-37 hospital account or the tertiary care facility account as follows:

49-38 [(1) not more than \$40 million in prize money each
49-39 biennium may be deposited to or appropriated from the Texas
49-40 Department of Health state-owned multicategorical teaching
49-41 hospital account, which is an account in the general revenue fund,
49-42 and

49-43 [(2) all prize money subject to this section in excess
49-44 of \$40 million each biennium shall be deposited in the tertiary care
49-45 facility account. Money deposited in the tertiary care facility
49-46 account may only be appropriated to the department for purposes
49-47 specified in Chapter 46 or 61, Health and Safety Code].

49-48 (b) Effective September 1, 2005, Section 466.408(b),
49-49 Government Code, is reenacted to read as follows:

49-50 (b) If a claim is not made for prize money on or before the
49-51 180th day after the date on which the winner was selected, the prize
49-52 money shall be deposited to the credit of the Texas Department of
49-53 Health state-owned multicategorical teaching hospital account or
49-54 the tertiary care facility account as follows:

49-55 (1) not more than \$40 million in prize money each
49-56 biennium may be deposited to or appropriated from the Texas
49-57 Department of Health state-owned multicategorical teaching
49-58 hospital account, which is an account in the general revenue fund;
49-59 and

49-60 (2) all prize money subject to this section in excess
49-61 of \$40 million each biennium shall be deposited in the tertiary care
49-62 facility account. Money deposited in the tertiary care facility
49-63 account may only be appropriated to the department for purposes
49-64 specified in Chapter 46 or 61, Health and Safety Code.

49-65 (c) It is the intent of the legislature that the Health and
49-66 Human Services Commission, to the extent possible, shall take all
49-67 action necessary to provide the highest level of possible financial
49-68 support to providing community care services and support for the
49-69 aging, as appropriate to reflect the legislature's priority for

those programs reflected in the General Appropriations Act.

SECTION 2.34. The heading to Subchapter C, Chapter 531, Government Code, is amended to read as follows:

SUBCHAPTER C. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES

[WELFARE] FRAUD, ABUSE, OR OVERCHARGES

SECTION 2.35. Subchapter C, Chapter 531, Government Code, is amended by adding Section 531.1011 to read as follows:

Sec. 531.1011. DEFINITIONS. For purposes of this subchapter:

(1) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person, including any act that constitutes fraud under applicable federal or state law.

(2) "Hold on payment" means the temporary denial of reimbursement under the Medicaid program for items or services furnished by a specified provider.

(3) "Practitioner" means a physician or other individual licensed under state law to practice the individual's profession.

(4) "Program exclusion" means the suspension of a provider from being authorized under the Medicaid program to request reimbursement for items or services furnished by that specific provider.

(5) "Provider" means a person, firm, partnership, corporation, agency, association, institution, or other entity that was or is approved by the commission to:

(A) provide medical assistance under contract or provider agreement with the commission; or

(B) provide third-party billing vendor services under a contract or provider agreement with the commission.

SECTION 2.36. Section 2177.0001(3), Government Code, is amended to read as follows:

(3) "State agency" has the meaning assigned by Section 2054.003, except that the term does not include a university system or institution of higher education or an agency identified in Section 531.001(4).

SECTION 2.37. Section 2177.101(a), Government Code, is amended to read as follows:

(a) This subchapter does not apply to procurements conducted by an agency identified in Section 531.001(4) or to procurements for major construction projects, as defined by the commission in consultation with the department, such as procurements made under Chapter 223, Transportation Code. In defining a major construction project, the commission shall base its decision on whether the nature of the project, any related contract or specifications, or other considerations are of a type that would make electronic procurement inappropriate.

SECTION 2.38. Section 2055.001(4), Government Code, is amended to read as follows:

(4) "State agency" has the meaning assigned by Section 2054.003, except that the term does not include a university system or institution of higher education or an agency identified in Section 531.001(4).

SECTION 2.39. Section 2055.002, Government Code, is amended to read as follows:

Sec. 2055.002. APPLICABILITY TO INSTITUTIONS OF HIGHER EDUCATION OR HEALTH AND HUMAN SERVICES AGENCIES. (a) Except as provided by Subsection (b), the requirements of this chapter regarding electronic government projects do not apply to institutions of higher education or a health and human services agency identified in Section 531.001(4), Government Code.

(b) Subject to approval by the office, an institution of higher education or a health and human services agency may elect to participate regarding an electronic government project of that institution or agency in the same manner as a state agency under this chapter. If the institution or health and human services agency makes this election and the office approves the election, the institution or health and human services agency:

51-1 (1) shall comply with this chapter regarding that
 51-2 electronic government project in the same manner as a state agency;
 51-3 and

51-4 (2) may not withdraw the project from management by
 51-5 the office unless the office approves the withdrawal.

51-6 SECTION 2.40. (a) Subchapter B, Chapter 12, Health and
 51-7 Safety Code, is amended by adding Sections 12.0111 and 12.0112 to
 51-8 read as follows:

51-9 Sec. 12.0111. LICENSING FEES. (a) This section applies in
 51-10 relation to each licensing program administered by the department
 51-11 or administered by a regulatory board or other agency that is under
 51-12 the jurisdiction of the department or administratively attached to
 51-13 the department. In this section and Section 12.0112, "license"
 51-14 includes a permit, certificate, or registration.

51-15 (b) Notwithstanding other law, the department shall charge
 51-16 a fee for issuing or renewing a license that is in an amount
 51-17 designed to allow the department to recover from its license
 51-18 holders all of the department's direct and indirect costs in
 51-19 administering and enforcing the applicable licensing program.

51-20 (c) Notwithstanding other law, each regulatory board or
 51-21 other agency that is under the jurisdiction of the department or
 51-22 administratively attached to the department and that issues
 51-23 licenses shall charge a fee for issuing or renewing a license that
 51-24 is in an amount designed to allow the department and the regulatory
 51-25 board or agency to recover from the license holders all of the
 51-26 direct and indirect costs to the department and to the regulatory
 51-27 board or agency in administering and enforcing the applicable
 51-28 licensing program.

51-29 (d) This section does not apply to a person regulated under
 51-30 Chapter 773.

51-31 Sec. 12.0112. TERM OF LICENSE. (a) Notwithstanding other
 51-32 law and except as provided by Subsection (b), the term of each
 51-33 license issued by the department, or by a regulatory board or other
 51-34 agency that is under the jurisdiction of the department or
 51-35 administratively attached to the department, is two years. The
 51-36 department, regulatory board, or agency may provide for staggering
 51-37 the issuance and renewal of licenses.

51-38 (b) This section does not apply to a license issued for a
 51-39 youth camp under Chapter 141.

51-40 (b) Section 12.0111, Health and Safety Code, as added by
 51-41 this section, applies only to a license, permit, certificate, or
 51-42 registration issued or renewed by the Texas Department of Health,
 51-43 or by a regulatory board or other agency that is under the
 51-44 jurisdiction of the department or administratively attached to the
 51-45 department, on or after January 1, 2004.

51-46 (c) Section 12.0112, Health and Safety Code, as added by
 51-47 this section, applies only to a license, permit, certificate, or
 51-48 registration that is issued or renewed on or after January 1, 2005.

51-49 SECTION 2.41. Sections 62.055(a), (d), and (e), Health and
 51-50 Safety Code, are amended to read as follows:

51-51 (a) It is the intent of the legislature that the commission
 51-52 maximize the use of private resources in administering the child
 51-53 health plan created under this chapter. In administering the child
 51-54 health plan, the commission may contract with[+]

51-55 [~~1~~] a third party administrator to provide
 51-56 enrollment and related services under the state child health plan[+]
 51-57 ~~or~~

51-58 [~~2~~] ~~another entity, including the Texas Healthy Kids~~
 51-59 ~~Corporation under Subchapter F, Chapter 109, to obtain health~~
 51-60 ~~benefit plan coverage for children who are eligible for coverage~~
 51-61 ~~under the state child health plan].~~

51-62 (d) A third party administrator [~~or other entity~~] may
 51-63 perform tasks under the contract that would otherwise be performed
 51-64 by the Texas Department of Health or Texas Department of Human
 51-65 Services under this chapter.

51-66 (e) The commission shall:

51-67 (1) retain all policymaking authority over the state
 51-68 child health plan;

51-69 (2) procure all contracts with a third party

52-1 administrator [~~or other entity~~] through a competitive procurement
52-2 process in compliance with all applicable federal and state laws or
52-3 regulations; and

52-4 (3) ensure that all contracts with child health plan
52-5 providers under Section 62.155 are procured through a competitive
52-6 procurement process in compliance with all applicable federal and
52-7 state laws or regulations.

52-8 SECTION 2.42. (a) Subchapter B, Chapter 62, Health and
52-9 Safety Code, is amended by adding Section 62.0582 to read as
52-10 follows:

52-11 Sec. 62.0582. THIRD-PARTY BILLING VENDORS. (a) A
52-12 third-party billing vendor may not submit a claim with the
52-13 commission for payment on behalf of a health plan provider under the
52-14 program unless the vendor has entered into a contract with the
52-15 commission authorizing that activity.

52-16 (b) To the extent practical, the contract shall contain
52-17 provisions comparable to the provisions contained in contracts
52-18 between the commission and health plan providers, with an emphasis
52-19 on provisions designed to prevent fraud or abuse under the program.
52-20 At a minimum, the contract must require the third-party billing
52-21 vendor to:

52-22 (1) provide documentation of the vendor's authority to
52-23 bill on behalf of each provider for whom the vendor submits claims;

52-24 (2) submit a claim in a manner that permits the
52-25 commission to identify and verify the vendor, any computer or
52-26 telephone line used in submitting the claim, any relevant user
52-27 password used in submitting the claim, and any provider number
52-28 referenced in the claim; and

52-29 (3) subject to any confidentiality requirements
52-30 imposed by federal law, provide the commission, the office of the
52-31 attorney general, or authorized representatives with:

52-32 (A) access to any records maintained by the
52-33 vendor, including original records and records maintained by the
52-34 vendor on behalf of a provider, relevant to an audit or
52-35 investigation of the vendor's services or another function of the
52-36 commission or office of attorney general relating to the vendor;
52-37 and

52-38 (B) if requested, copies of any records described
52-39 by Paragraph (A) at no charge to the commission, the office of the
52-40 attorney general, or authorized representatives.

52-41 (c) On receipt of a claim submitted by a third-party billing
52-42 vendor, the commission shall send a remittance notice directly to
52-43 the provider referenced in the claim. The notice must include
52-44 detailed information regarding the claim submitted on behalf of the
52-45 provider.

52-46 (d) The commission shall take all action necessary,
52-47 including any modifications of the commission's claims processing
52-48 system, to enable the commission to identify and verify a
52-49 third-party billing vendor submitting a claim for payment under the
52-50 program, including identification and verification of any computer
52-51 or telephone line used in submitting the claim, any relevant user
52-52 password used in submitting the claim, and any provider number
52-53 referenced in the claim.

52-54 (e) The commission shall audit each third-party billing
52-55 vendor subject to this section at least annually to prevent fraud
52-56 and abuse under the program.

52-57 (b) Section 62.0582, Health and Safety Code, as added by
52-58 this section, takes effect January 1, 2006.

52-59 SECTION 2.43. Section 62.002(4), Health and Safety Code, is
52-60 amended to read as follows:

52-61 (4) "Net family income" means the amount of income
52-62 established for a family after reduction for offsets, not to exceed
52-63 10 percent of the amount of net family income, for expenses such as
52-64 child care and work-related expenses~~[, in accordance with standards~~
52-65 ~~applicable under the Medicaid program].~~

52-66 SECTION 2.44. Sections 62.101(b) and (c), Health and Safety
52-67 Code, are amended to read as follows:

52-68 (b) Unless different income eligibility levels are
52-69 prescribed by the General Appropriations Act, the [The] commission

53-1 shall establish income eligibility levels consistent with Title
 53-2 XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as
 53-3 amended, and any other applicable law or regulations, and subject
 53-4 to the availability of appropriated money, so that a child who is
 53-5 younger than 19 years of age and whose net family income is at or
 53-6 below 200 percent of the federal poverty level is eligible for
 53-7 health benefits coverage under the program.

53-8 (c) The commissioner shall evaluate enrollment levels and
 53-9 program impact every six months during the first 12 months of
 53-10 implementation and at least annually thereafter and shall submit a
 53-11 finding of fact to the Legislative Budget Board and the Governor's
 53-12 Office of Budget and Planning as to the adequacy of funding and the
 53-13 ability of the program to sustain enrollment at the eligibility
 53-14 level established by Subsection (b). In the event that
 53-15 appropriated money is insufficient to sustain enrollment at the
 53-16 authorized eligibility level or enrollment exceeds the number of
 53-17 children authorized to be enrolled in the child health plan under
 53-18 the General Appropriations Act, the commissioner shall:

53-19 (1) suspend enrollment in the child health plan;

53-20 (2) establish a waiting list for applicants for
 53-21 coverage; and

53-22 (3) establish a process for periodic or continued
 53-23 enrollment of applicants in the child health plan program as the
 53-24 availability of money allows.

53-25 SECTION 2.45. Section 62.1015(b), Health and Safety Code,
 53-26 is amended to read as follows:

53-27 (b) A child of an employee of a charter school, school
 53-28 district, other educational district whose employees are members of
 53-29 the Teacher Retirement System of Texas, or regional education
 53-30 service center may be enrolled in health benefits coverage under
 53-31 the child health plan. A child enrolled in the child health plan
 53-32 under this section:

53-33 (1) participates in the same manner as any other child
 53-34 enrolled in the child health plan; and

53-35 (2) is subject to the same requirements and
 53-36 restrictions relating to income eligibility, continuous coverage,
 53-37 and enrollment, including applicable waiting periods, as any other
 53-38 child enrolled in the child health plan.

53-39 SECTION 2.46. Section 62.102, Health and Safety Code, is
 53-40 amended to read as follows:

53-41 Sec. 62.102. CONTINUOUS COVERAGE. The commission shall
 53-42 provide that an individual who is determined to be eligible for
 53-43 coverage under the child health plan remains eligible for those
 53-44 benefits until the earlier of:

53-45 (1) the end of a period, not to exceed 180 days [~~12~~
 53-46 ~~months~~], following the date of the eligibility determination; or

53-47 (2) the individual's 19th birthday.

53-48 SECTION 2.47. Section 62.151, Health and Safety Code, is
 53-49 amended by amending Subsection (b) and adding Subsections (e) and
 53-50 (f) to read as follows:

53-51 (b) In developing the covered benefits, the commission
 53-52 shall consider the health care needs of healthy children and
 53-53 children with special health care needs. [~~At the time the child~~
 53-54 ~~health plan program is first implemented, the child health plan~~
 53-55 ~~must provide a benefits package that is actuarially equivalent, as~~
 53-56 ~~determined in accordance with 42 U.S.C. Section 1397cc, to the~~
 53-57 ~~basic plan for active state employees offered through health~~
 53-58 ~~maintenance organizations under the Texas Employees Uniform Group~~
 53-59 ~~Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance~~
 53-60 ~~Code), as determined by the commission. The child health plan must~~
 53-61 ~~provide at least the covered benefits described by the recommended~~
 53-62 ~~benefits package described for a state-designed child health plan~~
 53-63 ~~by the Texas House of Representatives Committee on Public Health~~
 53-64 ~~"CHIP" Interim Report to the Seventy-Sixth Texas Legislature dated~~
 53-65 ~~December, 1998, and the Senate Interim Committee on Children's~~
 53-66 ~~Health Insurance Report to the Seventy-Sixth Texas Legislature~~
 53-67 ~~dated December 1, 1998.]~~

53-68 (e) In developing the covered benefits, the commission
 53-69 shall seek input from the Public Assistance Health Benefit Review

and Design Committee established under Section 531.067, Government Code.

(f) The commission, if it determines the policy to be cost-effective, may ensure that an enrolled child does not, unless authorized by the commission in consultation with the child's attending physician or advanced practice nurse, receive under the child health plan:

(1) more than four different outpatient brand-name prescription drugs during a month; or

(2) more than a 34-day supply of a brand-name prescription drug at any one time.

SECTION 2.48. Section 62.153, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Subject to Subsection (d), cost-sharing [Cost-sharing] provisions adopted under this section shall ensure that families with higher levels of income are required to pay progressively higher percentages of the cost of the plan.

(d) Cost-sharing provisions adopted under this section may be determined based on the maximum level authorized under federal law and applied to income levels in a manner that minimizes administrative costs.

SECTION 2.49. (a) The heading to Section 62.154, Health and Safety Code, is amended to read as follows:

Sec. 62.154. WAITING PERIOD; CROWD OUT.

(b) Sections 62.154(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) To the extent permitted under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, the child health plan must include a waiting period. The child health plan [and] may include copayments and other provisions intended to discourage:

(1) employers and other persons from electing to discontinue offering coverage for children under employee or other group health benefit plans; and

(2) individuals with access to adequate health benefit plan coverage, other than coverage under the child health plan, from electing not to obtain or to discontinue that coverage for a child.

(b) A child is not subject to a waiting period adopted under Subsection (a) if:

(1) the family lost coverage for the child as a result of:

(A) termination of employment because of a layoff or business closing;

(B) termination of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272);

(C) change in marital status of a parent of the child;

(D) termination of the child's Medicaid eligibility because:

(i) the child's family's earnings or resources increased; or

(ii) the child reached an age at which Medicaid coverage is not available; or

(E) a similar circumstance resulting in the involuntary loss of coverage;

(2) the family terminated health benefits plan coverage for the child because the cost to the child's family for the coverage exceeded 10 percent of the family's net income; ~~or~~

(3) the child has access to group-based health benefits plan coverage and is required to participate in the health insurance premium payment reimbursement program administered by the commission; or

(4) the commission has determined that other grounds exist for a good cause exception.

(d) The waiting period required by Subsection (a) must ~~+~~

~~(1)~~ extend for a period of 90 days after:

55-1 (1) the first day of the month in [last date on] which
55-2 the applicant is enrolled under the child health plan, if the date
55-3 of enrollment is on or before the 15th day of the month; or

55-4 (2) the first day of the month after which the
55-5 applicant is enrolled under the child health plan, if the date of
55-6 enrollment is after the 15th day of the month [was covered under a
55-7 health benefits plan; and

55-8 [~~(2) apply to a child who was covered by a health~~
55-9 ~~benefits plan at any time during the 90 days before the date of~~
55-10 ~~application for coverage under the child health plan, other than a~~
55-11 ~~child who was covered under a health benefits plan provided under~~
55-12 ~~Chapter 109].~~

55-13 SECTION 2.50. Sections 62.155(c) and (d), Health and Safety
55-14 Code, are amended to read as follows:

55-15 (c) In selecting a health plan provider, the commission:

55-16 (1) may give preference to a person who provides
55-17 similar coverage under the Medicaid program [~~or through the Texas~~
55-18 ~~Healthy Kids Corporation]; and~~

55-19 (2) shall provide for a choice of at least two health
55-20 plan providers in each service [metropolitan] area.

55-21 (d) The commissioner may authorize an exception to
55-22 Subsection (c)(2) if there is only one acceptable applicant to
55-23 become a health plan provider in the service [metropolitan] area.

55-24 SECTION 2.51. Subchapter D, Chapter 62, Health and Safety
55-25 Code, is amended by adding Section 62.158 to read as follows:

55-26 Sec. 62.158. STATE TAXES. The commission shall ensure that
55-27 any experience rebate or profit-sharing for health plan providers
55-28 under the child health plan is calculated by treating premium,
55-29 maintenance, and other taxes under the Insurance Code and any other
55-30 taxes payable to this state as allowable expenses for purposes of
55-31 determining the amount of the experience rebate or profit-sharing.

55-32 SECTION 2.52. (a) Subtitle E, Title 2, Health and Safety
55-33 Code, is amended by adding Chapter 112 to read as follows:

55-34 CHAPTER 112. BORDER HEALTH FOUNDATION

55-35 Sec. 112.001. DEFINITIONS. In this chapter:

55-36 (1) "Board of directors" means the board of directors
55-37 of the Border Health Foundation.

55-38 (2) "Foundation" means the Border Health Foundation.

55-39 Sec. 112.002. CREATION OF FOUNDATION. (a) The department
55-40 shall establish the Border Health Foundation as a nonprofit
55-41 corporation that complies with the Texas Non-Profit Corporation Act
55-42 (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), except
55-43 as otherwise provided by this chapter, and qualifies as an
55-44 organization exempt from federal income tax under Section
55-45 501(c)(3), Internal Revenue Code of 1986, as amended.

55-46 (b) The department shall ensure that the foundation
55-47 operates independently of any state agency or political subdivision
55-48 of this state.

55-49 Sec. 112.003. POWERS AND DUTIES. (a) The foundation shall
55-50 raise money from other foundations, governmental entities, and
55-51 other sources to finance health programs in this state in areas
55-52 adjacent to the border with the United Mexican States.

55-53 (b) The foundation shall:

55-54 (1) identify and seek potential partners in the
55-55 private sector that will afford this state the opportunity to
55-56 maintain or increase the existing levels of financing of health
55-57 programs and activities;

55-58 (2) engage in outreach efforts to make the existence
55-59 of the office known to potential partners throughout this state;
55-60 and

55-61 (3) perform any other function necessary to carry out
55-62 the purposes of this section.

55-63 (c) The department shall review programs from all agencies
55-64 under its control to determine which projects should be available
55-65 to receive money under Subsection (a).

55-66 (d) The foundation has the powers necessary and convenient
55-67 to carry out its duties.

55-68 Sec. 112.004. ADMINISTRATION. (a) The foundation is
55-69 governed by a board of five directors appointed by the Texas Board

56-1 of Health from individuals recommended by the commissioner.

56-2 (b) Members of the board of directors serve for staggered
56-3 terms of six years, with as near as possible to one-third of the
56-4 members' terms expiring every two years.

56-5 (c) Appointments to the board of directors shall be made
56-6 without regard to the race, color, disability, sex, religion, age,
56-7 or national origin of the appointees.

56-8 (d) The board of directors shall ensure that the foundation
56-9 remains eligible for an exemption from federal income tax under
56-10 Section 501(a), Internal Revenue Code of 1986, as amended, by being
56-11 listed as an exempt organization under Section 501(c)(3) of that
56-12 code, as amended.

56-13 Sec. 112.005. RESTRICTIONS ON BOARD APPOINTMENT,
56-14 MEMBERSHIP, AND EMPLOYMENT. (a) In this section, "Texas trade
56-15 association" means a cooperative and voluntarily joined
56-16 association of business or professional competitors in this state
56-17 designed to assist its members and its industry or profession in
56-18 dealing with mutual business or professional problems and in
56-19 promoting their common interest.

56-20 (b) A person may not be a member of the board of directors
56-21 and may not be a foundation employee employed in a "bona fide
56-22 executive, administrative, or professional capacity," as that
56-23 phrase is used for purposes of establishing an exemption to the
56-24 overtime provisions of the federal Fair Labor Standards Act of 1938
56-25 (29 U.S.C. Section 201 et seq.), as amended, if:

56-26 (1) the person is an officer, employee, or paid
56-27 consultant of a Texas trade association in the field of health care;
56-28 or

56-29 (2) the person's spouse is an officer, manager, or paid
56-30 consultant of a Texas trade association in the field of health care.

56-31 (c) A person may not be a member of the board of directors or
56-32 act as the general counsel to the board of directors or the
56-33 foundation if the person is required to register as a lobbyist under
56-34 Chapter 305, Government Code, because of the person's activities
56-35 for compensation on behalf of a profession related to the operation
56-36 of the foundation.

56-37 Sec. 112.006. REMOVAL OF BOARD MEMBER. (a) It is a ground
56-38 for removal from the board of directors that a member:

56-39 (1) is ineligible for membership under Section
56-40 112.005;

56-41 (2) cannot, because of illness or disability,
56-42 discharge the member's duties for a substantial part of the member's
56-43 term; or

56-44 (3) is absent from more than half of the regularly
56-45 scheduled board meetings that the member is eligible to attend
56-46 during a calendar year without an excuse approved by a majority vote
56-47 of the board of directors.

56-48 (b) The validity of an action of the board of directors is
56-49 not affected by the fact that it is taken when a ground for removal
56-50 of a board member exists.

56-51 (c) The foundation in its articles or bylaws shall establish
56-52 the manner in which a board member may be removed under this section
56-53 and may establish other grounds for removal of a member.

56-54 Sec. 112.007. VACANCY. A vacancy on the board of directors
56-55 shall be filled for the remainder of the unexpired term in the same
56-56 manner as provided in Section 112.004(a).

56-57 Sec. 112.008. OFFICERS. The board of directors shall elect
56-58 from among its members a presiding officer, an assistant presiding
56-59 officer, and other necessary officers. The presiding officer and
56-60 assistant presiding officer serve for a period of one year and may
56-61 be reelected.

56-62 Sec. 112.009. MEETINGS. The board of directors may meet as
56-63 often as necessary, but shall meet at least twice a year.

56-64 Sec. 112.010. TAX EXEMPTION. All income, property, and
56-65 other assets of the foundation are exempt from taxation by this
56-66 state and political subdivisions of this state.

56-67 Sec. 112.011. MEMORANDUM OF UNDERSTANDING. The foundation
56-68 and the department shall enter into a memorandum of understanding
56-69 that:

57-1 (1) requires the board of directors and staff of the
 57-2 foundation to report to the commissioner and department;

57-3 (2) allows the department to provide staff functions
 57-4 to the foundation; and

57-5 (3) outlines the financial contributions to be made to
 57-6 the foundation from funds obtained from grants and other sources.

57-7 Sec. 112.012. FUNDING. (a) The department, another agency
 57-8 of this state, including an institution of higher education as
 57-9 defined by Section 61.003, Education Code, or a political
 57-10 subdivision of this state may contract with the foundation to
 57-11 finance, on behalf of the department, agency, or political
 57-12 subdivision, health programs described by Section 112.003.

57-13 (b) The foundation may apply for and accept funds from the
 57-14 federal government or any other public or private entity. The
 57-15 foundation or any member of the foundation may also solicit and
 57-16 accept pledges, gifts, and endowments from private sources on the
 57-17 foundation's behalf. The foundation may only accept a pledge,
 57-18 gift, or endowment solicited under this section that is consistent
 57-19 with the purposes of the foundation.

57-20 (c) The board of directors of the foundation shall manage
 57-21 and approve disbursements of funds, pledges, gifts, and endowments
 57-22 that are the property of the foundation.

57-23 (d) The board of directors of the foundation shall manage
 57-24 any capital improvements constructed, owned, or leased by the
 57-25 foundation and any real property acquired by the foundation.

57-26 Sec. 112.013. RECORDS. (a) The foundation shall maintain
 57-27 financial records and reports independently from those of the
 57-28 department.

57-29 (b) The foundation shall comply with all filing
 57-30 requirements of the secretary of state and the Internal Revenue
 57-31 Service.

57-32 Sec. 112.014. REPORT TO DEPARTMENT. Not later than the
 57-33 60th day after the last day of the fiscal year, the foundation shall
 57-34 submit to the department a report itemizing all income and
 57-35 expenditures and describing all activities of the foundation during
 57-36 the preceding fiscal year.

57-37 (b) The Border Health Foundation shall be created as
 57-38 required by this section not later than June 1, 2004.

57-39 SECTION 2.53. Section 142.003(a), Health and Safety Code,
 57-40 is amended to read as follows:

57-41 (a) The following persons need not be licensed under this
 57-42 chapter:

57-43 (1) a physician, dentist, registered nurse,
 57-44 occupational therapist, or physical therapist licensed under the
 57-45 laws of this state who provides home health services to a client
 57-46 only as a part of and incidental to that person's private office
 57-47 practice;

57-48 (2) a registered nurse, licensed vocational nurse,
 57-49 physical therapist, occupational therapist, speech therapist,
 57-50 medical social worker, or any other health care professional as
 57-51 determined by the department who provides home health services as a
 57-52 sole practitioner;

57-53 (3) a registry that operates solely as a clearinghouse
 57-54 to put consumers in contact with persons who provide home health,
 57-55 hospice, or personal assistance services and that does not maintain
 57-56 official client records, direct client services, or compensate the
 57-57 person who is providing the service;

57-58 (4) an individual whose permanent residence is in the
 57-59 client's residence;

57-60 (5) an employee of a person licensed under this
 57-61 chapter who provides home health, hospice, or personal assistance
 57-62 services only as an employee of the license holder and who receives
 57-63 no benefit for providing the services, other than wages from the
 57-64 license holder;

57-65 (6) a home, nursing home, convalescent home, assisted
 57-66 living facility, special care facility, or other institution for
 57-67 individuals who are elderly or who have disabilities that provides
 57-68 home health or personal assistance services only to residents of
 57-69 the home or institution;

58-1 (7) a person who provides one health service through a
58-2 contract with a person licensed under this chapter;

58-3 (8) a durable medical equipment supply company;

58-4 (9) a pharmacy or wholesale medical supply company
58-5 that does not furnish services, other than supplies, to a person at
58-6 the person's house;

58-7 (10) a hospital or other licensed health care facility
58-8 that provides home health or personal assistance services only to
58-9 inpatient residents of the hospital or facility;

58-10 (11) a person providing home health or personal
58-11 assistance services to an injured employee under Title 5, Labor
58-12 Code;

58-13 (12) a visiting nurse service that:
58-14 (A) is conducted by and for the adherents of a
58-15 well-recognized church or religious denomination; and

58-16 (B) provides nursing services by a person exempt
58-17 from licensing by Section 301.004, Occupations Code, because the
58-18 person furnishes nursing care in which treatment is only by prayer
58-19 or spiritual means;

58-20 (13) an individual hired and paid directly by the
58-21 client or the client's family or legal guardian to provide home
58-22 health or personal assistance services;

58-23 (14) a business, school, camp, or other organization
58-24 that provides home health or personal assistance services,
58-25 incidental to the organization's primary purpose, to individuals
58-26 employed by or participating in programs offered by the business,
58-27 school, or camp that enable the individual to participate fully in
58-28 the business's, school's, or camp's programs;

58-29 (15) a person or organization providing
58-30 sitter-companion services or chore or household services that do
58-31 not involve personal care, health, or health-related services;

58-32 (16) a licensed health care facility that provides
58-33 hospice services under a contract with a hospice;

58-34 (17) a person delivering residential acquired immune
58-35 deficiency syndrome hospice care who is licensed and designated as
58-36 a residential AIDS hospice under Chapter 248; ~~or~~

58-37 (18) the Texas Department of Criminal Justice; or

58-38 (19) a person that provides services under a home and
58-39 community-based services waiver program for persons with mental
58-40 retardation adopted in accordance with Section 1915(c) of the
58-41 federal Social Security Act (42 U.S.C. Section 1396n), as amended,
58-42 and that is funded wholly or partly by the Texas Department of
58-43 Mental Health and Mental Retardation and monitored by that
58-44 department or by a designated local authority in accordance with
58-45 standards adopted by that department.

58-46 SECTION 2.54. Section 142.009(j), Health and Safety Code,
58-47 is amended to read as follows:

58-48 (j) Except as provided by Subsections (h) ~~[(i)],~~ and (l),
58-49 an on-site survey must be conducted within 18 months after a survey
58-50 for an initial license. After that time, an on-site survey must be
58-51 conducted at least every 36 months.

58-52 SECTION 2.55. (a) Section 242.047, Health and Safety Code,
58-53 is amended to read as follows:

58-54 Sec. 242.047. ACCREDITATION REVIEW TO SATISFY [INSTEAD OF]
58-55 INSPECTION OR CERTIFICATION REQUIREMENTS. (a) The department
58-56 shall accept an annual accreditation review from the Joint
58-57 Commission on Accreditation of Health Organizations for a nursing
58-58 home instead of an inspection for renewal of a license under Section
58-59 242.033 and in satisfaction of the requirements for certification
58-60 by the department for participation in the medical assistance
58-61 program under Chapter 32, Human Resources Code, and the federal
58-62 Medicare program, but only if:

58-63 (1) the nursing home is accredited by the commission
58-64 under the commission's long-term care standards;

58-65 (2) the commission maintains an annual inspection or
58-66 review program that, for each nursing home, meets the department's
58-67 applicable minimum standards as confirmed by the board;

58-68 (3) the commission conducts an annual on-site
58-69 inspection or review of the home; ~~and~~

59-1 (4) the nursing home submits to the department a copy
59-2 of its annual accreditation review from the commission in addition
59-3 to the application, fee, and any report required for renewal of a
59-4 license or for certification, as applicable; and

59-5 (5) the department has:

59-6 (A) determined whether a waiver or authorization
59-7 from a federal agency is necessary under federal law, including for
59-8 federal funding purposes, before the department accepts an annual
59-9 accreditation review from the joint commission:

59-10 (i) instead of an inspection for license
59-11 renewal purposes;

59-12 (ii) as satisfying the requirements for
59-13 certification by the department for participation in the medical
59-14 assistance program; or

59-15 (iii) as satisfying the requirements for
59-16 certification by the department for participation in the federal
59-17 Medicare program; and

59-18 (B) obtained any necessary federal waivers or
59-19 authorizations.

59-20 (b) The department shall coordinate its licensing and
59-21 certification activities with the commission.

59-22 (c) The department and the commission shall sign a
59-23 memorandum of agreement to implement this section. The memorandum
59-24 must provide that if all parties to the memorandum do not agree in
59-25 the development, interpretation, and implementation of the
59-26 memorandum, any area of dispute is to be resolved by the board.

59-27 (d) Except as specifically provided by this section, this
59-28 [This] section does not limit the department in performing any
59-29 duties and inspections authorized by this chapter or under any
59-30 contract relating to the medical assistance program under Chapter
59-31 32, Human Resources Code, and Titles XVIII and XIX of the Social
59-32 Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.),
59-33 including authority to take appropriate action relating to an
59-34 institution, such as closing the institution.

59-35 (e) This section does not require a nursing home to obtain
59-36 accreditation from the commission.

59-37 (b) Not later than October 1, 2003, the Texas Department of
59-38 Human Services shall:

59-39 (1) determine whether a waiver or authorization from a
59-40 federal agency is necessary under federal law, including for
59-41 federal funding purposes, before the department may accept an
59-42 annual accreditation review from the Joint Commission on
59-43 Accreditation of Health Organizations for a nursing home:

59-44 (A) instead of an inspection for purposes of
59-45 renewing a nursing home license under Chapter 242, Health and
59-46 Safety Code;

59-47 (B) as satisfying the requirements for
59-48 certification by the department for participation in the medical
59-49 assistance program under Chapter 32, Human Resources Code; and

59-50 (C) as satisfying the requirements for
59-51 certification by the department for participation in the federal
59-52 Medicare program; and

59-53 (2) if the department determines that a waiver or
59-54 authorization is necessary, request any required waivers or
59-55 authorizations that the department may possibly obtain under
59-56 federal law.

59-57 (c) Not later than December 1, 2003, the Texas Department of
59-58 Human Services shall report its progress under Subsection (b) of
59-59 this section to the governor and to the presiding officer of each
59-60 house of the legislature.

59-61 SECTION 2.56. (a) Section 242.063(d), Health and Safety
59-62 Code, is amended to read as follows:

59-63 (d) ~~A [Notwithstanding Chapter 15, Civil Practice and~~
59-64 ~~Remedies Code, or Section 65.023, Civil Practice and Remedies Code,~~
59-65 ~~a] suit for a temporary restraining order or other injunctive~~
59-66 ~~relief must [may] be brought in [Travis County or in] the county in~~
59-67 ~~which the alleged violation occurs.~~

59-68 (b) Section 242.063(e), Health and Safety Code, is
59-69 repealed.

60-1 (c) The changes in law made by this section to Section
60-2 242.063(d), Health and Safety Code, apply only to a suit filed on or
60-3 after the effective date of this section. A suit filed before the
60-4 effective date of this section is covered by the law in effect when
60-5 the suit was filed, and that law is continued in effect for that
60-6 purpose.

60-7 SECTION 2.57. Section 242.065(b), Health and Safety Code,
60-8 is amended to read as follows:

60-9 (b) In determining the amount of a penalty to be awarded
60-10 under this section, the trier of fact shall consider:

60-11 (1) the seriousness of the violation~~[, including the~~
60-12 ~~nature, circumstances, extent, and gravity of the violation and the~~
60-13 ~~hazard or potential hazard created by the violation to the health or~~
60-14 ~~safety of a resident]~~;

60-15 (2) the history of violations committed by the person
60-16 or the person's affiliate, employee, or controlling person;

60-17 (3) the amount necessary to deter future violations;

60-18 (4) the efforts made to correct the violation;

60-19 (5) any misrepresentation made to the department or to
60-20 another person regarding:

60-21 (A) the quality of services rendered or to be
60-22 rendered to residents;

60-23 (B) the compliance history of the institution or
60-24 any institutions owned or controlled by an owner or controlling
60-25 person of the institution; or

60-26 (C) the identity of an owner or controlling
60-27 person of the institution;

60-28 (6) the culpability of the individual who committed
60-29 the violation; and

60-30 (7) any other matter that should, as a matter of
60-31 justice or equity, be considered.

60-32 SECTION 2.58. (a) Section 242.070, Health and Safety Code,
60-33 is amended to read as follows:

60-34 Sec. 242.070. APPLICATION OF OTHER LAW. The department may
60-35 not assess more than one monetary penalty under this chapter and
60-36 Chapter 32, Human Resources Code, for a violation arising out of the
60-37 same act or failure to act, except as provided by Section
60-38 242.0665(c). The ~~[This section does not prohibit the]~~ department
60-39 may assess the greater of ~~[from assessing]~~ a monetary penalty under
60-40 this chapter or ~~[and]~~ a monetary penalty under Chapter 32, Human
60-41 Resources Code, for the same act or failure to act.

60-42 (b) The change in law made by this section to Section
60-43 242.070, Health and Safety Code, applies only to a penalty assessed
60-44 on or after the effective date of this section.

60-45 SECTION 2.59. Section 242.601(a), Health and Safety Code,
60-46 is amended to read as follows:

60-47 (a) An institution must establish medication administration
60-48 procedures ~~[to ensure that:~~

60-49 ~~[(1) medications to be administered are checked~~
60-50 ~~against the order of a physician, advanced practice nurse, or~~
60-51 ~~physician assistant pursuant to protocols jointly developed with a~~
60-52 ~~physician;~~

60-53 ~~[(2) the resident is identified before the~~
60-54 ~~administration of a medication;~~

60-55 ~~[(3) each resident's clinical record includes an~~
60-56 ~~individual medication record in which the dose of medication~~
60-57 ~~administered is properly recorded by the person who administered~~
60-58 ~~the medication;~~

60-59 ~~[(4) medications and biologicals are prepared and~~
60-60 ~~administered to a resident by the same individual, except under~~
60-61 ~~unit-of-use package distribution systems; and~~

60-62 ~~[(5) a medication prescribed for one resident is not~~
60-63 ~~administered to any other person].~~

60-64 SECTION 2.60. Section 242.603(a), Health and Safety Code,
60-65 is amended to read as follows:

60-66 (a) An institution shall store medications under
60-67 appropriate conditions of sanitation, temperature, light,
60-68 moisture, ventilation, segregation, and security. ~~[Poisons,~~
60-69 ~~medications used externally, and medications taken internally~~

61-1 ~~shall be stored on separate shelves or in separate cabinets.~~
61-2 ~~Medication stored in a refrigerator containing other items shall be~~
61-3 ~~kept in a separate compartment with appropriate security. The~~
61-4 ~~institution shall store a medication in a locked area that must~~
61-5 ~~remain locked unless an individual authorized to distribute the~~
61-6 ~~medication is present.]~~

61-7 SECTION 2.61. (a) Section 245.004(a), Health and Safety
61-8 Code, is amended to read as follows:

61-9 (a) The following facilities need not be licensed under this
61-10 chapter:

61-11 (1) a hospital licensed under Chapter 241 (Texas
61-12 Hospital Licensing Law); or

61-13 (2) the office of a physician licensed under Subtitle
61-14 B, Title 3, Occupations Code, unless the office is used for the
61-15 purpose of performing more than 50 [~~300~~] abortions in any 12-month
61-16 period.

61-17 (b) An office of a physician required by Section 245.004(a),
61-18 Health and Safety Code, as amended by this section, to be licensed
61-19 under Chapter 245, Health and Safety Code, must obtain that license
61-20 not later than January 1, 2004.

61-21 SECTION 2.62. Section 252.202(a), Health and Safety Code,
61-22 is amended to read as follows:

61-23 (a) A quality assurance fee is imposed on each facility for
61-24 which a license fee must be paid under Section 252.034, ~~[and]~~ on
61-25 each facility owned by a community mental health and mental
61-26 retardation center, as described by Subchapter A, Chapter 534, and
61-27 on each facility owned by the Texas Department of Mental Health and
61-28 Mental Retardation. The fee:

61-29 (1) is an amount established under Subsection (b)
61-30 multiplied by the number of patient days as determined in
61-31 accordance with Section 252.203;

61-32 (2) is payable monthly; and

61-33 (3) is in addition to other fees imposed under this
61-34 chapter.

61-35 SECTION 2.63. Section 252.203, Health and Safety Code, is
61-36 amended to read as follows:

61-37 Sec. 252.203. PATIENT DAYS. For each calendar day, a
61-38 facility shall determine the number of patient days by adding the
61-39 following:

61-40 (1) the number of patients occupying a facility bed
61-41 immediately before midnight of that day; and

61-42 (2) ~~[the number of beds that are on hold on that day~~
61-43 ~~and that have been placed on hold for a period not to exceed three~~
61-44 ~~consecutive calendar days during which a patient is in a hospital,~~
61-45 ~~and~~

61-46 ~~[(3)]~~ the number of beds that are on hold on that day
61-47 and that have been placed on hold for a period not to exceed three
61-48 consecutive calendar days during which a patient is on therapeutic
61-49 ~~[home]~~ leave.

61-50 SECTION 2.64. Section 252.204(b), Health and Safety Code,
61-51 is amended to read as follows:

61-52 (b) Each facility shall:

61-53 (1) not later than the 20th [~~10th~~] day after the last
61-54 day of a month file a report with the Health and Human Services
61-55 Commission or the department, as appropriate, stating the total
61-56 patient days for the month; and

61-57 (2) not later than the 30th day after the last day of
61-58 the month pay the quality assurance fee.

61-59 SECTION 2.65. Sections 252.207(a) and (c), Health and
61-60 Safety Code, are amended to read as follows:

61-61 (a) Subject to legislative appropriation and state and
61-62 federal law, the [~~The~~] Health and Human Services Commission may
61-63 [~~shall~~] use money in the quality assurance fund, together with any
61-64 federal money available to match that money~~[, to]~~:

61-65 (1) to offset [~~allowable~~] expenses incurred to
61-66 administer the quality assurance fee under this chapter [~~under the~~
61-67 ~~Medicaid program~~]; [~~or~~]

61-68 (2) to increase reimbursement rates paid under the
61-69 Medicaid program to facilities or waiver programs for persons with

62-1 mental retardation operated in accordance with 42 U.S.C. Section
 62-2 1396n(c) and its subsequent amendments; or

62-3 (3) for any other health and human services purpose
 62-4 approved by the governor and Legislative Budget Board~~[, subject to~~
 62-5 Section 252.206(d)].

62-6 (c) If money in the quality assurance fund is used to
 62-7 increase a reimbursement rate in the Medicaid program, the ~~[The]~~
 62-8 Health and Human Services Commission shall ensure that the
 62-9 reimbursement methodology used to set that rate describes how the
 62-10 money in the fund will be used to increase the rate and ~~[formula~~
 62-11 devised under Subsection (b)] provides incentives to increase
 62-12 direct care staffing and direct care wages and benefits.

62-13 SECTION 2.66. Section 253.008, Health and Safety Code, is
 62-14 amended to read as follows:

62-15 Sec. 253.008. VERIFICATION OF EMPLOYABILITY. (a) Before a
 62-16 facility, ~~[or]~~ an agency licensed under Chapter 142, or a person
 62-17 exempt from licensing under Section 142.003(a)(19) may hire an
 62-18 employee, the facility, ~~[or]~~ agency, or person shall search the
 62-19 employee misconduct registry under this chapter and the nurse aide
 62-20 registry maintained under the Omnibus Budget Reconciliation Act of
 62-21 1987 (Pub. L. No. 100-203) to determine whether the applicant for
 62-22 employment ~~[person]~~ is designated in either registry as having
 62-23 abused, neglected, or exploited a resident or consumer of a
 62-24 facility or an individual receiving services from an agency
 62-25 licensed under Chapter 142 or from a person exempt from licensing
 62-26 under Section 142.003(a)(19).

62-27 (b) A facility, [or] agency licensed under Chapter 142, or a
 62-28 person exempt from licensing under Section 142.003(a)(19) may not
 62-29 employ a person who is listed in either registry as having abused,
 62-30 neglected, or exploited a resident or consumer of a facility or an
 62-31 individual receiving services from an agency licensed under Chapter
 62-32 142 or from a person exempt from licensing under Section
 62-33 142.003(a)(19).

62-34 SECTION 2.67. Section 253.009(a), Health and Safety Code,
 62-35 is amended to read as follows:

62-36 (a) Each facility, [or] each agency licensed under Chapter
 62-37 142, and each person exempt from licensing under Section
 62-38 142.003(a)(19) shall notify its employees in a manner prescribed by
 62-39 the department:

- 62-40 (1) about the employee misconduct registry; and
 62-41 (2) that an employee may not be employed if the
 62-42 employee is listed in the registry.

62-43 SECTION 2.68. (a) Chapter 285, Health and Safety Code, is
 62-44 amended by adding Subchapter M to read as follows:

62-45 SUBCHAPTER M. PROVISION OF SERVICES

62-46 Sec. 285.201. PROVISION OF MEDICAL AND HOSPITAL CARE. As
 62-47 authorized by 8 U.S.C. Section 1621(d), this chapter affirmatively
 62-48 establishes eligibility for a person who would otherwise be
 62-49 ineligible under 8 U.S.C. Section 1621(a), provided that only local
 62-50 funds are utilized for the provision of nonemergency public health
 62-51 benefits. A person is not considered a resident of a governmental
 62-52 entity or hospital district if the person attempted to establish
 62-53 residence solely to obtain health care assistance.

62-54 (b) This section takes effect immediately if this Act
 62-55 receives a vote of two-thirds of all the members elected to each
 62-56 house, as provided by Section 39, Article III, Texas Constitution.
 62-57 If this Act does not receive the vote necessary for immediate
 62-58 effect, this section takes effect September 1, 2003.

62-59 SECTION 2.69. Section 431.021, Health and Safety Code, is
 62-60 amended to read as follows:

62-61 Sec. 431.021. PROHIBITED ACTS. The following acts and the
 62-62 causing of the following acts within this state are unlawful and
 62-63 prohibited:

62-64 (a) the introduction or delivery for introduction into
 62-65 commerce of any food, drug, device, or cosmetic that is adulterated
 62-66 or misbranded;

62-67 (b) the adulteration or misbranding of any food, drug,
 62-68 device, or cosmetic in commerce;

62-69 (c) the receipt in commerce of any food, drug, device, or

63-1 cosmetic that is adulterated or misbranded, and the delivery or
63-2 proffered delivery thereof for pay or otherwise;

63-3 (d) the distribution in commerce of a consumer commodity, if
63-4 such commodity is contained in a package, or if there is affixed to
63-5 that commodity a label that does not conform to the provisions of
63-6 this chapter and of rules adopted under the authority of this
63-7 chapter; provided, however, that this prohibition shall not apply
63-8 to persons engaged in business as wholesale or retail distributors
63-9 of consumer commodities except to the extent that such persons:

63-10 (1) are engaged in the packaging or labeling of such
63-11 commodities; or

63-12 (2) prescribe or specify by any means the manner in
63-13 which such commodities are packaged or labeled;

63-14 (e) the introduction or delivery for introduction into
63-15 commerce of any article in violation of Section 431.084, 431.114,
63-16 or 431.115;

63-17 (f) the dissemination of any false advertisement;

63-18 (g) the refusal to permit entry or inspection, or to permit
63-19 the taking of a sample or to permit access to or copying of any
63-20 record as authorized by Sections 431.042-431.044; or the failure to
63-21 establish or maintain any record or make any report required under
63-22 Section 512(j), (l), or (m) of the federal Act, or the refusal to
63-23 permit access to or verification or copying of any such required
63-24 record;

63-25 (h) the manufacture within this state of any food, drug,
63-26 device, or cosmetic that is adulterated or misbranded;

63-27 (i) the giving of a guaranty or undertaking referred to in
63-28 Section 431.059, which guaranty or undertaking is false, except by
63-29 a person who relied on a guaranty or undertaking to the same effect
63-30 signed by, and containing the name and address of the person
63-31 residing in this state from whom the person received in good faith
63-32 the food, drug, device, or cosmetic; or the giving of a guaranty or
63-33 undertaking referred to in Section 431.059, which guaranty or
63-34 undertaking is false;

63-35 (j) the use, removal, or disposal of a detained or embargoed
63-36 article in violation of Section 431.048;

63-37 (k) the alteration, mutilation, destruction, obliteration,
63-38 or removal of the whole or any part of the labeling of, or the doing
63-39 of any other act with respect to a food, drug, device, or cosmetic,
63-40 if such act is done while such article is held for sale after
63-41 shipment in commerce and results in such article being adulterated
63-42 or misbranded;

63-43 (l)(1) forging, counterfeiting, simulating, or falsely
63-44 representing, or without proper authority using any mark, stamp,
63-45 tag, label, or other identification device authorized or required
63-46 by rules adopted under this chapter or the regulations promulgated
63-47 under the provisions of the federal Act;

63-48 (2) making, selling, disposing of, or keeping in
63-49 possession, control, or custody, or concealing any punch, die,
63-50 plate, stone, or other thing designed to print, imprint, or
63-51 reproduce the trademark, trade name, or other identifying mark,
63-52 imprint, or device of another or any likeness of any of the
63-53 foregoing on any drug or container or labeling thereof so as to
63-54 render such drug a counterfeit drug;

63-55 (3) the doing of any act that causes a drug to be a
63-56 counterfeit drug, or the sale or dispensing, or the holding for sale
63-57 or dispensing, of a counterfeit drug;

63-58 (m) the using by any person to the person's own advantage,
63-59 or revealing, other than to the commissioner, an authorized agent,
63-60 a health authority or to the courts when relevant in any judicial
63-61 proceeding under this chapter, of any information acquired under
63-62 the authority of this chapter concerning any method or process that
63-63 as a trade secret is entitled to protection;

63-64 (n) the using, on the labeling of any drug or device or in
63-65 any advertising relating to such drug or device, of any
63-66 representation or suggestion that approval of an application with
63-67 respect to such drug or device is in effect under Section 431.114 or
63-68 Section 505, 515, or 520(g) of the federal Act, as the case may be,
63-69 or that such drug or device complies with the provisions of such

64-1 sections;

64-2 (o) the using, in labeling, advertising or other sales
64-3 promotion of any reference to any report or analysis furnished in
64-4 compliance with Sections 431.042-431.044 or Section 704 of the
64-5 federal Act;

64-6 (p) in the case of a prescription drug distributed or
64-7 offered for sale in this state, the failure of the manufacturer,
64-8 packer, or distributor of the drug to maintain for transmittal, or
64-9 to transmit, to any practitioner licensed by applicable law to
64-10 administer such drug who makes written request for information as
64-11 to such drug, true and correct copies of all printed matter that is
64-12 required to be included in any package in which that drug is
64-13 distributed or sold, or such other printed matter as is approved
64-14 under the federal Act. Nothing in this subsection shall be
64-15 construed to exempt any person from any labeling requirement
64-16 imposed by or under other provisions of this chapter;

64-17 (q)(1) placing or causing to be placed on any drug or device
64-18 or container of any drug or device, with intent to defraud, the
64-19 trade name or other identifying mark, or imprint of another or any
64-20 likeness of any of the foregoing;

64-21 (2) selling, dispensing, disposing of or causing to be
64-22 sold, dispensed, or disposed of, or concealing or keeping in
64-23 possession, control, or custody, with intent to sell, dispense, or
64-24 dispose of, any drug, device, or any container of any drug or
64-25 device, with knowledge that the trade name or other identifying
64-26 mark or imprint of another or any likeness of any of the foregoing
64-27 has been placed thereon in a manner prohibited by Subdivision (1) of
64-28 this subsection; or

64-29 (3) making, selling, disposing of, causing to be made,
64-30 sold, or disposed of, keeping in possession, control, or custody,
64-31 or concealing with intent to defraud any punch, die, plate, stone,
64-32 or other thing designed to print, imprint, or reproduce the
64-33 trademark, trade name, or other identifying mark, imprint, or
64-34 device of another or any likeness of any of the foregoing on any
64-35 drug or container or labeling of any drug or container so as to
64-36 render such drug a counterfeit drug;

64-37 (r) dispensing or causing to be dispensed a different drug
64-38 in place of the drug ordered or prescribed without the express
64-39 permission in each case of the person ordering or prescribing;

64-40 (s) the failure to register in accordance with Section 510
64-41 of the federal Act, the failure to provide any information required
64-42 by Section 510(j) or (k) of the federal Act, or the failure to
64-43 provide a notice required by Section 510(j)(2) of the federal Act;

64-44 (t)(1) the failure or refusal to:

64-45 (A) comply with any requirement prescribed under
64-46 Section 518 or 520(g) of the federal Act; or

64-47 (B) furnish any notification or other material or
64-48 information required by or under Section 519 or 520(g) of the
64-49 federal Act;

64-50 (2) with respect to any device, the submission of any
64-51 report that is required by or under this chapter that is false or
64-52 misleading in any material respect;

64-53 (u) the movement of a device in violation of an order under
64-54 Section 304(g) of the federal Act or the removal or alteration of
64-55 any mark or label required by the order to identify the device as
64-56 detained;

64-57 (v) the failure to provide the notice required by Section
64-58 412(b) or 412(c), the failure to make the reports required by
64-59 Section 412(d)(1)(B), or the failure to meet the requirements
64-60 prescribed under Section 412(d)(2) of the federal Act;

64-61 (w) except as provided under Subchapter M of this chapter
64-62 and Section 562.1085, Occupations Code, the acceptance by a person
64-63 of an unused prescription or drug, in whole or in part, for the
64-64 purpose of resale, after the prescription or drug has been
64-65 originally dispensed, or sold;

64-66 (x) engaging in the wholesale distribution of drugs or
64-67 operating as a distributor or manufacturer of devices in this state
64-68 without filing a licensing statement with the commissioner as
64-69 required by Section 431.202 or having a license as required by

65-1 Section 431.272, as applicable;

65-2 (y) engaging in the manufacture of food in this state or
65-3 operating as a food wholesaler in this state without having a
65-4 license as required by Section 431.222; or

65-5 (z) unless approved by the United States Food and Drug
65-6 Administration pursuant to the federal Act, the sale, delivery,
65-7 holding, or offering for sale of a self-testing kit designed to
65-8 indicate whether a person has a human immunodeficiency virus
65-9 infection, acquired immune deficiency syndrome, or a related
65-10 disorder or condition.

65-11 SECTION 2.70. (a) Section 461.018(b), Health and Safety
65-12 Code, is amended to read as follows:

65-13 (b) The commission's program under Subsection (a) must
65-14 include:

65-15 (1) establishing and maintaining a list of webpages
65-16 and toll-free "800" telephone numbers of nonprofit entities that
65-17 [number to] provide crisis counseling and referral services to
65-18 families experiencing difficulty as a result of problem or
65-19 compulsive gambling;

65-20 (2) promoting public awareness regarding the
65-21 recognition and prevention of problem or compulsive gambling;

65-22 (3) facilitating, through in-service training and
65-23 other means, the availability of effective assistance programs for
65-24 problem or compulsive gamblers; and

65-25 (4) conducting studies to identify adults and
65-26 juveniles in this state who are, or who are at risk of becoming,
65-27 problem or compulsive gamblers.

65-28 (b) Section 466.251(b), Government Code, and Section
65-29 2001.417(b), Occupations Code, are repealed.

65-30 SECTION 2.71. Section 533.034, Health and Safety Code, is
65-31 amended to read as follows:

65-32 Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED
65-33 SERVICES. (a) The department may cooperate, negotiate, and
65-34 contract with local agencies, hospitals, private organizations and
65-35 foundations, community centers, physicians, and other persons to
65-36 plan, develop, and provide community-based mental health and mental
65-37 retardation services.

65-38 (b) The department may adopt a schedule of initial and
65-39 annual renewal compliance fees for persons that provide services
65-40 under a home and community-based services waiver program for
65-41 persons with mental retardation adopted in accordance with Section
65-42 1915(c) of the federal Social Security Act (42 U.S.C. Section
65-43 1396n), as amended, and that is funded wholly or partly by the
65-44 department and monitored by the department or by a designated local
65-45 authority in accordance with standards adopted by the department.
65-46 This subsection expires September 1, 2005.

65-47 SECTION 2.72. Subchapter B, Chapter 533, Health and Safety
65-48 Code, is amended by adding Section 533.0354 to read as follows:

65-49 Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL
65-50 DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES. (a) A local
65-51 mental health authority shall provide assessment services, crisis
65-52 services, and intensive and comprehensive services using disease
65-53 management practices for adults with bipolar disorder,
65-54 schizophrenia, or clinically severe depression and for children
65-55 with serious emotional illnesses. The local mental health
65-56 authority shall engage an individual with treatment services that
65-57 are:

65-58 (1) ongoing and matched to the needs of the individual
65-59 in type, duration, and intensity;

65-60 (2) focused on a process of recovery designed to allow
65-61 the individual to progress through levels of service;

65-62 (3) guided by evidence-based protocols and a
65-63 strength-based paradigm of service; and

65-64 (4) monitored by a system that holds the local
65-65 authority accountable for specific outcomes, while allowing
65-66 flexibility to maximize local resources.

65-67 (b) The department shall require each local mental health
65-68 authority to incorporate jail diversion strategies into the
65-69 authority's disease management practices for managing adults with

66-1 schizophrenia and bipolar disorder to reduce the involvement of
66-2 those client populations with the criminal justice system.

66-3 (c) The department shall enter into performance contracts
66-4 between the department and each local mental health authority for
66-5 the fiscal years ending August 31, 2004, and August 31, 2005, that
66-6 specify measurable outcomes related to their success in using
66-7 disease management practices to meet the needs of the target
66-8 populations.

66-9 (d) The department shall study the implementation of
66-10 disease management practices, including the jail diversion
66-11 measures, and shall submit to the governor, the lieutenant
66-12 governor, and the speaker of the house of representatives a report
66-13 on the progress in implementing disease management practices and
66-14 jail diversion measures by local mental health authorities. The
66-15 report must be delivered not later than December 31, 2004, and must
66-16 include specific information on:

66-17 (1) the implementation of jail diversion measures
66-18 undertaken; and

66-19 (2) the effect of disparities in per capita funding
66-20 levels among local mental health authorities on the implementation
66-21 and effectiveness of disease management practices and jail
66-22 diversion measures.

66-23 (e) The department may use the fiscal year ending August 31,
66-24 2004, as a transition period for implementing the requirements of
66-25 Subsections (a)-(c).

66-26 SECTION 2.73. (a) Subchapter B, Chapter 533, Health and
66-27 Safety Code, is amended by adding Section 533.049 to read as
66-28 follows:

66-29 Sec. 533.049. PRIVATIZATION OF STATE SCHOOL. (a) After
66-30 August 31, 2004, and before September 1, 2005, the department may
66-31 contract with a private service provider to operate a state school
66-32 only if:

66-33 (1) the Health and Human Services Commission
66-34 determines that the private service provider will operate the state
66-35 school at a cost that is at least 25 percent less than the cost to
66-36 the department to operate the state school;

66-37 (2) the Health and Human Services Commission approves
66-38 the contract;

66-39 (3) the private service provider is required under the
66-40 contract to operate the school at a quality level at least equal to
66-41 the quality level achieved by the department when the department
66-42 operated the school, as measured by the school's most recent
66-43 applicable ICF-MR survey; and

66-44 (4) the state school, when operated under the
66-45 contract, treats a population with the same characteristics and
66-46 need levels as the population treated by the state school when
66-47 operated by the department.

66-48 (b) On or before April 1, 2004, the department shall report
66-49 to the commissioner of health and human services whether the
66-50 department has received a proposal by a private service provider to
66-51 operate a state school. The report must include an evaluation of
66-52 the private service provider's qualifications, experience, and
66-53 financial strength, a determination of whether the provider can
66-54 operate the state school under the same standard of care as the
66-55 department, and an analysis of the projected savings under a
66-56 proposed contract with the provider. The savings analysis must
66-57 include all department costs to operate the state school, including
66-58 costs, such as employee benefits, that are not appropriated to the
66-59 department.

66-60 (c) If the department contracts with a private service
66-61 provider to operate a state school, the department, the Governor's
66-62 Office of Budget and Planning, and the Legislative Budget Board
66-63 shall identify sources of funding that must be transferred to the
66-64 department to fund the contract.

66-65 (d) The department may renew a contract under this section.
66-66 The conditions listed in Subsections (a)(1)-(3) apply to the
66-67 renewal of the contract.

66-68 (b) Section 533.049, Health and Safety Code, as added by
66-69 this section, takes effect September 1, 2004.

67-1 SECTION 2.74. (a) Subchapter B, Chapter 533, Health and
67-2 Safety Code, is amended by adding Section 533.050 to read as
67-3 follows:

67-4 Sec. 533.050. PRIVATIZATION OF STATE MENTAL HOSPITAL. (a)
67-5 After August 31, 2004, and before September 1, 2005, the department
67-6 may contract with a private service provider to operate a state
67-7 mental hospital owned by the department only if:

67-8 (1) the Health and Human Services Commission
67-9 determines that the private service provider will operate the
67-10 hospital at a cost that is at least 25 percent less than the cost to
67-11 the department to operate the hospital;

67-12 (2) the Health and Human Services Commission approves
67-13 the contract;

67-14 (3) the hospital, when operated under the contract,
67-15 treats a population with the same characteristics and acuity levels
67-16 as the population treated at the hospital when operated by the
67-17 department; and

67-18 (4) the private service provider is required under the
67-19 contract to operate the hospital at a quality level at least equal
67-20 to the quality level achieved by the department when the department
67-21 operated the hospital, as measured by the hospital's most recent
67-22 applicable accreditation determination from the Joint Commission
67-23 on Accreditation of Healthcare Organizations (JCAHO).

67-24 (b) On or before April 1, 2004, the department shall report
67-25 to the commissioner of health and human services whether the
67-26 department has received a proposal by a private service provider to
67-27 operate a state mental hospital. The report must include an
67-28 evaluation of the private service provider's qualifications,
67-29 experience, and financial strength, a determination of whether the
67-30 provider can operate the hospital under the same standard of care as
67-31 the department, and an analysis of the projected savings under a
67-32 proposed contract with the provider. The savings analysis must
67-33 include all department costs to operate the hospital, including
67-34 costs, such as employee benefits, that are not appropriated to the
67-35 department.

67-36 (c) If the department contracts with a private service
67-37 provider to operate a state mental hospital, the department, the
67-38 Governor's Office of Budget and Planning, and the Legislative
67-39 Budget Board shall identify sources of funding that must be
67-40 transferred to the department to fund the contract.

67-41 (d) The department may renew a contract under this section.
67-42 The conditions listed in Subsections (a)(1)-(3) apply to the
67-43 renewal of the contract.

67-44 (b) Section 533.050, Health and Safety Code, as added by
67-45 this section, takes effect September 1, 2004.

67-46 SECTION 2.75. (a) Subchapter C, Chapter 533, Health and
67-47 Safety Code, is amended by adding Sections 533.061 and 533.0611 to
67-48 read as follows:

67-49 Sec. 533.061. REQUIRED CONTRACT PROVISIONS. (a) The
67-50 department shall include in a contract with an ICF-MR program
67-51 provider a provision stating that the contract terminates if the
67-52 department imposes a vendor hold on payments made to the facility
67-53 under the medical assistance program under Chapter 32, Human
67-54 Resources Code, three times during an 18-month period.

67-55 (b) The department shall ensure that each provision of a
67-56 contract with an ICF-MR program provider is consistent with
67-57 department and Texas Department of Human Services rules that govern
67-58 the program.

67-59 Sec. 533.0611. SANCTIONS. If the Texas Department of Human
67-60 Services recommends that a vendor hold be imposed on payments made
67-61 to an ICF-MR program provider or that the contract with the ICF-MR
67-62 program provider be terminated, the Texas Department of Mental
67-63 Health and Mental Retardation shall immediately impose the vendor
67-64 hold or terminate the contract, as appropriate, without conducting
67-65 a further investigation or providing the program provider an
67-66 opportunity to take corrective action.

67-67 (b) A rule adopted by the Texas Board of Mental Health and
67-68 Mental Retardation before September 1, 2003, relating to the
67-69 imposition of a vendor hold on payments made to an ICF-MR program

68-1 provider or the cancellation of a contract with an ICF-MR program
 68-2 provider after the imposition of vendor holds, is repealed on
 68-3 September 1, 2003.

68-4 (c) The change in law made by Section 533.061, Health and
 68-5 Safety Code, as added by this section, applies only to a contract
 68-6 entered into with an ICF-MR program provider on or after the
 68-7 effective date of this section. A contract entered into with an
 68-8 ICF-MR program provider before the effective date of this section
 68-9 is governed by the law in effect on the date the contract was
 68-10 entered into, and the former law is continued in effect for that
 68-11 purpose.

68-12 SECTION 2.76. Section 533.084, Health and Safety Code, is
 68-13 amended by adding Subsections (b-1) and (b-2) to read as follows:

68-14 (b-1) Notwithstanding Subsection (b) or any other law, the
 68-15 proceeds from the disposal of any surplus real property by the
 68-16 department that occurs before September 1, 2005:

68-17 (1) are not required to be deposited to the credit of
 68-18 the department in the Texas capital trust fund established under
 68-19 Chapter 2201, Government Code; and

68-20 (2) may be appropriated for any general governmental
 68-21 purpose.

68-22 (b-2) Subsection (b-1) and this subsection expire September
 68-23 1, 2005.

68-24 SECTION 2.77. Subchapter D, Chapter 533, Health and Safety
 68-25 Code, is amended by adding Section 533.0844 to read as follows:

68-26 Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT.

68-27 (a) The mental health community services account is an account in
 68-28 the general revenue fund that may be appropriated only for the
 68-29 provision of mental health services by or under contract with the
 68-30 department.

68-31 (b) The department shall deposit to the credit of the mental
 68-32 health community services account any money donated to the state
 68-33 for inclusion in the account, including life insurance proceeds
 68-34 designated for deposit to the account.

68-35 (c) Interest earned on the mental health community services
 68-36 account shall be credited to the account. The account is exempt
 68-37 from the application of Section 403.095, Government Code.

68-38 SECTION 2.78. Subchapter D, Chapter 533, Health and Safety
 68-39 Code, is amended by adding Section 533.0846 to read as follows:

68-40 Sec. 533.0846. MENTAL RETARDATION COMMUNITY SERVICES

68-41 ACCOUNT. (a) The mental retardation community services account is
 68-42 an account in the general revenue fund that may be appropriated only
 68-43 for the provision of mental retardation services by or under
 68-44 contract with the department.

68-45 (b) The department shall deposit to the credit of the mental
 68-46 retardation community services account any money donated to the
 68-47 state for inclusion in the account, including life insurance
 68-48 proceeds designated for deposit to the account.

68-49 (c) Interest earned on the mental retardation community
 68-50 services account shall be credited to the account. The account is
 68-51 exempt from the application of Section 403.095, Government Code.

68-52 SECTION 2.79. Section 572.0025(f), Health and Safety Code,
 68-53 is amended to read as follows:

68-54 (f) A prospective voluntary patient may not be formally
 68-55 accepted for treatment in a facility unless:

68-56 (1) the facility has a physician's order admitting the
 68-57 prospective patient, which order may be issued orally,
 68-58 electronically, or in writing, signed by the physician, provided
 68-59 that, in the case of an oral order or an electronically transmitted
 68-60 unsigned order, a signed original is presented to the mental health
 68-61 facility within 24 hours of the initial order; the order must be
 68-62 from:

68-63 (A) an admitting physician who has, either in
 68-64 person or through the use of audiovisual or other
 68-65 telecommunications technology, conducted a [an in-person] physical
 68-66 and psychiatric examination within 72 hours of the admission; or

68-67 (B) an admitting physician who has consulted with
 68-68 a physician who has, either in person or through the use of
 68-69 audiovisual or other telecommunications technology, conducted an

69-1 [~~in-person~~] examination within 72 hours of the admission; and
 69-2 (2) the facility administrator or a person designated
 69-3 by the administrator has agreed to accept the prospective patient
 69-4 and has signed a statement to that effect.

69-5 SECTION 2.80. (a) Section 773.050(c), Health and Safety
 69-6 Code, is amended to read as follows:

69-7 (c) The board shall consider the education, training, and
 69-8 experience of allied health professionals in adopting the minimum
 69-9 standards for emergency medical services personnel certification
 69-10 and may establish criteria for interstate reciprocity of emergency
 69-11 medical services personnel. Each out-of-state application for
 69-12 certification must be accompanied by a nonrefundable fee of not
 69-13 more than \$120 [~~\$100~~]. The board may also establish criteria for
 69-14 out-of-country emergency medical services personnel certification.
 69-15 Each out-of-country application for certification must be
 69-16 accompanied by a nonrefundable fee of not more than \$180 [~~\$150~~].

69-17 (b) Section 773.052(a), Health and Safety Code, is amended
 69-18 to read as follows:

69-19 (a) An emergency medical services provider with a specific
 69-20 hardship may apply to the bureau chief for a variance from a rule
 69-21 adopted under this chapter. The board may adopt a fee of not more
 69-22 than \$30 [~~\$25~~] for filing an application for a variance.

69-23 (c) Sections 773.054(c) and (d), Health and Safety Code, are
 69-24 amended to read as follows:

69-25 (c) Each application under Subsection (a)(3) must be
 69-26 accompanied by a nonrefundable fee of not more than \$30 [~~\$25~~] for a
 69-27 program instructor or examiner or \$60 [~~\$50~~] for a course
 69-28 coordinator. The department may not require a fee for a
 69-29 certification from an instructor, examiner, or coordinator who does
 69-30 not receive compensation for providing services.

69-31 (d) Each application under Subsection (a)(2) must be
 69-32 accompanied by a nonrefundable fee of not more than \$30 [~~\$25~~] for a
 69-33 basic course or training program or \$60 [~~\$50~~] for an advanced course
 69-34 or training program. The department may not require a fee for
 69-35 approval of a course or training program if the course coordinator
 69-36 or sponsoring agency does not receive compensation for providing
 69-37 the course or training program.

69-38 (d) Sections 773.055(a), (d), and (e), Health and Safety
 69-39 Code, are amended to read as follows:

69-40 (a) A nonrefundable fee must accompany each application for
 69-41 emergency medical services personnel certification. The fee may
 69-42 not exceed:

69-43 (1) \$90 [~~\$75~~] for an emergency medical
 69-44 technician-paramedic or emergency medical
 69-45 technician-intermediate;

69-46 (2) \$60 [~~\$50~~] for an emergency medical technician or
 69-47 emergency care attendant;

69-48 (3) \$90 [~~\$75~~] for recertification of an emergency
 69-49 medical technician-paramedic or emergency medical
 69-50 technician-intermediate;

69-51 (4) \$60 [~~\$50~~] for recertification of an emergency
 69-52 medical technician or emergency care attendant; or

69-53 (5) \$120 [~~\$100~~] for certification or recertification
 69-54 of a licensed paramedic.

69-55 (d) The department shall furnish a person who fails an
 69-56 examination for certification with an analysis of the person's
 69-57 performance on the examination if requested in writing by that
 69-58 person. The board may adopt rules to allow a person who fails the
 69-59 examination to retake all or part of the examination. A fee of not
 69-60 more than \$30 [~~\$25~~] must accompany each application for
 69-61 reexamination.

69-62 (e) The department shall issue certificates to emergency
 69-63 medical services personnel who meet the minimum standards for
 69-64 personnel certification adopted under Section 773.050. A
 69-65 certificate is valid for four years from the date of issuance. The
 69-66 department shall charge a fee of not more than \$10 [~~\$5~~] to replace a
 69-67 lost certificate.

69-68 (e) Section 773.056(b), Health and Safety Code, is amended
 69-69 to read as follows:

70-1 (b) The department shall issue a certificate to each program
 70-2 instructor, examiner, or course coordinator who meets the minimum
 70-3 standards adopted under Section 773.050. The certificate is valid
 70-4 for two years. The department shall charge a fee of not more than
 70-5 \$10 [~~\$5~~] to replace a lost or stolen certificate.

70-6 (f) Section 773.057(b), Health and Safety Code, is amended
 70-7 to read as follows:

70-8 (b) A nonrefundable application and vehicle fee determined
 70-9 by the board must accompany each application. The application fee
 70-10 may not exceed \$500 [~~\$150~~] for each application and the vehicle fee
 70-11 may not exceed \$180 for each emergency medical services vehicle
 70-12 operated by the provider.

70-13 (g) Section 773.0572, Health and Safety Code, is amended to
 70-14 read as follows:

70-15 Sec. 773.0572. PROVISIONAL LICENSES. The board by rule
 70-16 shall establish conditions under which an emergency medical
 70-17 services provider who fails to meet the minimum standards
 70-18 prescribed by this chapter may be issued a provisional license. The
 70-19 department may issue a provisional license to an emergency medical
 70-20 services provider under this chapter if the department finds that
 70-21 issuing the license would serve the public interest and that the
 70-22 provider meets the requirements of the rules adopted under this
 70-23 section. A nonrefundable fee of not more than \$30 [~~\$25~~] must
 70-24 accompany each application for a provisional license.

70-25 (h) Section 773.0611(c), Health and Safety Code, is amended
 70-26 to read as follows:

70-27 (c) The board shall adopt rules for unannounced inspections
 70-28 authorized under this section. The department or its
 70-29 representative shall perform unannounced inspections in accordance
 70-30 with those rules. An emergency medical services provider shall pay
 70-31 to the department a nonrefundable fee of not more than \$30 [~~\$25~~] if
 70-32 reinspection is necessary to determine compliance with this chapter
 70-33 and the rules adopted under this chapter.

70-34 (i) Section 773.065(c), Health and Safety Code, is amended
 70-35 to read as follows:

70-36 (c) The penalty may not exceed \$7,500 [~~\$1,000~~] for each
 70-37 violation. The board by rule shall establish gradations of
 70-38 penalties in accordance with the relative seriousness of the
 70-39 violation.

70-40 (j) Subchapter C, Chapter 773, Health and Safety Code, is
 70-41 amended by adding Section 773.071 to read as follows:

70-42 Sec. 773.071. FEES. (a) To the extent feasible, the board
 70-43 by rule shall set the fees under this subchapter in amounts
 70-44 necessary for the department to recover the cost of administering
 70-45 this subchapter.

70-46 (b) Subsection (a) does not apply to fees for which Section
 70-47 773.059 prescribes the method for determining the amount of the
 70-48 fees.

70-49 (k) Sections 773.116(b) and (d), Health and Safety Code, are
 70-50 amended to read as follows:

70-51 (b) The board by rule shall set the amount of the fee
 70-52 schedule for initial or continuing designation as a trauma facility
 70-53 according to the number of beds in the health care facility. The
 70-54 amount of the fee may not exceed:

70-55 (1) \$5,000 for a Level I or II facility;

70-56 (2) \$2,500 for a Level III facility; or

70-57 (3) \$1,000 for a Level IV facility.

70-58 (d) To the extent feasible, the board by rule shall set the
 70-59 fee in an amount necessary for the department to recover [A fee
 70-60 under Subsection (c) may not exceed] the cost directly related to
 70-61 designating trauma facilities under this subchapter.

70-62 (l) Section 773.116(c), Health and Safety Code, is
 70-63 repealed.

70-64 (m) The changes in law made by this section relating to
 70-65 administrative penalties apply only to a violation that occurs on
 70-66 or after the effective date of this section. For the purposes of
 70-67 this subsection, an offense is committed before the effective date
 70-68 of this section if any element of the offense occurs before that
 70-69 date. A violation that occurred before the effective date of this

71-1 section is covered by the law in effect when the violation occurred,
 71-2 and the former law is continued in effect for that purpose.

71-3 (n) The changes in law made by this section relating to fees
 71-4 imposed under Chapter 773, Health and Safety Code, apply only to
 71-5 fees for an application filed or an inspection conducted on or after
 71-6 the effective date of this section. A fee for an application filed
 71-7 or an inspection conducted before the effective date of this
 71-8 section is covered by the law in effect when the application was
 71-9 filed or the inspection was conducted, and the former law is
 71-10 continued in effect for that purpose.

71-11 SECTION 2.81. Chapter 22, Human Resources Code, is amended
 71-12 by adding Section 22.040 to read as follows:

71-13 Sec. 22.040. THIRD-PARTY INFORMATION. Notwithstanding any
 71-14 other provision of this code, the department may use information
 71-15 obtained from a third party to verify the assets and resources of a
 71-16 person for purposes of determining the person's eligibility and
 71-17 need for medical assistance, financial assistance, or nutritional
 71-18 assistance. Third-party information includes information obtained
 71-19 from:

71-20 (1) a consumer reporting agency, as defined by Section
 71-21 20.01, Business & Commerce Code;

71-22 (2) an appraisal district; or

71-23 (3) the Texas Department of Transportation's vehicle
 71-24 registration record database.

71-25 SECTION 2.82. (a) Section 31.0031, Human Resources Code,
 71-26 is amended by amending Subsection (g) and adding Subsection (h) to
 71-27 read as follows:

71-28 (g) In this section:

71-29 (1) "Caretaker [~~,"caretaker]~~ relative" means a person
 71-30 who is listed as a relative eligible to receive assistance under 42
 71-31 U.S.C. Section 602(a).

71-32 (2) "Payee" means a person who resides in a household
 71-33 with a dependent child and who is within the degree of relationship
 71-34 with the child that is required of a caretaker, but whose needs are
 71-35 not included in determining the amount of financial assistance
 71-36 provided for the person's household.

71-37 (h) The department shall require each payee to sign a bill
 71-38 of responsibilities that defines the responsibilities of the state
 71-39 and of the payee. The responsibility agreement must require that a
 71-40 payee comply with the requirements of Subsections (d)(1), (2), (5),
 71-41 (6), and (7).

71-42 (b) Beginning September 1, 2003, the Texas Department of
 71-43 Human Services shall require each payee of financial assistance
 71-44 under Chapter 31, Human Resources Code, to enter into a
 71-45 responsibility agreement that complies with the requirements of
 71-46 Section 31.0031, Human Resources Code, as amended by this section,
 71-47 to continue receiving that assistance. Each payee of financial
 71-48 assistance under Chapter 31, Human Resources Code, who received
 71-49 that assistance on behalf of a dependent child before September 1,
 71-50 2003, must enter into a responsibility agreement that complies with
 71-51 the requirements of Section 31.0031, Human Resources Code, as
 71-52 amended by this section, not later than the date of the first
 71-53 eligibility review that occurs after September 1, 2003. The
 71-54 department may not enforce the terms of the new agreement until the
 71-55 payee has an opportunity to enter into the agreement.

71-56 SECTION 2.83. Section 31.0031(c), Human Resources Code, is
 71-57 amended to read as follows:

71-58 (c) The department shall adopt rules governing sanctions
 71-59 and penalties under this section to or for:

71-60 (1) a person who fails to cooperate [~~comply~~] with each
 71-61 applicable requirement of the responsibility agreement prescribed
 71-62 by this section; and

71-63 (2) the family of a person who fails to cooperate with
 71-64 each applicable requirement of the responsibility agreement.

71-65 SECTION 2.84. (a) Sections 31.0032, 31.0033, and 31.0034,
 71-66 Human Resources Code, are amended to read as follows:

71-67 Sec. 31.0032. PAYMENT OF ASSISTANCE FOR PERFORMANCE
 71-68 [PENALTIES AND SANCTIONS]. (a) Except as provided by Section
 71-69 231.115, Family Code, [as added by Chapter 911, Acts of the 75th

~~Legislature, Regular Session, 1997,~~] if after an investigation the department or the Title IV-D agency determines that a person is not cooperating [~~complying~~] with a requirement of the responsibility agreement required under Section 31.0031, the department [~~immediately~~] shall immediately apply a sanction terminating the total amount of financial assistance provided under this chapter to or for the person and the person's family [~~apply appropriate sanctions or penalties regarding the assistance provided to or for that person under this chapter~~].

(a-1) The department shall apply a sanction or penalty imposed under Subsection (a) for a period ending when the person demonstrates cooperation with the requirement of the responsibility agreement for which the sanction was imposed or for a one-month period, whichever is longer.

(b) The department shall immediately notify the caretaker relative, second parent, or payee receiving the financial assistance if the department will not make the financial assistance payment for the period prescribed by Subsection (a-1) because of a person's failure to cooperate with the requirements of the responsibility agreement during a month [~~whether sanctions will be applied under this section~~].

(c) To the extent allowed by federal law, the Health and Human Services Commission or any health and human services agency, as defined by Section 531.001, Government Code, may deny medical assistance for a person who is eligible for financial assistance but to whom that assistance is not paid because of the person's failure to cooperate. Medical assistance to the person's family may not be denied for the person's failure to cooperate. Medical assistance may not be denied to a person receiving assistance under this chapter who is under the age of 19, a pregnant adult, or any other person who may not be denied medical assistance under federal law.

(d) This section does not prohibit the Texas Workforce Commission, the Health and Human Services Commission, or any health and human services agency, as defined by Section 531.001, Government Code, [~~department~~] from providing [~~medical assistance,~~] child care[~~7~~] or any other related social or support services for an individual who is eligible for financial assistance but to whom that assistance is not paid because of the individual's failure to cooperate [~~subject to sanctions or penalties under this chapter~~].

(e) The department by rule shall establish procedures to determine whether a person has cooperated with the requirements of the responsibility agreement.

Sec. 31.0033. GOOD CAUSE [~~NONCOMPLIANCE~~] HEARING FOR FAILURE TO COOPERATE. (a) If the department or Title IV-D agency determines that a person has failed to cooperate with the requirements of the responsibility agreement under Section 31.0031 [~~penalties and sanctions should be applied under Section 31.0032~~], the person determined to have failed to cooperate [~~not complied~~] or, if different, the person receiving the financial assistance may request a hearing to show good cause for failure to cooperate [~~noncompliance~~] not later than the 13th day after the date the [~~on which~~] notice is sent [~~received~~] under Section 31.0032. If the person determined to have failed to cooperate or, if different, the person receiving the financial assistance requests a hearing to show good cause not later than the 13th day after the date on which the notice is sent under Section 31.0032, the department may not withhold or reduce the payment of financial assistance until the department determines whether the person had good cause for the person's failure to cooperate. On a showing of good cause for failure to cooperate [~~noncompliance~~], the person may receive a financial assistance payment for the period in which the person failed to cooperate, but had good cause for that failure to cooperate [~~sanctions may not be imposed~~].

(b) The department shall promptly conduct a hearing if a timely request is made under Subsection (a).

(c) If the department finds that good cause for the person's failure to cooperate [~~noncompliance~~] was not shown at a hearing, the department may not make a financial assistance payment in any

73-1 amount to the person for the person or the person's family for the
73-2 period prescribed by Section 31.0032(a-1) [~~shall apply appropriate~~
73-3 ~~sanctions or penalties to or for that person until the department,~~
73-4 ~~or the Title IV-D agency in a Title IV-D case, determines that the~~
73-5 ~~person is in compliance with the terms of the responsibility~~
73-6 ~~agreement]~~.

73-7 (d) The department by rule shall establish criteria for good
73-8 cause failure to cooperate [~~noncompliance~~] and guidelines for what
73-9 constitutes a good faith effort on behalf of a recipient under this
73-10 section.

73-11 (e) Except as provided by a waiver or modification granted
73-12 under Section 31.0322, a person has good cause for failing or
73-13 refusing to cooperate with the requirement of the responsibility
73-14 agreement under Section 31.0031(d)(1) only if:

73-15 (1) the person's cooperation would be harmful to the
73-16 physical, mental, or emotional health of the person or the person's
73-17 dependent child; or

73-18 (2) the person's noncooperation resulted from other
73-19 circumstances the person could not control.

73-20 Sec. 31.0034. ANNUAL REPORT. The department shall prepare
73-21 and submit an annual report to the legislature that contains
73-22 statistical information regarding persons who are applying for or
73-23 receiving financial assistance or services under this chapter,
73-24 including the number of persons receiving assistance, the type of
73-25 assistance those persons are receiving, and the length of time
73-26 those persons have been receiving the assistance. The report also
73-27 must contain information on:

73-28 (1) the number of persons to whom [~~sanctions and~~] time
73-29 limits apply;

73-30 (2) the number of persons under each time limit
73-31 category;

73-32 (3) the number of persons who are exempt from
73-33 participation under Section 31.012(c);

73-34 (4) the number of persons who were receiving financial
73-35 assistance under this chapter but are no longer eligible to receive
73-36 that assistance because they failed to cooperate [~~comply~~] with the
73-37 requirements prescribed by Section 31.0031;

73-38 (5) the number of persons who are no longer eligible to
73-39 receive financial assistance or transitional benefits under this
73-40 chapter because:

73-41 (A) the person's household income has increased
73-42 due to employment; or

73-43 (B) the person has exhausted the person's
73-44 benefits under this chapter; [~~and~~]

73-45 (6) the number of persons receiving child care, job
73-46 training, or other support services designed to assist the
73-47 transition to self-sufficiency; and

73-48 (7) the number of persons who were eligible to receive
73-49 financial assistance under this chapter for each one-month period
73-50 but to whom that financial assistance was not paid because the
73-51 person failed to cooperate with the requirements of the
73-52 responsibility agreement under Section 31.0031.

73-53 (b) Subchapter A, Chapter 31, Human Resources Code, is
73-54 amended by adding Section 31.00331 to read as follows:

73-55 Sec. 31.00331. ADDITIONAL PENALTY FOR CONTINUOUS FAILURE TO
73-56 COOPERATE. A person who fails to cooperate with the responsibility
73-57 agreement for two consecutive months becomes ineligible for
73-58 financial assistance for the person or the person's family. The
73-59 person may reapply for financial assistance, but must cooperate
73-60 with the requirements of the responsibility agreement for a
73-61 one-month period before receiving an assistance payment for that
73-62 month.

73-63 (c) The changes in law made by this section apply to a person
73-64 receiving financial assistance under Chapter 31, Human Resources
73-65 Code, on or after the effective date of this section, regardless of
73-66 the date on which eligibility for financial assistance was
73-67 determined.

73-68 SECTION 2.85. Subchapter A, Chapter 31, Human Resources
73-69 Code, is amended by adding Section 31.0038 to read as follows:

Sec. 31.0038. TEMPORARY EXCLUSION OF NEW SPOUSE'S INCOME.

(a) Subject to the limitations prescribed by Subsection (b), income earned by an individual who marries an individual receiving financial assistance at the time of the marriage may not be considered by the department during the six-month period following the date of the marriage for purposes of determining:

(1) the amount of financial assistance granted to an individual under this chapter for the support of dependent children; or

(2) whether the family meets household income and resource requirements for financial assistance under this chapter.

(b) To be eligible for the income disregard provided by Subsection (a), the combined income of the individual receiving financial assistance and the new spouse cannot exceed 200 percent of the federal poverty level for their family size.

SECTION 2.86. Sections 31.012(b) and (c), Human Resources Code, are amended to read as follows:

(b) The department by rule shall establish criteria for good cause failure to cooperate [~~noncompliance~~] and for notification procedures regarding participation in work or employment activities under this section.

(c) A person who is the caretaker of a physically or mentally disabled child who requires the caretaker's presence is not required to participate in a program under this section. A [~~Effective January 1, 2000, a single person who is the caretaker of a child is not required to participate in a program under this section until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of three. Effective September 1, 2000, a single person who is the caretaker of a child is exempt until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of two. Effective September 1, 2001, a~~] single person who is the caretaker of a child is exempt until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of one. Notwithstanding Sections 31.0035(b) and 32.0255(b), the department shall provide to a person who is exempt under this subsection and who voluntarily participates in a program under Subsection (a)(2) six months of transitional benefits in addition to the applicable limit prescribed by Section 31.0065.

SECTION 2.87. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.015 to read as follows:

Sec. 31.015. HEALTHY MARRIAGE DEVELOPMENT PROGRAM. (a) Subject to available federal funding, the department shall develop and implement a healthy marriage development program for recipients of financial assistance under this chapter.

(b) The healthy marriage development program shall promote and provide three instructional courses on the following topics:

(1) premarital counseling for engaged couples and marriage counseling for married couples that includes skill development for:

- (A) anger resolution;
- (B) family violence prevention;
- (C) communication;
- (D) honoring your spouse; and
- (E) managing a budget;

(2) physical fitness and active lifestyles and nutrition and cooking, including:

(A) abstinence for all unmarried persons, including abstinence for persons who have previously been married; and

(B) nutrition on a budget; and

(3) parenting skills, including parenting skills for character development, academic success, and stepchildren.

(c) The department shall provide to a recipient of financial assistance under this chapter additional financial assistance of not more than \$20 for the recipient's participation in a course offered through the healthy marriage development program up to a maximum payment of \$60 a month.

75-1 (d) The department may provide the courses or may contract
 75-2 with any person, including a community or faith-based organization,
 75-3 for the provision of the courses. The department must provide all
 75-4 participants with an option of attending courses in a
 75-5 non-faith-based organization.

75-6 (e) The department shall develop rules as necessary for the
 75-7 administration of the healthy marriage development program.

75-8 (f) The department must ensure that the courses provided by
 75-9 the department and courses provided through contracts with other
 75-10 organizations will be sensitive to the needs of individuals from
 75-11 different religions, races, and genders.

75-12 SECTION 2.88. (a) Subchapter A, Chapter 302, Labor Code,
 75-13 is amended by adding Sections 302.0025, 302.0026, 302.0036,
 75-14 302.0037, and 302.0038 to read as follows:

75-15 Sec. 302.0025. EMPLOYMENT PLAN AND POSTEMPLOYMENT
 75-16 STRATEGIES. (a) The commission shall ensure that an individual
 75-17 employment plan developed for a recipient of financial assistance
 75-18 participating in an employment program under Chapter 31, Human
 75-19 Resources Code, includes specific postemployment strategies to
 75-20 assist the recipient in making a transition to stable employment at
 75-21 a wage that enables the recipient and the recipient's family to
 75-22 maintain self-sufficiency.

75-23 (b) The individual employment plan must:
 75-24 (1) consider a recipient's individual circumstances
 75-25 and needs in determining the recipient's initial job placement;
 75-26 (2) identify a target wage that enables the recipient
 75-27 and the recipient's family to maintain self-sufficiency;
 75-28 (3) provide specific postemployment goals and include
 75-29 methods and time frames by which the recipient is to achieve those
 75-30 goals; and
 75-31 (4) refer the recipient to additional educational and
 75-32 training opportunities.

75-33 Sec. 302.0026. EMPLOYMENT SERVICES REFERRAL PROGRAM. (a)
 75-34 The commission and local workforce development boards shall develop
 75-35 an employment services referral program for recipients of financial
 75-36 assistance who participate in employment programs under Chapter 31,
 75-37 Human Resources Code, and have, in comparison to other recipients,
 75-38 higher levels of barriers to employment. The referral program must
 75-39 be designed to provide to a recipient referrals to preemployment
 75-40 and postemployment services offered by community-based
 75-41 organizations.

75-42 (b) In developing the referral program, the commission and
 75-43 local workforce development boards shall, subject to the
 75-44 availability of funds, coordinate partnerships and contract with
 75-45 community-based organizations that provide employment services
 75-46 specifically for persons with high levels of barriers to
 75-47 employment.

75-48 Sec. 302.0036. TRANSPORTATION ASSISTANCE. (a) To the
 75-49 extent funds are available, the commission and local workforce
 75-50 development boards shall provide transportation assistance to
 75-51 recipients of financial assistance participating in employment
 75-52 programs under Chapter 31, Human Resources Code, that enables the
 75-53 recipients to maintain a stable work history and attain financial
 75-54 stability and self-sufficiency.

75-55 (b) The commission and local workforce development boards
 75-56 may provide the assistance described by Subsection (a) by
 75-57 implementing new initiatives or expanding existing initiatives
 75-58 that provide transportation assistance to recipients of financial
 75-59 assistance for whom transportation is a barrier to employment.

75-60 Sec. 302.0037. MAXIMIZING FEDERAL FUNDS FOR TRANSPORTATION
 75-61 ASSISTANCE. (a) The commission and local workforce development
 75-62 boards shall maximize the state's receipt of federal funds
 75-63 available to provide transportation assistance to recipients of
 75-64 financial assistance participating in employment programs under
 75-65 Chapter 31, Human Resources Code.

75-66 (b) The commission and local workforce development boards
 75-67 may, within any applicable appropriation limits, take any action
 75-68 required by federal law to receive federal funds to provide
 75-69 transportation assistance.

76-1 Sec. 302.0038. HOUSING RESOURCES FOR CERTAIN RECIPIENTS OF
 76-2 FINANCIAL ASSISTANCE. (a) The commission, in cooperation with
 76-3 local workforce development boards, shall, for a recipient of
 76-4 financial assistance participating in an employment program under
 76-5 Chapter 31, Human Resources Code:

76-6 (1) identify unmet housing needs and assess whether
 76-7 those needs are barriers to the recipient's full participation in
 76-8 the workforce and attainment of financial stability and
 76-9 self-sufficiency; and

76-10 (2) develop a service plan that takes into
 76-11 consideration the recipient's unmet housing needs.

76-12 (b) The commission by rule shall develop and implement a
 76-13 program through which a recipient identified under Subsection (a)
 76-14 as having unmet housing needs is referred by the commission or local
 76-15 workforce development board to agencies and organizations
 76-16 providing housing programs and services and connected to other
 76-17 housing resources. To provide those referrals and connections, the
 76-18 commission shall establish collaborative partnerships between:

76-19 (1) the commission;

76-20 (2) local workforce development boards;

76-21 (3) municipal, county, and regional housing
 76-22 authorities; and

76-23 (4) sponsors of local housing programs and services.

76-24 (c) The commission shall ensure that commission and local
 76-25 workforce development board staff members receive training
 76-26 regarding the programs and services offered by agencies and
 76-27 organizations with which the commission establishes partnerships
 76-28 under Subsection (b) and other available housing resources.

76-29 (b) Not later than December 1, 2003, the Texas Workforce
 76-30 Commission and local workforce development boards shall develop the
 76-31 employment services referral program required by Section 302.0026,
 76-32 Labor Code, as added by this section.

76-33 (c) Not later than December 1, 2003, the Texas Workforce
 76-34 Commission shall develop and implement the program required by
 76-35 Section 302.0038(b), Labor Code, as added by this section.

76-36 SECTION 2.89. Section 302.011, Labor Code, is amended to
 76-37 read as follows:

76-38 Sec. 302.011. POSTEMPLOYMENT CASE MANAGEMENT AND
 76-39 MENTORING. The commission shall encourage local workforce
 76-40 development boards to provide postemployment case management
 76-41 services for and use mentoring techniques to assist recipients of
 76-42 financial assistance who participate in employment programs under
 76-43 Chapter 31, Human Resources Code, and have, in comparison to other
 76-44 recipients, higher levels of barriers to employment. The case
 76-45 management services and mentoring techniques must be designed to
 76-46 increase the recipient's potential for wage growth and development
 76-47 of a stable employment history.

76-48 SECTION 2.90. Subchapter B, Chapter 32, Human Resources
 76-49 Code, is amended by adding Section 32.0212 to read as follows:

76-50 Sec. 32.0212. DELIVERY OF MEDICAL ASSISTANCE.
 76-51 Notwithstanding any other law and subject to Section 533.0025,
 76-52 Government Code, the department shall provide medical assistance
 76-53 for acute care through the Medicaid managed care system implemented
 76-54 under Chapter 533, Government Code.

76-55 SECTION 2.91. Section 32.024(i), Human Resources Code, is
 76-56 amended to read as follows:

76-57 (i) The department in its adoption of rules ~~may~~ [shall]
 76-58 establish a medically needy program that serves pregnant women,
 76-59 children, and caretakers who have high medical expenses, subject to
 76-60 availability of appropriated funds.

76-61 SECTION 2.92. (a) Section 32.024, Human Resources Code, is
 76-62 amended by adding Subsections (t-1), (z), and (z-1) to read as
 76-63 follows:

76-64 (t-1) The department, in its rules governing the medical
 76-65 transportation program, may not prohibit a recipient of medical
 76-66 assistance from receiving transportation services through the
 76-67 program to obtain renal dialysis treatment on the basis that the
 76-68 recipient resides in a nursing facility.

76-69 (z) In its rules and standards governing the vendor drug

77-1 program, the department, to the extent allowed by federal law and if
 77-2 the department determines the policy to be cost-effective, may
 77-3 ensure that a recipient of prescription drug benefits under the
 77-4 medical assistance program does not, unless authorized by the
 77-5 department in consultation with the recipient's attending
 77-6 physician or advanced practice nurse, receive under the medical
 77-7 assistance program:

77-8 (1) more than four different outpatient brand-name
 77-9 prescription drugs during a month; or

77-10 (2) more than a 34-day supply of a brand-name
 77-11 prescription drug at any one time.

77-12 (z-1) Subsection (z) does not affect any other limit on
 77-13 prescription medications otherwise prescribed by department rule.

77-14 (b) Section 32.024(z), Human Resources Code, as added by
 77-15 this section, applies to a person receiving medical assistance on
 77-16 or after the effective date of this section regardless of the date
 77-17 on which the person began receiving that medical assistance.

77-18 SECTION 2.93. Section 32.025(e), Human Resources Code, is
 77-19 amended to read as follows:

77-20 (e) The department shall permit an application requesting
 77-21 medical assistance for a child under 19 years of age to be conducted
 77-22 by mail instead of through a personal appearance at a department
 77-23 office, unless the department determines that the information
 77-24 needed to verify eligibility cannot be obtained in that manner. The
 77-25 department may by rule develop procedures requiring an application
 77-26 for a child described by this subsection to be conducted through a
 77-27 personal interview with a department representative if the
 77-28 department determines that information needed to verify
 77-29 eligibility cannot be obtained in any other manner.

77-30 SECTION 2.94. Section 32.026, Human Resources Code, is
 77-31 amended by amending Subsection (e) and adding Subsection (g) to
 77-32 read as follows:

77-33 (e) The department shall permit a recertification review of
 77-34 the eligibility and need for medical assistance of a child under 19
 77-35 years of age to be conducted by a person-to-person telephone
 77-36 interview or through a combination of a telephone interview and
 77-37 mail correspondence instead of through a personal appearance at a
 77-38 department office, unless the department determines that the
 77-39 information needed to verify eligibility cannot be obtained in that
 77-40 manner. The department may by rule develop procedures requiring a
 77-41 recertification review of a child described by this subsection to
 77-42 be conducted through a personal interview with a department
 77-43 representative if the department determines that information
 77-44 needed to verify eligibility cannot be obtained in any other
 77-45 manner.

77-46 (g) If a person is applying for long-term care services
 77-47 through the medical assistance program, the department may not
 77-48 determine and certify the person's eligibility and need for medical
 77-49 assistance unless the person has applied for and obtained any
 77-50 benefits and services for which the person is eligible through the
 77-51 Department of Veterans Affairs.

77-52 SECTION 2.95. (a) Section 32.0315(a), Human Resources
 77-53 Code, is amended to read as follows:

77-54 (a) Subject to appropriated state funds, the [The]
 77-55 department shall establish procedures and formulas for the
 77-56 allocation of federal medical assistance funds that are directed to
 77-57 be used to support graduate medical education in connection with
 77-58 the medical assistance program.

77-59 (b) Sections 32.0315(d)-(h), Human Resources Code, are
 77-60 repealed.

77-61 SECTION 2.96. Section 10(c), Chapter 584, Acts of the 77th
 77-62 Legislature, Regular Session, 2001, is amended to read as follows:

77-63 (c) The Health and Human Services Commission or the
 77-64 appropriate state agency operating part of the medical assistance
 77-65 program under Chapter 32, Human Resources Code, shall adopt rules
 77-66 required by Section 32.0261, Human Resources Code, as added by this
 77-67 Act, so that the rules take effect in accordance with that section
 77-68 not earlier than September 1, 2002, or later than September 1, 2005
 77-69 [June 1, 2003]. The rules must provide for a 12-month period of

78-1 continuous eligibility in accordance with that section for a child
78-2 whose initial or continued eligibility is determined on or after
78-3 the effective date of the rules.

78-4 SECTION 2.97. (a) Section 32.028, Human Resources Code, is
78-5 amended by amending Subsection (g) and adding Subsections (i), (j),
78-6 (k), and (l) to read as follows:

78-7 (g) Subject to Subsection (i), the [The] Health and Human
78-8 Services Commission shall ensure that the rules governing the
78-9 determination of rates paid for nursing home services improve the
78-10 quality of care by:

78-11 (1) providing a program offering incentives for
78-12 increasing direct care staff and direct care wages and benefits,
78-13 but only to the extent that appropriated funds are available after
78-14 money is allocated to base rate reimbursements as determined by the
78-15 Health and Human Services Commission's nursing facility rate
78-16 setting methodologies; and

78-17 (2) if appropriated funds are available after money is
78-18 allocated for payment of incentive-based rates under Subdivision
78-19 (1), providing incentives that incorporate the use of a quality of
78-20 care index, a customer satisfaction index, and a resolved
78-21 complaints index developed by the commission.

78-22 (i) The Health and Human Services Commission shall ensure
78-23 that rules governing the incentives program described by Subsection
78-24 (g)(1):

78-25 (1) provide that participation in the program by a
78-26 nursing home is voluntary;

78-27 (2) do not impose on a nursing home not participating
78-28 in the program a minimum spending requirement for direct care staff
78-29 wages and benefits; and

78-30 (3) do not set a base rate for a nursing home
78-31 participating in the program that is more than the base rate for a
78-32 nursing home participation in the program.

78-33 (j) The Health and Human Services Commission shall adopt
78-34 rules governing the determination of the amount of reimbursement or
78-35 credit for restocking drugs under Section 562.1085, Occupations
78-36 Code, that recognize the costs of processing the drugs, including
78-37 the cost of:

78-38 (1) reporting the drug's prescription number and date
78-39 of original issue;

78-40 (2) verifying whether the drug's expiration date or
78-41 the drug's recommended shelf life exceeds 120 days;

78-42 (3) determining the source of payment; and

78-43 (4) preparing credit records.

78-44 (k) The commission shall provide an electronic system for
78-45 the issuance of credit for returned drugs that complies with the
78-46 Health Insurance Portability and Accountability Act of 1996, Pub.
78-47 L. No. 104-191, as amended. To ensure a cost-effective system, only
78-48 drugs for which the credit exceeds the cost of the restocking fee by
78-49 at least 100 percent are eligible for credit.

78-50 (1) The commission shall establish a task force to develop
78-51 the rules necessary to implement Subsections (j) and (k). The task
78-52 force must include representatives of nursing facilities and
78-53 pharmacists.

78-54 (b) The Health and Human Services Commission shall adopt the
78-55 rules required by Sections 32.028(j) and (k), Human Resources Code,
78-56 as added by this section, not later than December 1, 2003.

78-57 SECTION 2.98. Subchapter B, Chapter 32, Human Resources
78-58 Code, is amended by adding Section 32.0291 to read as follows:

78-59 Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS.

78-60 (a) Notwithstanding any other law, the department may:

78-61 (1) perform a prepayment review of a claim for
78-62 reimbursement under the medical assistance program to determine
78-63 whether the claim involves fraud or abuse; and

78-64 (2) as necessary to perform that review, withhold
78-65 payment of the claim for not more than five working days without
78-66 notice to the person submitting the claim.

78-67 (b) Notwithstanding any other law, the department may
78-68 impose a postpayment hold on payment of future claims submitted by a
78-69 provider if the department has reliable evidence that the provider

79-1 has committed fraud or wilful misrepresentation regarding a claim
 79-2 for reimbursement under the medical assistance program. The
 79-3 department must notify the provider of the postpayment hold not
 79-4 later than the fifth working day after the date the hold is imposed.

79-5 (c) On timely written request by a provider subject to a
 79-6 postpayment hold under Subsection (b), the department shall file a
 79-7 request with the State Office of Administrative Hearings for an
 79-8 expedited administrative hearing regarding the hold. The provider
 79-9 must request an expedited hearing under this subsection not later
 79-10 than the 10th day after the date the provider receives notice from
 79-11 the department under Subsection (b). The department shall
 79-12 discontinue the hold unless the department makes a prima facie
 79-13 showing at the hearing that the evidence relied on by the department
 79-14 in imposing the hold is relevant, credible, and material to the
 79-15 issue of fraud or wilful misrepresentation.

79-16 (d) The department shall adopt rules that allow a provider
 79-17 subject to a postpayment hold under Subsection (b) to seek an
 79-18 informal resolution of the issues identified by the department in
 79-19 the notice provided under that subsection. A provider must seek an
 79-20 informal resolution under this subsection not later than the
 79-21 deadline prescribed by Subsection (c). A provider's decision to
 79-22 seek an informal resolution under this subsection does not extend
 79-23 the time by which the provider must request an expedited
 79-24 administrative hearing under Subsection (c). However, a hearing
 79-25 initiated under Subsection (c) shall be stayed at the department's
 79-26 request until the informal resolution process is completed.

79-27 SECTION 2.99. Section 32.032, Human Resources Code, is
 79-28 amended to read as follows:

79-29 Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE.
 79-30 The department shall adopt reasonable rules for minimizing the
 79-31 opportunity for fraud and abuse, for establishing and maintaining
 79-32 methods for detecting and identifying situations in which a
 79-33 question of fraud or abuse in the program may exist, and for
 79-34 referring cases where fraud or abuse appears to exist to the
 79-35 appropriate law enforcement agencies for prosecution.

79-36 SECTION 2.100. Section 32.0321, Human Resources Code, is
 79-37 amended to read as follows:

79-38 Sec. 32.0321. SURETY BOND. (a) The department by rule may
 79-39 require each provider of medical assistance in a provider type that
 79-40 has demonstrated significant potential for fraud or abuse to file
 79-41 with the department a surety bond in a reasonable amount. The
 79-42 department by rule shall require a provider of medical assistance
 79-43 to file with the department a surety bond in a reasonable amount if
 79-44 the department identifies a pattern of suspected fraud or abuse
 79-45 involving criminal conduct relating to the provider's services
 79-46 under the medical assistance program that indicates the need for
 79-47 protection against potential future acts of fraud or abuse.

79-48 (b) The bond under Subsection (a) must be payable to the
 79-49 department to compensate the department for damages resulting from
 79-50 or penalties or fines imposed in connection with an act of fraud or
 79-51 abuse committed by the provider under the medical assistance
 79-52 program.

79-53 (c) Subject to Subsection (d) or (e), the department by rule
 79-54 may require each provider of medical assistance that establishes a
 79-55 resident's trust fund account to post a surety bond to secure the
 79-56 account. The bond must be payable to the department to compensate
 79-57 residents of the bonded provider for trust funds that are lost,
 79-58 stolen, or otherwise unaccounted for if the provider does not repay
 79-59 any deficiency in a resident's trust fund account to the person
 79-60 legally entitled to receive the funds.

79-61 (d) The department may not require the amount of a surety
 79-62 bond posted for a single facility provider under Subsection (c) to
 79-63 exceed the average of the total average monthly balance of all the
 79-64 provider's resident trust fund accounts for the 12-month period
 79-65 preceding the bond issuance or renewal date.

79-66 (e) If an employee of a provider of medical assistance is
 79-67 responsible for the loss of funds in a resident's trust fund
 79-68 account, the resident, the resident's family, and the resident's
 79-69 legal representative are not obligated to make any payments to the

80-1 provider that would have been made out of the trust fund had the
80-2 loss not occurred.

80-3 SECTION 2.101. (a) Subchapter B, Chapter 32, Human
80-4 Resources Code, is amended by adding Section 32.0423 to read as
80-5 follows:

80-6 Sec. 32.0423. RECOVERY OF REIMBURSEMENTS FROM HEALTH
80-7 COVERAGE PROVIDERS. To the extent allowed by federal law, a health
80-8 care service provider must seek reimbursement from available
80-9 third-party health coverage or insurance that the provider knows
80-10 about before billing the medical assistance program.

80-11 (b) Section 32.0423, Human Resources Code, as added by this
80-12 section, applies to a person receiving medical assistance on or
80-13 after the effective date of this section regardless of the date on
80-14 which the person began receiving that medical assistance.

80-15 SECTION 2.102. (a) Subchapter B, Chapter 32, Human
80-16 Resources Code, is amended by adding Section 32.0462 to read as
80-17 follows:

80-18 Sec. 32.0462. MEDICATIONS AND MEDICAL SUPPLIES. The
80-19 department may adopt rules establishing procedures for the purchase
80-20 and distribution of medically necessary, over-the-counter
80-21 medications and medical supplies under the medical assistance
80-22 program that were previously being provided by prescription if the
80-23 department determines it is more cost-effective than obtaining
80-24 those medications and medical supplies through a prescription.

80-25 (b) Not later than January 1, 2004, the Health and Human
80-26 Services Commission shall submit a report to the clerks of the
80-27 standing committees of the senate and house of representatives with
80-28 jurisdiction over the state Medicaid program describing the status
80-29 of any cost savings generated by purchasing over-the-counter
80-30 medications and medical supplies as provided by Section 32.0462,
80-31 Human Resources Code, as added by this section. The report must be
80-32 updated not later than January 1, 2005.

80-33 SECTION 2.103. Section 32.050, Human Resources Code, is
80-34 amended by adding Subsections (d), (e), and (f) to read as follows:

80-35 (d) Except as provided by Subsection (e), a nursing
80-36 facility, a home health services provider, or any other similar
80-37 long-term care services provider that is Medicare-certified and
80-38 provides care to individuals who are eligible for Medicare must:

80-39 (1) seek reimbursement from Medicare before billing
80-40 the medical assistance program for services provided to an
80-41 individual identified under Subsection (a); and

80-42 (2) as directed by the department, appeal Medicare
80-43 claim denials for payment services provided to an individual
80-44 identified under Subsection (a).

80-45 (e) A home health services provider is not required to seek
80-46 reimbursement from Medicare before billing the medical assistance
80-47 program for services provided to a person who is eligible for
80-48 Medicare and who:

80-49 (1) has been determined as not being homebound; or
80-50 (2) meets other criteria determined by the department.

80-51 (f) If the Medicare reimbursement rate for a service
80-52 provided to an individual identified under Subsection (a) exceeds
80-53 the medical assistance reimbursement rate for a comparable service,
80-54 the medical assistance program may not pay a Medicare coinsurance
80-55 or deductible amount for that service.

80-56 SECTION 2.104. (a) Subchapter B, Chapter 32, Human
80-57 Resources Code, is amended by adding Section 32.060 to read as
80-58 follows:

80-59 Sec. 32.060. NURSING FACILITY QUALITY ASSURANCE TEAM. (a)
80-60 The nursing facility quality assurance team is established to make
80-61 recommendations to the department designed to promote high-quality
80-62 care for residents of nursing facilities.

80-63 (b) The team is composed of:

80-64 (1) nine members appointed by the governor as follows:
80-65 (A) two physicians with expertise in providing
80-66 long-term care;

80-67 (B) one registered nurse with expertise in
80-68 providing long-term care;

80-69 (C) three nursing facility advocates not

81-1 affiliated with the nursing facility industry; and
 81-2 (D) three representatives of the nursing
 81-3 facility industry; and

81-4 (2) the state long-term care ombudsman, who serves as
 81-5 an ex officio, nonvoting member of the team.

81-6 (c) The governor shall designate a member of the team, other
 81-7 that the state long-term care ombudsman, to serve as presiding
 81-8 officer. The members of the team shall elect any other necessary
 81-9 officers.

81-10 (d) The team shall meet at the call of the presiding
 81-11 officer.

81-12 (e) A member of the team serves at the will of the governor.

81-13 (f) A member of the team may not receive compensation for
 81-14 serving on the team but is entitled to reimbursement for travel
 81-15 expenses incurred by the member while conducting the business of
 81-16 the team as provided by the General Appropriations Act.

81-17 (g) The team shall:

81-18 (1) develop and recommend clearly defined minimum
 81-19 standards to be considered for inclusion in contracts between the
 81-20 department and nursing facilities for the delivery of medical
 81-21 assistance under this chapter that are designed to:

81-22 (A) ensure that the care provided by nursing
 81-23 facilities to residents who are recipients of medical assistance
 81-24 meets or exceeds the minimum acceptable standard of care; and

81-25 (B) encourage nursing facilities to provide the
 81-26 highest quality of care to those residents; and

81-27 (2) develop and recommend improvements to consumers'
 81-28 access to information regarding the quality of care provided by
 81-29 nursing facilities that contract with the department to provide
 81-30 medical assistance, including improvements in:

81-31 (A) the types and amounts of information to which
 81-32 consumers have access, such as expanding the types and amounts of
 81-33 information available through the department's Internet website;
 81-34 and

81-35 (B) the department's data systems that compile
 81-36 nursing facilities' inspection or survey data and other data
 81-37 relating to quality of care in nursing facilities.

81-38 (h) In developing minimum standards for contracts as
 81-39 required by Subsection (g)(1), the team shall:

81-40 (1) study the risk factors identified by the Texas
 81-41 Department of Insurance as contributing to lawsuits against nursing
 81-42 facilities;

81-43 (2) consider for inclusion in the minimum standards:

81-44 (A) the practices the Texas Department of
 81-45 Insurance recommends nursing facilities adopt to reduce the
 81-46 likelihood of those lawsuits; and

81-47 (B) other standards designed to improve the
 81-48 quality of care;

81-49 (3) focus on a minimum number of critical standards
 81-50 necessary to identify nursing facilities with poor quality services
 81-51 that should not be awarded contracts for the delivery of medical
 81-52 assistance; and

81-53 (4) with the assistance of the department, assess the
 81-54 potential cost impacts on providers necessary to meet the minimum
 81-55 standards, and the commensurate fiscal impact on the department's
 81-56 appropriations requirement.

81-57 (i) The department shall ensure the accuracy of information
 81-58 provided to the team for use by the team in performing the team's
 81-59 duties under this section. The Health and Human Services
 81-60 Commission shall provide administrative support and resources to
 81-61 the team and request additional administrative support and
 81-62 resources from health and human services agencies as necessary.

81-63 (b) The governor shall appoint the members of the nursing
 81-64 facility quality assurance team established under Section 32.060,
 81-65 Human Resources Code, as added by this section, not later than
 81-66 January 1, 2004.

81-67 (c) The nursing facility quality assurance team shall
 81-68 develop and make the recommendations required by Section 32.060,
 81-69 Human Resources Code, as added by this section, not later than May

82-1 1, 2004.

82-2 (d) The nursing facility quality assurance team shall
82-3 report on its work and recommendations to the governor and the
82-4 Legislative Budget Board no later than October 1, 2004, for
82-5 consideration by the 79th Legislature.

82-6 SECTION 2.105. Subchapter B, Chapter 32, Human Resources
82-7 Code, is amended by adding Section 32.061 to read as follows:

82-8 Sec. 32.061. COMMUNITY ATTENDANT SERVICES PROGRAM. Any
82-9 home and community-based services that the department provides
82-10 under Section 1929, Social Security Act (42 U.S.C. Section 1396t)
82-11 and its subsequent amendments to functionally disabled individuals
82-12 who have income that exceeds the limit established by federal law
82-13 for Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et
82-14 seq.) and its subsequent amendments shall be provided through the
82-15 community attendant services program.

82-16 SECTION 2.106. (a) Subchapter B, Chapter 32, Human
82-17 Resources Code, is amended by adding Section 32.063 to read as
82-18 follows:

82-19 Sec. 32.063. THIRD-PARTY BILLING VENDORS. (a) A
82-20 third-party billing vendor may not submit a claim with the
82-21 department for reimbursement on behalf of a provider of medical
82-22 services under the medical assistance program unless the vendor has
82-23 entered into a contract with the department authorizing that
82-24 activity.

82-25 (b) To the extent practical, the contract shall contain
82-26 provisions comparable to the provisions contained in contracts
82-27 between the department and providers of medical services, with an
82-28 emphasis on provisions designed to prevent fraud or abuse under the
82-29 medical assistance program. At a minimum, the contract must
82-30 require the third-party billing vendor to:

82-31 (1) provide documentation of the vendor's authority to
82-32 bill on behalf of each provider for whom the vendor submits claims;

82-33 (2) submit a claim in a manner that permits the
82-34 department to identify and verify the vendor, any computer or
82-35 telephone line used in submitting the claim, any relevant user
82-36 password used in submitting the claim, and any provider number
82-37 referenced in the claim; and

82-38 (3) subject to any confidentiality requirements
82-39 imposed by federal law, provide the department, the office of the
82-40 attorney general, or authorized representatives with:

82-41 (A) access to any records maintained by the
82-42 vendor, including original records and records maintained by the
82-43 vendor on behalf of a provider, relevant to an audit or
82-44 investigation of the vendor's services or another function of the
82-45 department or office of the attorney general relating to the
82-46 vendor; and

82-47 (B) if requested, copies of any records described
82-48 by Paragraph (A) at no charge to the department, the office of the
82-49 attorney general, or authorized representatives.

82-50 (c) On receipt of a claim submitted by a third-party billing
82-51 vendor, the department shall send a remittance notice directly to
82-52 the provider referenced in the claim. The notice must include
82-53 detailed information regarding the claim submitted on behalf of the
82-54 provider.

82-55 (d) The department shall take all action necessary,
82-56 including any modifications of the department's claims processing
82-57 system, to enable the department to identify and verify a
82-58 third-party billing vendor submitting a claim for reimbursement
82-59 under the medical assistance program, including identification and
82-60 verification of any computer or telephone line used in submitting
82-61 the claim, any relevant user password used in submitting the claim,
82-62 and any provider number referenced in the claim.

82-63 (e) The department shall audit each third-party billing
82-64 vendor subject to this section at least annually to prevent fraud
82-65 and abuse under the medical assistance program.

82-66 (b) Section 32.063, Human Resources Code, as added by this
82-67 section, takes effect January 1, 2006.

82-68 SECTION 2.107. (a) Subchapter B, Chapter 32, Human
82-69 Resources Code, is amended by adding Section 32.064 to read as

83-1 follows:

83-2 Sec. 32.064. COST SHARING. (a) To the extent permitted
 83-3 under Title XIX, Social Security Act (42 U.S.C. Section 1396 et
 83-4 seq.), as amended, and any other applicable law or regulations, the
 83-5 Health and Human Services Commission shall adopt provisions
 83-6 requiring recipients of medical assistance to share the cost of
 83-7 medical assistance, including provisions requiring recipients to
 83-8 pay:

83-9 (1) an enrollment fee;

83-10 (2) a deductible; or

83-11 (3) coinsurance or a portion of the plan premium, if
 83-12 the recipients receive medical assistance under the Medicaid
 83-13 managed care program under Chapter 533, Government Code, or a
 83-14 Medicaid managed care demonstration project under Section 32.041.

83-15 (b) Subject to Subsection (d), cost-sharing provisions
 83-16 adopted under this section shall ensure that families with higher
 83-17 levels of income are required to pay progressively higher
 83-18 percentages of the cost of the medical assistance.

83-19 (c) If cost-sharing provisions imposed under Subsection (a)
 83-20 include requirements that recipients pay a portion of the plan
 83-21 premium, the commission shall specify the manner in which the
 83-22 premium is paid. The commission may require that the premium be
 83-23 paid to the commission, an agency operating part of the medical
 83-24 assistance program, or the Medicaid managed care plan.

83-25 (d) Cost-sharing provisions adopted under this section may
 83-26 be determined based on the maximum level authorized under federal
 83-27 law and applied to income levels in a manner that minimizes
 83-28 administrative costs.

83-29 (b) The changes in law made by Section 32.064, Human
 83-30 Resources Code, as added by this section, apply to a person
 83-31 receiving medical assistance on or after the effective date of this
 83-32 section, regardless of the date on which eligibility for that
 83-33 assistance was determined.

83-34 SECTION 2.108. Section 48.401(1), Human Resources Code, is
 83-35 amended to read as follows:

83-36 (1) "Agency" means:

83-37 (A) an entity licensed under Chapter 142, Health
 83-38 and Safety Code; or

83-39 (B) a person exempt from licensing under Section
 83-40 142.003(a)(19), Health and Safety Code.

83-41 SECTION 2.109. Section 73.0051, Human Resources Code, is
 83-42 amended by adding Subsection (l) to read as follows:

83-43 (l) The council by rule may establish a system of payments
 83-44 by families of children receiving services under this chapter,
 83-45 including a schedule of sliding fees, in a manner consistent with 34
 83-46 C.F.R. Sections 303.12(a)(3)(iv), 303.520, and 303.521.

83-47 SECTION 2.110. (a) Sections 91.027(a) and (b), Human
 83-48 Resources Code, are amended to read as follows:

83-49 (a) To the extent that funds are available under Sections
 83-50 521.421(f), as added by Chapter 510, Acts of the 75th Legislature,
 83-51 Regular Session, 1997, and 521.422(b), Transportation Code, the
 83-52 [The] commission shall operate [develop] a Blindness Education,
 83-53 Screening, and Treatment Program to provide:

83-54 (1) blindness prevention education and [to provide]
 83-55 screening and treatment to prevent blindness for residents who are
 83-56 not covered under an adequate health benefit plan; and

83-57 (2) transition services to blind disabled individuals
 83-58 eligible for vocational rehabilitation services under Section
 83-59 91.052.

83-60 (b) [The commission shall implement the program only to the
 83-61 extent that funds are available under Section 521.421(f),
 83-62 Transportation Code.] The program shall include:

83-63 (1) public education about blindness and other eye
 83-64 conditions;

83-65 (2) screenings and eye examinations to identify
 83-66 conditions that may cause blindness; [and]

83-67 (3) treatment procedures necessary to prevent
 83-68 blindness; and

83-69 (4) transition services.

84-1 (b) The Texas Commission for the Blind shall establish the
84-2 consolidated program under Section 91.027, Human Resources Code, as
84-3 amended by this section, not later than the 90th day after the
84-4 effective date of this section.

84-5 SECTION 2.111. (a) Section 111.052, Human Resources Code,
84-6 is amended to read as follows:

84-7 Sec. 111.052. GENERAL FUNCTIONS. (a) The commission
84-8 shall, to the extent of resources available and priorities
84-9 established by the board, provide rehabilitation services directly
84-10 or through public or private resources to individuals determined by
84-11 the commission to be eligible for the services under a vocational
84-12 rehabilitation program[~~, an extended rehabilitation services
84-13 program,~~] or other program established to provide rehabilitative
84-14 services.

84-15 (b) In carrying out the purposes of this chapter, the
84-16 commission may:

84-17 (1) cooperate with other departments, agencies,
84-18 political subdivisions, and institutions, both public and private,
84-19 in providing the services authorized by this chapter to eligible
84-20 individuals, in studying the problems involved, and in planning,
84-21 establishing, developing, and providing necessary or desirable
84-22 programs, facilities, and services, including those jointly
84-23 administered with state agencies;

84-24 (2) enter into reciprocal agreements with other
84-25 states;

84-26 (3) establish or construct rehabilitation facilities
84-27 and workshops, contract with or provide grants to agencies,
84-28 organizations, or individuals as necessary to implement this
84-29 chapter, make contracts or other arrangements with public and other
84-30 nonprofit agencies, organizations, or institutions for the
84-31 establishment of workshops and rehabilitation facilities, and
84-32 operate facilities for carrying out the purposes of this chapter;

84-33 (4) conduct research and compile statistics relating
84-34 to the provision of services to or the need for services by disabled
84-35 individuals;

84-36 (5) provide for the establishment, supervision,
84-37 management, and control of small business enterprises to be
84-38 operated by individuals with significant disabilities where their
84-39 operation will be improved through the management and supervision
84-40 of the commission;

84-41 (6) contract with schools, hospitals, private
84-42 industrial firms, and other agencies and with doctors, nurses,
84-43 technicians, and other persons for training, physical restoration,
84-44 transportation, and other rehabilitation services; and

84-45 (7) assess the statewide need for services necessary
84-46 to prepare students with disabilities for a successful transition
84-47 to employment, establish collaborative relationships with each
84-48 school district with education service centers to the maximum
84-49 extent possible within available resources, and develop strategies
84-50 to assist vocational rehabilitation counselors in identifying and
84-51 reaching students in need of transition planning [~~contract with a
84-52 public or private agency to provide and pay for rehabilitative
84-53 services under the extended rehabilitation services program,
84-54 including alternative sheltered employment or community integrated
84-55 employment for a person participating in the program~~].

84-56 (b) Sections 111.002(7), 111.0525(a), and 111.073, Human
84-57 Resources Code, are repealed.

84-58 SECTION 2.112. Section 111.060, Human Resources Code, is
84-59 amended by adding Subsection (d) to read as follows:

84-60 (d) Notwithstanding any other provision of this section,
84-61 any money in the comprehensive rehabilitation fund may be used for
84-62 general governmental purposes if:

84-63 (1) the comptroller certifies that appropriations
84-64 from general revenue made by the preceding legislature for the
84-65 current biennium exceed available general revenues and cash
84-66 balances for the remainder of that biennium;

84-67 (2) an estimate of anticipated revenues for a
84-68 succeeding biennium prepared by the comptroller in accordance with
84-69 Section 49a, Article III, Texas Constitution, is less than the

85-1 revenues that are estimated at the same time by the comptroller to
85-2 be available for the current biennium; or

85-3 (3) the Legislative Budget Board otherwise determines
85-4 that a state fiscal emergency exists that requires use of any money
85-5 in the fund for general governmental purposes.

85-6 SECTION 2.113. (a) Subchapter I, Chapter 264, Family Code,
85-7 is transferred to Chapter 33, Education Code, is redesignated as
85-8 Subchapter E, Chapter 33, Education Code, and is amended to read as
85-9 follows:

85-10 SUBCHAPTER E [~~±~~]. COMMUNITIES IN SCHOOLS PROGRAM

85-11 Sec. 33.151 [~~264.751~~]. DEFINITIONS. In this subchapter:

85-12 (1) "Department" [~~"Agency"~~] means the Department of
85-13 Protective and Regulatory Services [~~Texas Education Agency~~].

85-14 (2) "Communities In Schools program" means an
85-15 exemplary youth dropout prevention program.

85-16 (3) "Delinquent conduct" has the meaning assigned by
85-17 Section 51.03, Family Code.

85-18 (4) "Student at risk of dropping out of school" means:

85-19 (A) a student at risk of dropping out of school as
85-20 defined [~~has the meaning assigned~~] by Section 29.081;

85-21 (B) [~~, Education Code, or means~~] a student who is
85-22 eligible for a free or reduced lunch; or

85-23 (C) a student who is in family conflict or
85-24 crisis.

85-25 Sec. 33.152 [~~264.752~~]. STATEWIDE OPERATION OF PROGRAM. It
85-26 is the intent of the legislature that the Communities In Schools
85-27 program operate throughout this state. It is also the intent of the
85-28 legislature that programs established under Chapter 305, Labor
85-29 Code, as that chapter existed on August 31, 1999, and its
85-30 predecessor statute, the Texas Unemployment Compensation Act
85-31 (Article 5221b-9d, Vernon's Texas Civil Statutes), and programs
85-32 established under this subchapter shall remain eligible to
85-33 participate in the Communities In Schools program if funds are
85-34 available and if their performance meets the criteria established
85-35 by the agency [~~department~~] for renewal of their contracts.

85-36 Sec. 33.153 [~~264.753~~]. STATE DIRECTOR. The commissioner
85-37 [~~executive director of the department~~] shall designate a state
85-38 director for the Communities In Schools program.

85-39 Sec. 33.154 [~~264.754~~]. DUTIES OF STATE DIRECTOR. The state
85-40 director shall:

85-41 (1) coordinate the efforts of the Communities In
85-42 Schools program with other social service organizations and
85-43 agencies and with public school personnel to provide services to
85-44 students who are at risk of dropping out of school or engaging in
85-45 delinquent conduct, including students who are in family conflict
85-46 or emotional crisis;

85-47 (2) set standards for the Communities In Schools
85-48 program and establish state performance goals, objectives, and
85-49 measures for the program;

85-50 (3) obtain information to determine accomplishment of
85-51 state performance goals, objectives, and measures;

85-52 (4) promote and market the program in communities in
85-53 which the program is not established;

85-54 (5) help communities that want to participate in the
85-55 program establish a local funding base; and

85-56 (6) provide training and technical assistance for
85-57 participating communities and programs.

85-58 Sec. 33.155 [~~264.755~~]. DEPARTMENT [~~AGENCY~~] COOPERATION;
85-59 MEMORANDUM OF UNDERSTANDING. (a) The agency, the department, and
85-60 Communities In Schools, Inc. shall work together to maximize the
85-61 effectiveness of the Communities In Schools program.

85-62 (b) The agency and the department shall develop and
85-63 [~~mutually~~] agree to a memorandum of understanding to clearly define
85-64 the responsibilities of the agency and of the department under this
85-65 subchapter. The memorandum must address:

85-66 (1) the roles [~~role~~] of the agency and department in
85-67 encouraging local business to participate in local Communities In
85-68 Schools programs;

85-69 (2) the role of the agency in obtaining information

86-1 from participating school districts;

86-2 (3) the use of federal or state funds available to the
86-3 agency or the department for programs of this nature; and

86-4 (4) other areas identified by the agency and the
86-5 department that require clarification.

86-6 (c) The agency and the department shall adopt rules to
86-7 implement the memorandum and shall update the memorandum and rules
86-8 annually.

86-9 Sec. 33.156 [~~264.756~~]. FUNDING; EXPANSION OF
86-10 PARTICIPATION. (a) The agency [~~department~~] shall develop and

86-11 implement an equitable formula for the funding of local Communities
86-12 In Schools programs. The formula may provide for the reduction of
86-13 funds annually contributed by the state to a local program by an
86-14 amount not more than 50 percent of the amount contributed by the
86-15 state for the first year of the program. The formula must consider
86-16 the financial resources of individual communities and school
86-17 districts. Savings accomplished through the implementation of the
86-18 formula may be used to extend services to counties and
86-19 municipalities currently not served by a local program or to extend
86-20 services to counties and municipalities currently served by an
86-21 existing local program.

86-22 (b) Each local Communities In Schools program shall develop
86-23 a funding plan which ensures that the level of services is
86-24 maintained if state funding is reduced.

86-25 (c) A local Communities In Schools program may accept
86-26 federal funds, state funds, private contributions, grants, and
86-27 public and school district funds to support a campus participating
86-28 in the program.

86-29 Sec. 33.157 [~~264.757~~]. PARTICIPATION IN PROGRAM. An
86-30 elementary or secondary school receiving funding [~~designated~~]
86-31 under Section 33.156 [~~264.756~~] shall participate in a local
86-32 Communities In Schools program if the number of students enrolled
86-33 in the school who are at risk of dropping out of school is equal to
86-34 at least 10 percent of the number of students in average daily
86-35 attendance at the school, as determined by the agency.

86-36 Sec. 33.158 [~~264.758~~]. DONATIONS TO PROGRAM. (a) The
86-37 agency [~~department~~] may accept a donation of services or money or
86-38 other property that the agency [~~department~~] determines furthers the
86-39 lawful objectives of the agency [~~department~~] in connection with the
86-40 Communities In Schools program.

86-41 (b) Each donation, with the name of the donor and the
86-42 purpose of the donation, must be reported in the public records of
86-43 the agency [~~department~~].

86-44 (b) Section 302.062(g), Labor Code, is amended to read as
86-45 follows:

86-46 (g) Block grant funding under this section does not apply
86-47 to:

86-48 (1) the work and family policies program under Chapter
86-49 81;

86-50 (2) a program under the skills development fund
86-51 created under Chapter 303;

86-52 (3) the job counseling program for displaced
86-53 homemakers under Chapter 304;

86-54 (4) the Communities In Schools program under
86-55 Subchapter E [~~I~~], Chapter 33 [~~264~~], Education [~~Family~~] Code, to the
86-56 extent that funds are available to the commission for that program;

86-57 (5) the reintegration of offenders program under
86-58 Chapter 306;

86-59 (6) apprenticeship programs under Chapter 133,
86-60 Education Code;

86-61 (7) the continuity of care program under Section
86-62 501.095, Government Code;

86-63 (8) employment programs under Chapter 31, Human
86-64 Resources Code;

86-65 (9) the senior citizens employment program under
86-66 Chapter 101, Human Resources Code;

86-67 (10) the programs described by Section 302.021(b)(3);

86-68 (11) the community service program under the National
86-69 and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);

87-1 (12) the trade adjustment assistance program under
87-2 Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et
87-3 seq.);

87-4 (13) the programs to enhance the employment
87-5 opportunities of veterans; and

87-6 (14) the functions of the State Occupational
87-7 Information Coordinating Committee.

87-8 (c) On September 1, 2003:

87-9 (1) all powers, duties, functions, and activities
87-10 relating to the Communities In Schools program assigned to or
87-11 performed by the Department of Protective and Regulatory Services
87-12 immediately before September 1, 2003, are transferred to the Texas
87-13 Education Agency;

87-14 (2) all funds, rights, obligations, and contracts of
87-15 the Department of Protective and Regulatory Services related to the
87-16 Communities In Schools program are transferred to the Texas
87-17 Education Agency for the Communities In Schools program;

87-18 (3) all property and records in the custody of the
87-19 Department of Protective and Regulatory Services related to the
87-20 Communities In Schools program and all funds appropriated by the
87-21 legislature for the Communities In Schools program are transferred
87-22 to the Texas Education Agency for the Communities In Schools
87-23 program; and

87-24 (4) all employees of the Department of Protective and
87-25 Regulatory Services who primarily perform duties related to the
87-26 Communities In Schools program become employees of the Texas
87-27 Education Agency, to be assigned duties related to the Communities
87-28 In Schools program.

87-29 (d) For the 2003 and 2004 state fiscal years, all full-time
87-30 equivalent positions (FTEs) authorized by the General
87-31 Appropriations Act for the Communities In Schools program are
87-32 transferred to the Texas Education Agency and are not included in
87-33 determining the agency's compliance with any limitation on the
87-34 number of full-time equivalent positions (FTEs) imposed by the
87-35 General Appropriations Act.

87-36 (e) A reference in law or administrative rule to the
87-37 Department of Protective and Regulatory Services that relates to
87-38 the Communities In Schools program means the Texas Education
87-39 Agency. A reference in law or administrative rule to the executive
87-40 director of the Department of Protective and Regulatory Services
87-41 that relates to the Communities In Schools program means the
87-42 commissioner of education.

87-43 (f) A rule of the Department of Protective and Regulatory
87-44 Services relating to the Communities In Schools program continues
87-45 in effect as a rule of the commissioner of education until
87-46 superseded by rule of the commissioner of education. The secretary
87-47 of state is authorized to adopt rules as necessary to expedite the
87-48 implementation of this subsection.

87-49 (g) The transfer of the Communities In Schools program and
87-50 associated powers, duties, functions, and activities under this
87-51 section does not affect or impair any act done, any obligation,
87-52 right, order, license, permit, rule, criterion, standard, or
87-53 requirement existing, any investigation begun, or any penalty
87-54 accrued under former law, and that law remains in effect for any
87-55 action concerning those matters.

87-56 (h) An action brought or proceeding commenced before
87-57 September 1, 2003, including a contested case or a remand of any
87-58 action or proceeding by a reviewing court, is governed by the law
87-59 and rules applicable to the action or proceeding immediately before
87-60 September 1, 2003.

87-61 SECTION 2.114. (a) Sections 2(a) and (c), Article 4.11,
87-62 Insurance Code, are amended to read as follows:

87-63 (a) "Carrier" means any insurer, managed care organization,
87-64 or group hospital service plan transacting any such insurance
87-65 business in this state including companies operating under the
87-66 provisions of Chapters 841, 842, 843, 861, 881, 882, 883, 884, 941,
87-67 942, and 982, [3, 8, 11, 13, 15, 18, 19, 20, 20A, and 22 of the]
87-68 Insurance Code, Chapter 533, Government Code, or Title XIX of the
87-69 federal Social Security Act. The term does not include [but

88-1 ~~excluding~~] local mutual aid associations, fraternal benefit
 88-2 societies or associations, and societies that limit their
 88-3 membership to one occupation. For purposes of computing the premium
 88-4 tax under this article, a managed care organization shall be
 88-5 treated in the same manner as a health maintenance organization.

88-6 (c) "Gross premiums" are the total gross amount of all
 88-7 premiums, membership fees, assessments, dues, and any other
 88-8 considerations for such insurance received during the taxable year
 88-9 on each and every kind of such insurance policy or contract covering
 88-10 persons located in the State of Texas and arising from the types of
 88-11 insurance specified in Section 1 of this article, but deducting
 88-12 returned premiums, any dividends applied to purchase paid-up
 88-13 additions to insurance or to shorten the endowment or premium
 88-14 payment period, and excluding those premiums received from
 88-15 insurance carriers for reinsurance and there shall be no deduction
 88-16 for premiums paid for reinsurance. For purposes of this article, a
 88-17 stop-loss or excess loss insurance policy issued to a health
 88-18 maintenance organization, as defined under the Texas Health
 88-19 Maintenance Organization Act (Chapter 20A, Vernon's Texas
 88-20 Insurance Code), shall be considered reinsurance. Such gross
 88-21 premiums shall not include premiums received from the [~~Treasury of~~
 88-22 ~~the State of Texas or from the~~] Treasury of the United States for
 88-23 [~~insurance contracted for by the state or federal government for~~
 88-24 ~~the purpose of providing welfare benefits to designated welfare~~
 88-25 ~~recipients or for~~] insurance contracted for by the [~~state or~~
 88-26 federal government in accordance with or in furtherance of the
 88-27 provisions of Title XVIII of [~~2, Human Resources Code, or~~] the
 88-28 Federal Social Security Act (42 U.S.C. Section 1395c et seq.) and
 88-29 its subsequent amendments. The gross premiums receipts so reported
 88-30 shall not include the amount of premiums paid on group health,
 88-31 accident, and life policies in which the group covered by the policy
 88-32 consists of a single nonprofit trust established to provide
 88-33 coverage primarily for employees of:

88-34 (1) a municipality, county, or hospital district in
 88-35 this state; or

88-36 (2) a county or municipal hospital, without regard to
 88-37 whether the employees are employees of the county or municipality
 88-38 or another entity operating the hospital on behalf of the county or
 88-39 municipality.

88-40 (b) The change in law made by this section applies only to a
 88-41 tax report originally due on or after January 1, 2004.

88-42 SECTION 2.115. (a) Article 4.17(a), Insurance Code, is
 88-43 amended to read as follows:

88-44 (a) The commissioner shall annually determine the rate of
 88-45 assessment of a maintenance tax to be paid on an annual, semiannual,
 88-46 or other periodic basis, as determined by the comptroller. The rate
 88-47 of assessment may not exceed .04 percent of the correctly reported
 88-48 gross premiums of life, health, and accident insurance coverages
 88-49 and the gross considerations for annuity and endowment contracts
 88-50 collected by all authorized insurers writing life, health, and
 88-51 accident insurance, annuity, or endowment contracts in this state.
 88-52 The comptroller shall collect the maintenance tax. For purposes of
 88-53 this article, the gross premiums on which an assessment is based may
 88-54 not include premiums received from [~~this state or~~] the United
 88-55 States for insurance contracted for by [~~this state or~~] the United
 88-56 States [~~for the purpose of providing welfare benefits to designated~~
 88-57 ~~welfare recipients or for insurance contracted for by this state or~~
 88-58 ~~the United States~~] in accordance with or in furtherance of Title
 88-59 XVIII of [~~2, Human Resources Code, or~~] the federal Social Security
 88-60 Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments
 88-61 [~~(42 U.S.C. Section 301 et seq.)~~].

88-62 (b) The change in law made by this section applies only to a
 88-63 tax report originally due on or after January 1, 2004.

88-64 SECTION 2.116. (a) Section 33(d), Texas Health Maintenance
 88-65 Organization Act (Article 20A.33, Vernon's Texas Insurance Code),
 88-66 is amended to read as follows:

88-67 (d) The commissioner shall annually determine the rate of
 88-68 assessment of a per capita maintenance tax to be paid on an annual
 88-69 or semiannual basis, on the correctly reported gross revenues for

89-1 the issuance of health maintenance certificates or contracts
 89-2 collected by all authorized health maintenance organizations
 89-3 issuing such coverages in this state. The rate of assessment may
 89-4 not exceed \$2 for each enrollee. The rate of assessment may differ
 89-5 between basic health care plans, limited health care service plans,
 89-6 and single health care service plans and shall equitably reflect
 89-7 any differences in regulatory resources attributable to each type
 89-8 of plan. The comptroller shall collect the maintenance tax. For
 89-9 purposes of this section, the amount of maintenance tax assessed
 89-10 may not be computed on enrollees who as individual certificate
 89-11 holders or their dependents are covered by a master group policy
 89-12 paid for by revenues received from ~~[this state or]~~ the United States
 89-13 for insurance contracted for by ~~[this state or]~~ the United States
 89-14 ~~[for the purpose of providing welfare benefits to designated~~
 89-15 ~~welfare recipients or for insurance contracted for by this state or~~
 89-16 ~~the United States]~~ in accordance with or in furtherance of Title
 89-17 XVIII of ~~[2, Human Resources Code, or]~~ the federal Social Security
 89-18 Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments
 89-19 ~~[(42 U.S.C. Section 301 et seq.)].~~

89-20 (b) The change in law made by this section applies only to a
 89-21 tax report originally due on or after January 1, 2004.

89-22 SECTION 2.117. Section 2, Article 21.52K, Insurance Code,
 89-23 is amended by amending Subsections (c) and (d) and adding
 89-24 Subsection (g) to read as follows:

89-25 (c) If an individual described by Subsection (a), ~~[or]~~ (b),
 89-26 or (g) of this section is not eligible to enroll in the plan unless a
 89-27 family member of the individual is also enrolled in the plan, the
 89-28 issuer, on receipt of the written notice or request under
 89-29 Subsection (a), ~~[or]~~ (b), or (g) of this section, shall enroll both
 89-30 the individual and the family member in the plan.

89-31 (d) Unless enrollment occurs during an established
 89-32 enrollment period, enrollment under this article takes effect on
 89-33 the first day of the calendar month that begins at least 30 days
 89-34 after the date written notice or request is received by the issuer
 89-35 under Subsection (a), ~~[or]~~ (b), or (g) of this section.

89-36 (g) The issuer of a group health benefit plan shall permit
 89-37 an individual who is otherwise eligible for enrollment in the plan
 89-38 to enroll in the plan without regard to any enrollment period
 89-39 restriction if the individual:

89-40 (1) becomes ineligible for medical assistance under
 89-41 the state Medicaid program or enrollment in the state child health
 89-42 plan under Chapter 62, Health and Safety Code, after initially
 89-43 establishing eligibility; and

89-44 (2) provides a written request for enrollment in the
 89-45 group health benefit plan not later than the 30th day after the date
 89-46 the individual's eligibility for the state Medicaid program or the
 89-47 state child health plan terminated.

89-48 SECTION 2.118. (a) Article 21.53F, Insurance Code, as
 89-49 added by Chapter 683, Acts of the 75th Legislature, Regular
 89-50 Session, 1997, is amended by adding Section 9 to read as follows:

89-51 Sec. 9. OFFER OF COVERAGE REQUIRED; CERTAIN THERAPIES FOR
 89-52 CHILDREN WITH DEVELOPMENTAL DELAYS. (a) For purposes of this
 89-53 section, rehabilitative and habilitative therapies include:

89-54 (1) occupational therapy evaluations and services;

89-55 (2) physical therapy evaluations and services;

89-56 (3) speech therapy evaluations and services; and

89-57 (4) dietary or nutritional evaluations.

89-58 (b) The issuer of a health benefit plan must offer coverage
 89-59 that complies with this section. The individual or group policy or
 89-60 contract holder may reject coverage required to be offered under
 89-61 this subsection.

89-62 (c) A health benefit plan that provides coverage for
 89-63 rehabilitative and habilitative therapies under this section may
 89-64 not prohibit or restrict payment for covered services provided to a
 89-65 child and determined to be necessary to and provided in accordance
 89-66 with an individualized family service plan issued by the
 89-67 Interagency Council on Early Childhood Intervention under Chapter
 89-68 73, Human Resources Code.

89-69 (d) Rehabilitative and habilitative therapies described by

90-1 Subsection (c) of this section must be covered in the amount,
 90-2 duration, scope, and service setting established in the child's
 90-3 individualized family service plan.

90-4 (e) Under the coverage required to be offered under this
 90-5 section, a health benefit plan issuer may not:

90-6 (1) apply the cost of rehabilitative and habilitative
 90-7 therapies described by Subsection (c) of this section to an annual
 90-8 or lifetime maximum plan benefit or similar provision under the
 90-9 plan; or

90-10 (2) use the cost of rehabilitative or habilitative
 90-11 therapies described by Subsection (c) of this section as the sole
 90-12 justification for:

90-13 (A) increasing plan premiums; or

90-14 (B) terminating the insured's or enrollee's
 90-15 participation in the plan.

90-16 (b) The change in law made by this section applies only to a
 90-17 health benefit plan that is delivered, issued for delivery, or
 90-18 renewed on or after January 1, 2004. A health benefit plan that is
 90-19 delivered, issued for delivery, or renewed before January 1, 2004,
 90-20 is governed by the law as it existed immediately before the
 90-21 effective date of this section, and the former law is continued in
 90-22 effect for that purpose.

90-23 SECTION 2.119. Article 27.05, Insurance Code, is amended to
 90-24 read as follows:

90-25 Art. 27.05. EXEMPTION FROM PREMIUM TAX. The issuer of a
 90-26 children's health benefit plan approved under Article 27.03 of this
 90-27 code is not subject to the premium tax imposed by Article 4.11 of
 90-28 this code or the tax on revenues imposed under Section 33, Texas
 90-29 Health Maintenance Organization Act (Article 20A.33, Vernon's
 90-30 Texas Insurance Code), with respect to money received for coverage
 90-31 provided under that plan.

90-32 SECTION 2.120. Chapter 27, Insurance Code, is amended by
 90-33 adding Article 27.07 to read as follows:

90-34 Art. 27.07. INAPPLICABILITY TO CERTAIN PLANS. This chapter
 90-35 does not apply to a health benefit plan provided under the state
 90-36 Medicaid program or the state child health plan.

90-37 SECTION 2.121. Subchapter C, Chapter 562, Occupations Code,
 90-38 is amended by adding Sections 562.1085 and 562.1086 to read as
 90-39 follows:

90-40 Sec. 562.1085. UNUSED DRUGS RETURNED BY CERTAIN
 90-41 PHARMACISTS. (a) A pharmacist who practices in or serves as a
 90-42 consultant for a health care facility in this state may return to a
 90-43 pharmacy certain unused drugs, other than a controlled substance as
 90-44 defined by Chapter 481, Health and Safety Code, purchased from the
 90-45 pharmacy as provided by board rule. The unused drugs must:

90-46 (1) be approved by the federal Food and Drug
 90-47 Administration and be:

90-48 (A) sealed in the manufacturer's original
 90-49 unopened tamper-evident packaging and either individually
 90-50 packaged or packaged in unit-dose packaging;

90-51 (B) oral or parenteral medication in sealed
 90-52 single-dose containers approved by the federal Food and Drug
 90-53 Administration;

90-54 (C) topical or inhalant drugs in sealed
 90-55 units-of-use containers approved by the federal Food and Drug
 90-56 Administration; or

90-57 (D) parenteral medications in sealed
 90-58 multiple-dose containers approved by the federal Food and Drug
 90-59 Administration from which doses have not been withdrawn; and

90-60 (2) not be the subject of a mandatory recall by a state
 90-61 or federal agency or a voluntary recall by a drug seller or
 90-62 manufacturer.

90-63 (b) A pharmacist for the pharmacy shall examine a drug
 90-64 returned under this section to ensure the integrity of the drug
 90-65 product. A health care facility may not return a drug that:

90-66 (1) has been compounded;

90-67 (2) appears on inspection to be adulterated;

90-68 (3) requires refrigeration; or

90-69 (4) has less than 120 days until the expiration date or

91-1 end of the shelf life.

91-2 (c) The pharmacy may restock and redistribute unused drugs
 91-3 returned under this section.

91-4 (d) The pharmacy shall reimburse or credit the state
 91-5 Medicaid program for an unused drug returned under this section.

91-6 (e) The board shall adopt the rules, policies, and
 91-7 procedures necessary to administer this section, including rules
 91-8 that require a health care facility to inform the Health and Human
 91-9 Services Commission of medicines returned to a pharmacy under this
 91-10 section.

91-11 Sec. 562.1086. LIMITATION ON LIABILITY. (a) A pharmacy
 91-12 that returns unused drugs and a manufacturer that accepts the
 91-13 unused drugs under Section 562.1085 and the employees of the
 91-14 pharmacy or manufacturer are not liable for harm caused by the
 91-15 accepting, dispensing, or administering of drugs returned in strict
 91-16 compliance with Section 562.1085 unless the harm is caused by:

91-17 (1) wilful or wanton acts of negligence;

91-18 (2) conscious indifference or reckless disregard for
 91-19 the safety of others; or

91-20 (3) intentional conduct.

91-21 (b) This section does not limit, or in any way affect or
 91-22 diminish, the liability of a drug seller or manufacturer under
 91-23 Chapter 82, Civil Practice and Remedies Code.

91-24 (c) This section does not apply if harm results from the
 91-25 failure to fully and completely comply with the requirements of
 91-26 Section 562.1085.

91-27 (d) This section does not apply to a pharmacy or
 91-28 manufacturer that fails to comply with the insurance provisions of
 91-29 Chapter 84, Civil Practice and Remedies Code.

91-30 SECTION 2.122. Section 455.0015, Transportation Code, is
 91-31 amended by amending Subsection (b) and adding Subsections (c), (d),
 91-32 (e), (f), and (g) to read as follows:

91-33 (b) It is the intent of the legislature that, whenever
 91-34 possible, and to the maximum extent feasible, the existing network
 91-35 of transportation providers, and in particular the fixed route
 91-36 components of the existing networks, be used to meet the client
 91-37 transportation requirements of the state's social service agencies
 91-38 and their agents. The legislature recognizes the contributions of
 91-39 nonprofit entities dedicated to providing social services and
 91-40 related activities and encourages the continued community
 91-41 involvement of these entities in this area. The legislature
 91-42 likewise recognizes the potential cost savings and other benefits
 91-43 for utilizing existing private sector transportation resources.
 91-44 The department will contract with and promote the use of private
 91-45 sector transportation resources to the maximum extent feasible
 91-46 consistent with the goals of this subsection.

91-47 (c) The Texas Department of Health and the Health and Human
 91-48 Services Commission shall contract with the department for the
 91-49 department to assume all responsibilities of the Texas Department
 91-50 of Health and the Health and Human Services Commission relating to
 91-51 the provision of transportation services for clients of eligible
 91-52 programs. The department shall hold at least one public hearing to
 91-53 solicit the views of the public concerning the transition of
 91-54 transportation services to the department under this subsection and
 91-55 shall meet with and consider the views of interested persons,
 91-56 including persons representing transportation clients.

91-57 (d) The department may contract with an appropriate number
 91-58 of regional transportation brokers for administrative assistance
 91-59 in providing transportation services under the medical
 91-60 transportation program. In designing the medical transportation
 91-61 program, and in determining the appropriate number of regions, the
 91-62 department shall consider overall cost control, access to services,
 91-63 and service quality.

91-64 (e) The department may contract under Subsection (d) with
 91-65 any person or organization that meets the criteria established by
 91-66 the department, including a nonprofit organization, public entity,
 91-67 or private contractor.

91-68 (f) A contract under Subsection (d) between the department
 91-69 and a broker must:

92-1 (1) require the broker to act as a gatekeeper to
92-2 control costs and the use of transportation services as well as to
92-3 ensure consistent quality of and access to those services;

92-4 (2) require the broker to implement procedures
92-5 designed to:

92-6 (A) prevent fraud and abuse in the medical
92-7 transportation program; and

92-8 (B) promote use of the most efficient and least
92-9 costly modes of transportation; and

92-10 (3) include an overall cap on the amount that may be
92-11 paid by the department under the contract.

92-12 (g) A broker selected by the department may contract with
92-13 transportation providers as necessary to provide transportation
92-14 services to persons eligible for those services. The department
92-15 shall encourage each broker to make maximum use of existing service
92-16 providers in each region.

92-17 SECTION 2.123. Section 40.002, Human Resources Code, is
92-18 amended by adding Subsection (f) to read as follows:

92-19 (f) The department may contract with the Texas Department of
92-20 Transportation for the Texas Department of Transportation to assume
92-21 all responsibilities of the department relating to the provision of
92-22 transportation services for clients of eligible programs.

92-23 SECTION 2.124. Section 22.001, Human Resources Code, is
92-24 amended by adding Subsection (e) to read as follows:

92-25 (e) The department shall contract with the Texas Department
92-26 of Transportation for the Texas Department of Transportation to
92-27 assume all responsibilities of the department relating to the
92-28 provision of transportation services for clients of eligible
92-29 programs.

92-30 SECTION 2.125. Section 91.021, Human Resources Code, is
92-31 amended by adding Subsection (g) to read as follows:

92-32 (g) The commission shall contract with the Texas Department
92-33 of Transportation for the Texas Department of Transportation to
92-34 assume all responsibilities of the commission relating to the
92-35 provision of transportation services for clients of eligible
92-36 programs.

92-37 SECTION 2.126. Section 101.0256, Human Resources Code, is
92-38 amended to read as follows:

92-39 Sec. 101.0256. COORDINATED ACCESS TO LOCAL SERVICES. (a)
92-40 The department and the Texas Department of Human Services shall
92-41 develop standardized assessment procedures to share information on
92-42 common clients served in a similar service region.

92-43 (b) The department shall contract with the Texas Department
92-44 of Transportation for the Texas Department of Transportation to
92-45 assume all responsibilities of the department relating to the
92-46 provision of transportation services for clients of eligible
92-47 programs.

92-48 SECTION 2.127. Section 111.0525, Human Resources Code, is
92-49 amended by adding Subsection (d) to read as follows:

92-50 (d) The commission shall contract with the Texas Department
92-51 of Transportation for the Texas Department of Transportation to
92-52 assume all responsibilities of the commission relating to the
92-53 provision of transportation services for clients of eligible
92-54 programs.

92-55 SECTION 2.128. Section 461.012(a), Health and Safety Code,
92-56 is amended to read as follows:

92-57 (a) The commission shall:

92-58 (1) provide for research and study of the problems of
92-59 chemical dependency in this state and seek to focus public
92-60 attention on those problems through public information and
92-61 education programs;

92-62 (2) plan, develop, coordinate, evaluate, and
92-63 implement constructive methods and programs for the prevention,
92-64 intervention, treatment, and rehabilitation of chemical dependency
92-65 in cooperation with federal and state agencies, local governments,
92-66 organizations, and persons, and provide technical assistance,
92-67 funds, and consultation services for statewide and community-based
92-68 services;

92-69 (3) cooperate with and enlist the assistance of:

93-1 (A) other state, federal, and local agencies;
93-2 (B) hospitals and clinics;
93-3 (C) public health, welfare, and criminal justice
93-4 system authorities;
93-5 (D) educational and medical agencies and
93-6 organizations; and
93-7 (E) other related public and private groups and
93-8 persons;
93-9 (4) expand chemical dependency services for children
93-10 when funds are available because of the long-term benefits of those
93-11 services to the state and its citizens;
93-12 (5) sponsor, promote, and conduct educational
93-13 programs on the prevention and treatment of chemical dependency,
93-14 and maintain a public information clearinghouse to purchase and
93-15 provide books, literature, audiovisuals, and other educational
93-16 material for the programs;
93-17 (6) sponsor, promote, and conduct training programs
93-18 for persons delivering prevention, intervention, treatment, and
93-19 rehabilitation services and for persons in the criminal justice
93-20 system or otherwise in a position to identify chemically dependent
93-21 persons and their families in need of service;
93-22 (7) require programs rendering services to chemically
93-23 dependent persons to safeguard those persons' legal rights of
93-24 citizenship and maintain the confidentiality of client records as
93-25 required by state and federal law;
93-26 (8) maximize the use of available funds for direct
93-27 services rather than administrative services;
93-28 (9) consistently monitor the expenditure of funds and
93-29 the provision of services by all grant and contract recipients to
93-30 assure that the services are effective and properly staffed and
93-31 meet the standards adopted under this chapter;
93-32 (10) make the monitoring reports prepared under
93-33 Subdivision (9) a matter of public record;
93-34 (11) license treatment facilities under Chapter 464;
93-35 (12) use funds appropriated to the commission to carry
93-36 out this chapter and maximize the overall state allotment of
93-37 federal funds;
93-38 (13) develop and implement policies that will provide
93-39 the public with a reasonable opportunity to appear before the
93-40 commission and to speak on any issue under the commission's
93-41 jurisdiction;
93-42 (14) establish minimum criteria that peer assistance
93-43 programs must meet to be governed by and entitled to the benefits of
93-44 a law that authorizes licensing and disciplinary authorities to
93-45 establish or approve peer assistance programs for impaired
93-46 professionals;
93-47 (15) adopt rules governing the functions of the
93-48 commission, including rules that prescribe the policies and
93-49 procedures followed by the commission in administering any
93-50 commission programs;
93-51 (16) plan, develop, coordinate, evaluate, and
93-52 implement constructive methods and programs to provide healthy
93-53 alternatives for youth at risk of selling controlled substances;
93-54 (17) submit to the federal government reports and
93-55 strategies necessary to comply with Section 1926 of the federal
93-56 Alcohol, Drug Abuse, and Mental Health Administration
93-57 Reorganization Act, Pub. L. 102-321 (42 U.S.C. Section 300x-26);
93-58 reports and strategies are to be coordinated with appropriate state
93-59 governmental entities; ~~and~~
93-60 (18) regulate, coordinate, and provide training for
93-61 alcohol awareness courses required under Section 106.115,
93-62 Alcoholic Beverage Code, and may charge a fee for an activity
93-63 performed by the commission under this subdivision; and
93-64 (19) contract with the Texas Department of
93-65 Transportation for the Texas Department of Transportation to assume
93-66 all responsibilities of the commission relating to the provision of
93-67 transportation services for clients of eligible programs.

93-68 SECTION 2.129. Section 533.012, Health and Safety Code, is
93-69 amended to read as follows:

94-1 Sec. 533.012. COOPERATION OF STATE AGENCIES. (a) At the
94-2 department's request, all state departments, agencies, officers,
94-3 and employees shall cooperate with the department in activities
94-4 that are consistent with their functions.

94-5 (b) The department shall contract with the Texas Department
94-6 of Transportation for the Texas Department of Transportation to
94-7 assume all responsibilities of the department relating to the
94-8 provision of transportation services for clients of eligible
94-9 programs.

94-10 SECTION 2.130. (a) Section 1551.159, Insurance Code, as
94-11 effective June 1, 2003, is amended by amending Subsection (a) and
94-12 adding Subsection (h) to read as follows:

94-13 (a) Subject to any applicable limit in the General
94-14 Appropriations Act, the board of trustees shall use money
94-15 appropriated for employer contributions to fund 80 percent of the
94-16 cost of basic coverage for a child who:

94-17 (1) is a dependent of an employee;

94-18 (2) would be eligible, if the child were not the
94-19 dependent of the employee, for benefits under the state child
94-20 health plan established under Chapter 62, Health and Safety Code
94-21 [the program established by the state to implement Title XXI,
94-22 Social Security Act (42 U.S.C. Section 1397aa et seq.), as
94-23 amended]; and

94-24 (3) is not eligible for the state Medicaid program.

94-25 (h) A child enrolled in dependent child coverage under this
94-26 section is subject to the same requirements and restrictions
94-27 relating to income eligibility, continuous coverage, and
94-28 enrollment, including applicable waiting periods, as a child
94-29 enrolled in the state child health plan under Chapter 62, Health and
94-30 Safety Code.

94-31 (b) The change in law made by this section applies only to a
94-32 child enrolled in dependent child coverage under the state
94-33 employees group benefits program on and after September 1, 2003.

94-34 SECTION 2.131. Section 31.03, Penal Code, is amended by
94-35 adding Subsection (j) to read as follows:

94-36 (j) With the consent of the appropriate local county or
94-37 district attorney, the attorney general has concurrent
94-38 jurisdiction with that consenting local prosecutor to prosecute an
94-39 offense under this section that involves the state Medicaid
94-40 program.

94-41 SECTION 2.132. Section 32.45, Penal Code, is amended by
94-42 adding Subsection (d) to read as follows:

94-43 (d) With the consent of the appropriate local county or
94-44 district attorney, the attorney general has concurrent
94-45 jurisdiction with that consenting local prosecutor to prosecute an
94-46 offense under this section that involves the state Medicaid
94-47 program.

94-48 SECTION 2.133. Section 32.46, Penal Code, is amended by
94-49 adding Subsection (e) to read as follows:

94-50 (e) With the consent of the appropriate local county or
94-51 district attorney, the attorney general has concurrent
94-52 jurisdiction with that consenting local prosecutor to prosecute an
94-53 offense under this section that involves the state Medicaid
94-54 program.

94-55 SECTION 2.134. Section 37.10, Penal Code, is amended by
94-56 adding Subsection (i) to read as follows:

94-57 (i) With the consent of the appropriate local county or
94-58 district attorney, the attorney general has concurrent
94-59 jurisdiction with that consenting local prosecutor to prosecute an
94-60 offense under this section that involves the state Medicaid
94-61 program.

94-62 SECTION 2.135. Section 57.046, Utilities Code, is amended
94-63 by adding Subsection (c) to read as follows:

94-64 (c) In addition to the purposes for which the qualifying
94-65 entities account may be used, the board may use money in the account
94-66 to award grants to the Health and Human Services Commission for
94-67 technology initiatives of the commission.

94-68 SECTION 2.136. Articles 59.01(1) and (2), Code of Criminal
94-69 Procedure, are amended to read as follows:

(1) "Attorney representing the state" means the prosecutor with felony jurisdiction in the county in which a forfeiture proceeding is held under this chapter or, in a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(iv) of this article, the city attorney of a municipality if the property is seized in that municipality by a peace officer employed by that municipality and the governing body of the municipality has approved procedures for the city attorney acting in a forfeiture proceeding. In a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(vii) of this article, the term includes the attorney general.

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:
(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 21.11, 38.04, 43.25, or 43.26 or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code; or

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter; ~~[or]~~

(vi) any felony under Chapter 152, Finance Code; or

(vii) any felony under Chapter 31, 32, or 37, Penal Code, that involves the state Medicaid program, or any felony under Chapter 36, Human Resources Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision or a crime of violence; or

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision or a crime of violence.

SECTION 2.137. Article 59.06, Code of Criminal Procedure, is amended by adding Subsection (p) to read as follows:

(p) Notwithstanding Subsection (a), and to the extent necessary to protect the commission's ability to recover amounts wrongfully obtained by the owner of the property and associated damages and penalties to which the commission may otherwise be entitled by law, the attorney representing the state shall transfer to the Health and Human Services Commission all forfeited property defined as contraband under Article 59.01(2)(B)(vii). If the forfeited property consists of property other than money or negotiable instruments, the attorney representing the state may, if approved by the commission, sell the property and deliver to the commission the proceeds from the sale, minus costs attributable to the sale. The sale must be conducted in a manner that is reasonably expected to result in receiving the fair market value for the property.

SECTION 2.138. STUDY. (a) The Medicaid and Public Assistance Fraud Oversight Task Force, with the participation of the Texas Department of Health's bureau of vital statistics and other agencies designated by the comptroller, shall study procedures and documentation requirements used by the state in confirming a person's identity for purposes of establishing entitlement to Medicaid and other benefits provided through health

96-1 and human services programs.

96-2 (b) Not later than December 1, 2004, the Medicaid and Public
 96-3 Assistance Fraud Oversight Task Force, with assistance from the
 96-4 agencies participating in the study required by Subsection (a) of
 96-5 this section, shall submit a report to the legislature containing
 96-6 recommendations for improvements in the procedures and
 96-7 documentation requirements described by Subsection (a) of this
 96-8 section that would strengthen the state's ability to prevent fraud
 96-9 and abuse in the Medicaid program and other health and human
 96-10 services programs.

96-11 SECTION 2.139. EVALUATION OF MANAGED CARE PLANS. During
 96-12 state fiscal years 2004 and 2005 and in accordance with federal
 96-13 policy, the Health and Human Services Commission shall evaluate, as
 96-14 part of the processes of contract management and developing payment
 96-15 and rate methodologies and amounts, the administrative cost of a
 96-16 Medicaid managed care plan for a managed care organization,
 96-17 including a health maintenance organization, primary care case
 96-18 management, and an exclusive provider organization.

96-19 SECTION 2.140. STUDY: REVENUE ENHANCEMENT RELATED TO
 96-20 MEDICAID VENDOR DRUG REBATE. (a) A task force is created to study
 96-21 the prescription drug rebate system established and operated under
 96-22 the medical assistance program and other related programs.

96-23 (b) The commission shall establish a task force, composed of
 96-24 appropriate legislators, state agency personnel, and other
 96-25 appropriate personnel to study the prescription drug rebate system
 96-26 established and operated under the medical assistance program and
 96-27 other related programs.

96-28 (c) The study must include:

96-29 (1) a background on the development and operation of
 96-30 the federal vendor drug rebate and state supplemental rebate
 96-31 system;

96-32 (2) a description of current and historical state
 96-33 efforts to develop and implement alternatives to the federal vendor
 96-34 drug rebate system;

96-35 (3) a review of any relevant case law or legal
 96-36 precedents related to the vendor drug rebate system;

96-37 (4) an analysis of state implementation, including
 96-38 attempted implementation, of an exemption of federal requirements,
 96-39 including the federal Social Security Act, related to vendor drug
 96-40 rebates, prior authorization provisions, and formulary; and

96-41 (5) feasibility of developing either an alternative
 96-42 rebate system or other mechanism to enhance the state's share of
 96-43 prescription drug rebates.

96-44 (d) The study must be completed by December 1, 2004, and
 96-45 presented to the governor and the presiding officers of each house,
 96-46 the House Committee on Appropriations, and the Senate Finance
 96-47 Committee.

96-48 SECTION 2.141. LEGISLATIVE INTENT REGARDING PROVISION OF
 96-49 HEALTH AND HUMAN SERVICE TRANSPORTATION THROUGH THE TEXAS
 96-50 DEPARTMENT OF TRANSPORTATION. It is the intent of the legislature
 96-51 that the provision of health and human service transportation
 96-52 through the Texas Department of Transportation will improve the
 96-53 delivery of transportation services to clients and enhance their
 96-54 access to transportation services. Furthermore, it is the intent
 96-55 of the legislature that these services be provided in a manner that
 96-56 will generate efficiencies in operation, control costs, and permit
 96-57 increased levels of service. The Texas Department of
 96-58 Transportation shall encourage cooperation and coordination among
 96-59 transportation providers, regional transportation brokers, and
 96-60 actual and potential clients in an effort to achieve the stated
 96-61 legislative goals.

96-62 SECTION 2.142. (a) A change in law made by this article to
 96-63 Section 242.047, Health and Safety Code, that requires the Texas
 96-64 Department of Human Services to accept an annual accreditation
 96-65 review from the Joint Commission on Accreditation of Health
 96-66 Organizations for a nursing home in satisfaction of the
 96-67 requirements for certification:

96-68 (1) applies only to a nursing home that participates
 96-69 in the medical assistance program under Chapter 32, Human Resources

Code, before September 1, 2003; and

(2) may be implemented only as a pilot program.

(b) A pilot program operated in accordance with this section expires September 1, 2007.

SECTION 2.143. (a) The Texas State Board of Pharmacy shall adopt the rules required by Section 562.1085, Occupations Code, as added by this Act, not later than December 1, 2003.

(b) Notwithstanding Section 562.1085, Occupations Code, as added by this Act, a pharmacy is not required to accept unused drugs from a health care facility before January 1, 2004.

SECTION 2.144. TRANSFER OF MEDICAL TRANSPORTATION PROGRAM. (a) On September 1, 2004, or on an earlier date specified by the Health and Human Services Commission:

(1) all powers, duties, functions, activities, obligations, rights, contracts, records, property, and appropriations or other money of the Texas Department of Health that are determined by the commissioner of health and human services to be essential to the administration of the medical transportation program are transferred to the Health and Human Services Commission;

(2) a rule or form adopted by the Texas Department of Health that relates to the medical transportation program is a rule or form of the Health and Human Services Commission and remains in effect until altered by the commission;

(3) a reference in law or an administrative rule to the Texas Department of Health that relates to the medical transportation program means the Health and Human Services Commission;

(4) a license, permit, or certification in effect that was issued by the Texas Department of Health and that relates to the medical transportation program is continued in effect as a license, permit, or certification of the Health and Human Services Commission; and

(5) a complaint, investigation, or other proceeding pending before the Texas Department of Health that relates to the medical transportation program is transferred without change in status to the Health and Human Services Commission.

(b) The Health and Human Services Commission shall take all action necessary to provide for the transfer of the medical transportation program to the commission as soon as possible after the effective date of this section but not later than September 1, 2004.

SECTION 2.145. CONSOLIDATION OF CERTAIN DIVISIONS AND ACTIVITIES. (a) Not later than March 1, 2004, the Health and Human Services Commission shall consolidate the Medicaid post-payment third-party recovery divisions or activities of the Texas Department of Human Services, the Medicaid vendor drug program, and the state's Medicaid claims administrator with the Medicaid post-payment third-party recovery function.

(b) The Health and Human Services Commission shall use the commission's Medicaid post-payment third-party recovery contractor for the consolidated division.

(c) The Health and Human Services Commission shall update its computer system to facilitate the consolidation.

SECTION 2.146. ABOLITION OF ADVISORY COMMITTEES. (a) Notwithstanding any other provision of state law, each advisory committee, as that term is defined by Section 2110.001, Government Code, created before the effective date of this section that advises the Health and Human Services Commission or a health and human services agency is abolished on the effective date of this section unless the committee:

(1) is required by federal law; or

(2) advises an agency with respect to certification or licensing programs, the regulation of entities providing health and human services, or the implementation of a duty prescribed under this article, as determined by the commissioner of health and human services.

(b) The commissioner of health and human services shall certify which advisory committees are exempt from abolition under

98-1 Subsection (a) of this section and shall publish that certification
98-2 in the Texas Register.

98-3 (c) An advisory committee that is created on or after the
98-4 effective date of this section or that is exempt under Subsection
98-5 (b) of this section from abolition shall make recommendations to
98-6 the executive director of the health and human services agency the
98-7 advisory committee was created to advise and to the commissioner of
98-8 health and human services to assist with eliminating or minimizing
98-9 overlapping functions or required duties between the health and
98-10 human services agencies or between those agencies and the Health
98-11 and Human Services Commission.

98-12 (d) This section does not apply to the telemedicine advisory
98-13 committee established under Section 531.02172, Government Code, as
98-14 added by Chapters 661 and 959, Acts of the 77th Legislature, Regular
98-15 Session, 2001, and that committee continues in existence.

98-16 SECTION 2.147. Community mental health centers may
98-17 coordinate with local community health centers, federally
98-18 qualified health centers (FQHC), and/or disproportionate share
98-19 hospitals for the purpose of accessing local, state, and federal
98-20 programs that could result in lower cost pharmaceuticals. In
98-21 particular, community mental health centers may form a referral
98-22 relationship with community health centers, federally qualified
98-23 health centers (FQHC), disproportionate share hospitals, and/or
98-24 other eligible entities for the purpose of obtaining federal 340B
98-25 pricing for pharmaceuticals. Community mental health centers may
98-26 form a referral relationship with community health centers,
98-27 federally qualified health centers (FQHC), disproportionate share
98-28 hospitals, and/or other eligible entities for the purpose of taking
98-29 advantage of 340B or other lower cost drug programs regardless of
98-30 any statewide preferred drug list or vendor drug program which may
98-31 be adopted.

98-32 SECTION 2.148. CHILD HEALTH PLAN PROGRAM WAIVER. Not later
98-33 than October 1, 2003, the Health and Human Services Commission
98-34 shall request and actively pursue any necessary waivers from a
98-35 federal agency or any other appropriate entity to allow families
98-36 enrolled in the state Medicaid program to opt into the child health
98-37 plan program under Chapter 62, Health and Safety Code, while
98-38 retaining the appropriate federal match rate and the child's
98-39 entitlement to Medicaid coverage. The waiver shall, on at least an
98-40 annual basis, allow families eligible for Medicaid who have
98-41 previously opted to enroll their children in the child health plan
98-42 program under Chapter 62, Health and Safety Code, to return those
98-43 children to the Medicaid program.

98-44 SECTION 2.149. STATE CHILD HEALTH PLAN AMENDMENT. (a) In
98-45 this section, "group plan" means the group health benefit plan
98-46 under the health insurance premium payment reimbursement program
98-47 established under Section 62.059, Health and Safety Code.

98-48 (b) As soon as possible after the effective date of this
98-49 section, the Health and Human Services Commission shall submit for
98-50 approval a plan amendment relating to the state child health plan
98-51 under 42 U.S.C. Section 1397ff, as amended, as necessary to include
98-52 the employers' share of required premiums for coverage of
98-53 individuals enrolled in the group plan as expenditures for the
98-54 purpose of determining the state children's health insurance
98-55 expenditures, as that term is defined by 42 U.S.C. Section
98-56 1397ee(d)(2)(B), as amended, for federal match funding for the
98-57 child health plan program provided under Chapter 62, Health and
98-58 Safety Code.

98-59 SECTION 2.150. STATE MEDICAID PLAN AMENDMENT. (a) In this
98-60 section, "group plan" means the group health benefit plan under the
98-61 health insurance premium payment reimbursement program for
98-62 Medicaid recipients established under Section 32.0422, Human
98-63 Resources Code.

98-64 (b) As soon as possible after the effective date of this
98-65 section, the Health and Human Services Commission shall submit an
98-66 amendment to the state Medicaid plan as necessary to allow this
98-67 state to include the employers' share of required premiums for
98-68 coverage of individuals enrolled in the group plan as expenditures
98-69 for the purpose of determining this state's Medicaid program

99-1 expenditures for federal match funding for the state Medicaid
99-2 program.

99-3 SECTION 2.151. REPEAL. (a) The following are repealed:
99-4 (1) Sections 62.055(b) and (c), 62.056, 62.057,
99-5 142.006(d), (e), and (f), 142.009(i), 142.0176, 252.206(d), and
99-6 252.207(b), Health and Safety Code; and

99-7 (2) Sections 32.027(b) and (e), Human Resources Code.
99-8 (b) An advisory committee established under Section 62.057,
99-9 Health and Safety Code, is abolished on the effective date of this
99-10 section.

99-11 SECTION 2.152. In the event of a conflict between a
99-12 provision of this Act and another Act passed by the 78th
99-13 Legislature, Regular Session, 2003, that becomes law, this Act
99-14 prevails and controls regardless of the relative dates of
99-15 enactment.

99-16 SECTION 2.153. FEDERAL AUTHORIZATION OR WAIVER. If before
99-17 implementing any provision of this Act a state agency determines
99-18 that a waiver or authorization from a federal agency is necessary
99-19 for implementation of that provision, the agency affected by the
99-20 provision shall request the waiver or authorization and may delay
99-21 implementing that provision until the waiver or authorization is
99-22 granted.

99-23 SECTION 2.154. Any funds that are used by the Texas
99-24 Department of Transportation to implement the transportation
99-25 services provided in Sections 2.122, 2.123, 2.124, 2.125, 2.126,
99-26 2.127, 2.128, and 2.129 of this Act shall be accounted for and
99-27 budgeted separately from other funds appropriated to the Texas
99-28 Department of Transportation for any other public transportation
99-29 program or budget strategy.

99-30 SECTION 2.155. EFFECTIVE DATE. Except as otherwise
99-31 provided by this article, this article takes effect September 1,
99-32 2003.

99-33 * * * * *