

By: Nelson, et al.

S.B. No. 6

Substitute the following for S.B. No. 6:

By: Paxton

C.S.S.B. No. 6

A BILL TO BE ENTITLED

AN ACT

relating to protective services; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CHILD PROTECTIVE SERVICES

SECTION 1.01. Subchapter C, Chapter 39, Education Code, is amended by adding Section 39.0531 to read as follows:

Sec. 39.0531. REPORTING CONCERNING STUDENTS IN FOSTER CARE.

The campus report card under Section 39.052 and the district performance report under Section 39.053 must provide information evaluating the performance, using the academic excellence indicators adopted under Section 39.051(b), of students in foster care or other residential care under the conservatorship of the Department of Family and Protective Services.

SECTION 1.02. Section 54.211, Education Code, is amended to read as follows:

Sec. 54.211. EXEMPTIONS FOR STUDENTS IN FOSTER OR OTHER RESIDENTIAL CARE. (a) A student is exempt from the payment of tuition and fees authorized in this chapter if the student:

(1) was in foster care or other residential care under the conservatorship of the Department of Family and Protective ~~and Regulatory~~ Services on or after:

(A) the day preceding the student's 18th birthday;

(B) the day of the student's 14th birthday, if

1 the student was also eligible for adoption on or after that day; or

2 (C) the day the student graduated from high
3 school or received the equivalent of a high school diploma; and

4 (2) enrolls in an institution of higher education as
5 an undergraduate student not later than:

6 (A) the third anniversary of the date the student
7 was discharged from the foster or other residential care, the date
8 the student graduated from high school, or the date the student
9 received the equivalent of a high school diploma, whichever date is
10 earliest; or

11 (B) the student's 21st birthday.

12 (b) The Texas Education Agency and the Texas Higher
13 Education Coordinating Board shall develop outreach programs to
14 ensure that students in foster or other residential care in grades
15 9-12 are aware of the availability of the exemption from the payment
16 of tuition and fees provided by this section.

17 SECTION 1.03. Section 54.2111, Education Code, is amended
18 to read as follows:

19 Sec. 54.2111. EXEMPTIONS FOR ADOPTED STUDENTS FORMERLY IN
20 FOSTER OR OTHER RESIDENTIAL CARE. (a) A student is exempt from the
21 payment of tuition and fees authorized by this chapter if the
22 student:

23 (1) was adopted; and

24 (2) was the subject of an adoption assistance
25 agreement under Subchapter D, Chapter 162, Family Code.

26 (b) The Texas Education Agency and the Texas Higher
27 Education Coordinating Board shall develop outreach programs to

1 ensure that adopted students in grades 9-12 formerly in foster or
2 other residential care are aware of the availability of the
3 exemption from the payment of tuition and fees provided by this
4 section.

5 SECTION 1.04. Section 101.024, Family Code, is amended to
6 read as follows:

7 Sec. 101.024. PARENT. (a) "Parent" means the mother, a
8 man presumed to be the father, a man legally determined to be the
9 father, a man who has been adjudicated to be the father by a court of
10 competent jurisdiction, a man who has acknowledged his paternity
11 under applicable law, or an adoptive mother or father. Except as
12 provided by Subsection (b), the [The] term does not include a parent
13 as to whom the parent-child relationship has been terminated.

14 (b) For purposes of establishing, determining the terms of,
15 modifying, or enforcing an order, a reference in this title to a
16 parent includes a person ordered to pay child support under Section
17 154.001(a-1) or to provide medical support for a child.

18 SECTION 1.05. (a) Section 107.004, Family Code, is amended
19 to read as follows:

20 Sec. 107.004. ADDITIONAL DUTIES OF ATTORNEY AD LITEM FOR
21 CHILD. (a) Except as otherwise provided by this chapter, the
22 attorney ad litem appointed for a child shall:

23 (1) seek to elicit in a developmentally appropriate
24 manner the child's expressed objectives of representation;

25 (2) advise the child;

26 (3) provide guidance to the child;

27 (4) represent the child's expressed objectives of

1 representation and follow the child's expressed objectives of
2 representation during the course of litigation if the attorney ad
3 litem determines that the child is competent to understand the
4 nature of an attorney-client relationship and has formed that
5 relationship with the attorney ad litem;

6 (5) consider the impact on the child in formulating
7 the attorney ad litem's presentation of the child's expressed
8 objectives of representation to the court; and

9 (6) become familiar with:

10 (A) the American Bar Association's standards of
11 practice for attorneys who represent children in abuse and neglect
12 cases; and

13 (B) the suggested amendments to those standards
14 adopted by the National Association of Counsel for Children.

15 (b) An attorney ad litem appointed for a child in a
16 proceeding under Chapter 262 or 263 shall complete at least three
17 hours of continuing legal education relating to child advocacy as
18 described by Subsection (c) as soon as practicable after the
19 attorney ad litem's appointment. An attorney ad litem is not
20 required to comply with this subsection if the court finds that the
21 attorney ad litem has experience equivalent to the required
22 education.

23 (c) The continuing legal education required by Subsection
24 (b) must:

25 (1) be low-cost, available on the Internet, and
26 provided through the State Bar of Texas; and

27 (2) focus on the duties of an attorney ad litem in, and

1 the procedures of and best practices for, a proceeding under
2 Chapter 262 or 263.

3 (d) Except as provided by Subsection (e), an attorney ad
4 litem appointed for a child in a proceeding under Chapter 262 or 263
5 shall meet before each court hearing with:

6 (1) the child, if the child is at least four years of
7 age; or

8 (2) the individual with whom the child ordinarily
9 resides, including the child's parent, conservator, guardian,
10 caretaker, or custodian, if the child is younger than four years of
11 age.

12 (e) An attorney ad litem appointed for a child in a
13 proceeding under Chapter 262 or 263 is not required to comply with
14 Subsection (d) before a hearing if the court finds at that hearing
15 that the attorney ad litem has shown good cause why the attorney ad
16 litem's compliance with that subsection is not feasible or in the
17 best interest of the child.

18 (b) The changes in law made by this section apply only to an
19 attorney ad litem for a child appointed in a proceeding under
20 Chapter 262 or 263, Family Code, on or after the effective date of
21 this section. An attorney ad litem for a child appointed in a
22 proceeding under Chapter 262 or 263, Family Code, before the
23 effective date of this section is governed by the law in effect on
24 the date the attorney ad litem was appointed, and the former law is
25 continued in effect for that purpose.

26 (c) The State Bar of Texas shall adopt rules governing the
27 reporting of an attorney ad litem's timely completion of the

1 continuing legal education required by Section 107.004(b), Family
2 Code, as added by this section.

3 SECTION 1.06. (a) Section 154.001, Family Code, is amended
4 by adding Subsection (a-1) to read as follows:

5 (a-1) The court may order each person who is financially
6 able and whose parental rights have been terminated with respect to
7 a child in substitute care for whom the department has been
8 appointed managing conservator to support the child in the manner
9 specified by the order:

10 (1) until the earliest of:

11 (A) the child's adoption;

12 (B) the child's 18th birthday or graduation from
13 high school, whichever occurs later;

14 (C) removal of the child's disabilities of
15 minority by court order, marriage, or other operation of law; or

16 (D) the child's death; or

17 (2) if the child is disabled as defined in this
18 chapter, for an indefinite period.

19 (b) Section 154.001, Family Code, as amended by this
20 section, applies only to a person whose parent-child relationship
21 with respect to a child is terminated on or after the effective
22 date of this section. A person whose parent-child relationship is
23 terminated before the effective date of this section is governed by
24 the law in effect on the date the parent-child relationship was
25 terminated, and the former law is continued in effect for that
26 purpose.

27 SECTION 1.07. Section 162.304, Family Code, is amended by

1 adding Subsection (f) to read as follows:

2 (f) Subject to the availability of funds, the department
3 shall work with the Health and Human Services Commission and the
4 federal government to develop a program to provide medical
5 assistance under Chapter 32, Human Resources Code, to children who
6 were in the conservatorship of the department at the time of
7 adoptive placement and need medical or rehabilitative care but do
8 not qualify for adoption assistance.

9 SECTION 1.08. Subchapter B, Chapter 231, Family Code, is
10 amended by adding Section 231.122 to read as follows:

11 Sec. 231.122. MONITORING CHILD SUPPORT CASES; ENFORCEMENT.
12 The Title IV-D agency shall monitor each Title IV-D case from the
13 date the agency begins providing services on the case. If a child
14 support obligor in a Title IV-D case becomes more than 60 days
15 delinquent in paying child support, the Title IV-D agency shall
16 expedite the commencement of an action to enforce the child support
17 order.

18 SECTION 1.09. Section 261.001, Family Code, is amended by
19 amending Subdivision (2) to read as follows:

20 (2) "Department" means the Department of Family and
21 Protective [~~and Regulatory~~] Services.

22 SECTION 1.10. The heading to Section 261.107, Family Code,
23 is amended to read as follows:

24 Sec. 261.107. FALSE REPORT; CRIMINAL PENALTY; CIVIL
25 PENALTY.

26 SECTION 1.11. (a) Section 261.107, Family Code, is amended
27 by amending Subsection (a) and adding Subsections (d) and (e) to

1 read as follows:

2 (a) A person commits an offense if the person knowingly or
3 intentionally makes a report as provided in this chapter that the
4 person knows is false or lacks factual foundation. An offense under
5 this section is a state jail felony [~~Class A misdemeanor~~] unless it
6 is shown on the trial of the offense that the person has previously
7 been convicted under this section, in which case the offense is a
8 [~~state jail~~] felony of the third degree.

9 (d) The court shall order a person who is convicted of an
10 offense under this section to pay any reasonable attorney's fees
11 incurred by the person who was falsely accused of abuse or neglect
12 in any proceeding relating to the false report.

13 (e) A person who engages in conduct described by Subsection
14 (a) is liable to the state for a civil penalty of \$1,000. The
15 attorney general shall bring an action to recover a civil penalty
16 authorized by this subsection.

17 (b) Section 261.107(a), Family Code, as amended by this
18 section, and Section 261.107(d), Family Code, as added by this
19 section, apply only to an offense committed on or after the
20 effective date of this section. An offense committed before the
21 effective date of this section is covered by Section 261.107,
22 Family Code, as it existed on the date the offense was committed,
23 and the former law is continued in effect for that purpose. For
24 purposes of this subsection, an offense is committed before the
25 effective date of this section if any element of the offense occurs
26 before that date.

27 (c) Section 261.107(e), Family Code, as added by this

1 section, applies only to conduct that occurs on or after the
2 effective date of this section. Conduct that occurs before the
3 effective date of this section is governed by the law in effect on
4 the date the conduct occurred, and the former law is continued in
5 effect for that purpose.

6 SECTION 1.12. Section 261.201, Family Code, is amended by
7 adding Subsection (f-1) to read as follows:

8 (f-1) The department shall provide to a relative or other
9 individual with whom a child is placed any information the
10 department considers necessary to ensure that the relative or other
11 individual is prepared to meet the needs of the child. The
12 information required by this subsection may include information
13 related to any abuse or neglect suffered by the child.

14 SECTION 1.13. (a) Sections 261.301(a), (d), (f), (g), and
15 (h), Family Code, are amended to read as follows:

16 (a) With assistance from the appropriate state or local law
17 enforcement agency as provided by this section, the department or
18 designated agency shall make a prompt and thorough investigation of
19 a report of child abuse or neglect allegedly committed by a person
20 responsible for a child's care, custody, or welfare. The
21 investigation shall be conducted without regard to any pending suit
22 affecting the parent-child relationship.

23 (d) The executive commissioner of the Health and Human
24 Services Commission shall [~~department may~~] by rule assign
25 priorities and prescribe investigative procedures for
26 investigations based on the severity and immediacy of the alleged
27 harm to the child. Subject to the availability of funds, the rules

1 must require the department to respond within 24 hours after a
2 report of abuse and neglect that is assigned the highest priority
3 and within 72 hours after a report of abuse and neglect that is
4 assigned the second highest priority. The primary purpose of the
5 investigation shall be the protection of the child.

6 (f) An investigation of a report to the department [~~that is~~
7 ~~assigned the highest priority in accordance with department rules~~
8 ~~adopted under Subsection (d) and~~] that alleges that a child has been
9 or may be the victim of conduct that constitutes a criminal offense
10 that poses an immediate risk of physical or sexual abuse of a child
11 that could result in the death of or serious harm to the child shall
12 be conducted jointly by a peace officer, as defined by Article 2.12,
13 Code of Criminal Procedure, from the appropriate local law
14 enforcement agency and the department or the agency responsible for
15 conducting an investigation under Subchapter E.

16 (g) The inability or unwillingness of a local law
17 enforcement agency to conduct a joint investigation under this
18 section [~~Subsection (f)~~] does not constitute grounds to prevent or
19 prohibit the department from performing its duties under this
20 subtitle. The department shall document any instance in which a law
21 enforcement agency is unable or unwilling to conduct a joint
22 investigation under this section [~~Subsection (f)~~].

23 (h) The department and the appropriate local law
24 enforcement agency shall conduct an investigation, other than an
25 investigation under Subchapter E, as provided by this section and
26 Article 2.27, Code of Criminal Procedure, if the investigation is
27 of a report [~~of child abuse or neglect that is assigned the highest~~

1 ~~priority in accordance with department rules adopted under~~
2 ~~Subsection (d) and]~~ that alleges that a child has been or may be the
3 victim of conduct that constitutes a criminal offense that poses an
4 immediate risk of physical or sexual abuse of a child that could
5 result in the death of or serious harm to the child. Immediately on
6 receipt of a report described by this subsection, the department
7 shall notify the appropriate local law enforcement agency of the
8 report.

9 (b) The change in law made by this section to Section
10 261.301, Family Code, applies to the investigation of a report of
11 child abuse or neglect made on or after the effective date of this
12 section. The investigation of a report of child abuse or neglect
13 made before the effective date of this section is governed by the
14 law in effect on the date the report was made, and the former law is
15 continued in effect for that purpose.

16 (c) The Department of Family and Protective Services shall
17 develop and implement an automated tracking and reporting system
18 that enables the department to track information on initial
19 contacts to monitor compliance with the requirements of Section
20 261.301(d), Family Code, as amended by this section, relating to
21 the timely response to reports of abuse and neglect.

22 (d) The executive commissioner of the Health and Human
23 Services Commission shall adopt the rules as required by Section
24 261.301(d), Family Code, as amended by this section, not later than
25 September 1, 2007.

26 SECTION 1.14. Subchapter D, Chapter 261, Family Code, is
27 amended by adding Section 261.3011 to read as follows:

1 Sec. 261.3011. JOINT INVESTIGATION GUIDELINES AND
2 TRAINING. (a) The department shall, in consultation with the
3 appropriate law enforcement agencies in each county, develop
4 guidelines and protocols for joint investigations by the department
5 and the law enforcement agency under Section 261.301. The
6 guidelines and protocols must:

7 (1) clarify the respective roles of the department and
8 law enforcement agency in conducting the investigation; and

9 (2) incorporate the use of forensic methods in
10 determining the occurrence of child abuse and neglect.

11 (b) The department shall collaborate with law enforcement
12 agencies to provide to department investigators and law enforcement
13 officers responsible for investigating reports of abuse and neglect
14 joint training relating to methods to effectively conduct joint
15 investigations under Section 261.301. The training must include
16 information on interviewing techniques, evidence gathering, and
17 testifying in court for criminal investigations.

18 SECTION 1.15. (a) Section 261.3015(a), Family Code, is
19 amended to read as follows:

20 (a) In assigning priorities and prescribing investigative
21 procedures based on the severity and immediacy of the alleged harm
22 to a child under Section 261.301(d), the department [~~board by rule~~]
23 shall establish a flexible response system to allow the department
24 to make the most effective use of [~~allocate~~] resources by
25 investigating serious cases of abuse and neglect and by screening
26 out less serious cases of abuse and neglect if the department
27 determines, after contacting a professional or other credible

1 source, that the child's safety can be assured without further
2 investigation. The department may administratively close the less
3 serious cases without providing services or making a referral to
4 another entity for assistance [~~providing assessment and family~~
5 ~~preservation services in less serious cases~~].

6 (b) To ensure the safety of children, the Department of
7 Family and Protective Services shall use highly skilled caseworkers
8 to perform the screening functions described by Section
9 261.3015(a), Family Code, as amended by this section, and develop
10 standardized policy guidelines, including accountability measures
11 to monitor closed cases, to ensure that screening guidelines do not
12 result in the closing of cases that should not be closed.

13 SECTION 1.16. Subchapter D, Chapter 261, Family Code, is
14 amended by adding Section 261.3021 to read as follows:

15 Sec. 261.3021. CASEWORK DOCUMENTATION AND MANAGEMENT.
16 Subject to the appropriation of money for these purposes, the
17 department shall:

18 (1) identify critical investigation actions that
19 impact child safety and require department caseworkers to document
20 those actions in a child's case file not later than the day after
21 the action occurs;

22 (2) identify and develop a comprehensive set of
23 casework quality indicators that must be reported in real time to
24 support timely management oversight;

25 (3) provide department supervisors with access to
26 casework quality indicators and train department supervisors on the
27 use of that information in the daily supervision of caseworkers;

1 (4) develop a case tracking system that notifies
2 department supervisors and management when a case is not
3 progressing in a timely manner;

4 (5) use current data reporting systems to provide
5 department supervisors and management with easier access to
6 information; and

7 (6) train department supervisors and management on the
8 use of data to monitor cases and make decisions.

9 SECTION 1.17. Subchapter D, Chapter 261, Family Code, is
10 amended by adding Section 261.3031 to read as follows:

11 Sec. 261.3031. FAILURE TO COOPERATE WITH INVESTIGATION;
12 DEPARTMENT RESPONSE. If a parent or other person refuses to
13 cooperate with the department's investigation of the alleged abuse
14 or neglect of a child and the refusal poses a risk to the child's
15 safety, the department shall seek assistance from the appropriate
16 county attorney or district attorney or criminal district attorney
17 with responsibility for representing the department as provided by
18 Section 264.009 to obtain a court order as described by Section
19 261.303.

20 SECTION 1.18. Subchapter D, Chapter 261, Family Code, is
21 amended by adding Section 261.3032 to read as follows:

22 Sec. 261.3032. INTERFERENCE WITH INVESTIGATION; CRIMINAL
23 PENALTY. (a) A person commits an offense if, with the intent to
24 interfere with the department's investigation of a report of abuse
25 or neglect of a child, the person takes, retains, or conceals the
26 child and the person's taking, retention, or concealment interferes
27 with the department's investigation.

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

2 (c) If conduct that constitutes an offense under this
3 section also constitutes an offense under any other law, the actor
4 may be prosecuted under this section or the other law.

5 SECTION 1.19. (a) Section 261.307, Family Code, is amended
6 to read as follows:

7 Sec. 261.307. INFORMATION RELATING TO INVESTIGATION
8 PROCEDURE. As soon as possible after initiating an investigation
9 of a parent or other person having legal custody of a child, the
10 department shall provide to the person:

11 (1) a brief and easily understood summary of:

12 (A) [~~(1)~~] the department's procedures for
13 conducting an investigation of alleged child abuse or neglect,
14 including:

15 (i) [~~(A)~~] a description of the
16 circumstances under which the department would request to remove
17 the child from the home through the judicial system; and

18 (ii) [~~(B)~~] an explanation that the law
19 requires the department to refer all reports of alleged child abuse
20 or neglect to a law enforcement agency for a separate determination
21 of whether a criminal violation occurred;

22 (B) [~~(2)~~] the person's right to file a complaint
23 with the department or to request a review of the findings made by
24 the department in the investigation;

25 (C) [~~(3)~~] the person's right to review all
26 records of the investigation unless the review would jeopardize an
27 ongoing criminal investigation;

1 (D) [~~(4)~~] the person's right to seek legal
2 counsel;

3 (E) [~~(5)~~] references to the statutory and
4 regulatory provisions governing child abuse and neglect and how the
5 person may obtain copies of those provisions; and

6 (F) [~~(6)~~] the process the person may use to
7 acquire access to the child if the child is removed from the home;

8 (2) if the department determines that removal of the
9 child may be warranted, a proposed child placement resources form
10 that instructs the parent or other person having legal custody of
11 the child to complete and return the form to the department or
12 agency and to identify in the form three individuals who could be
13 relative caregivers or designated caregivers, as those terms are
14 defined by Section 264.751; and

15 (3) an informational manual required by Section
16 261.3071.

17 (b) The Department of Family and Protective Services shall
18 develop the proposed child placement resources form required to be
19 provided under Section 261.307, Family Code, as amended by this
20 section, not later than November 1, 2005.

21 (c) The Department of Family and Protective Services shall
22 provide the proposed child placement resources form as required by
23 Section 261.307, Family Code, as amended by this section, to the
24 parent or other person having legal custody of a child who is the
25 subject of an investigation of abuse or neglect that is commenced on
26 or after November 1, 2005.

27 SECTION 1.20. Subchapter D, Chapter 261, Family Code, is

1 amended by adding Section 261.3071 to read as follows:

2 Sec. 261.3071. INFORMATIONAL MANUALS. (a) In this
3 section, "relative caregiver" and "designated caregiver" have the
4 meanings assigned those terms by Section 264.751.

5 (b) The department shall develop and publish informational
6 manuals that provide information for:

7 (1) a parent or other person having custody of a child
8 who is the subject of an investigation under this chapter; and

9 (2) a person who is selected by the department to be
10 the child's relative or designated caregiver.

11 (c) Information provided in the manuals must be in both
12 English and Spanish and must include, as appropriate:

13 (1) useful indexes of information such as telephone
14 numbers;

15 (2) the information required to be provided under
16 Section 261.307(1);

17 (3) information describing the rights and duties of a
18 relative or designated caregiver; and

19 (4) information regarding the relative and other
20 designated caregiver program under Subchapter I, Chapter 264.

21 SECTION 1.21. Subchapter D, Chapter 261, Family Code, is
22 amended by adding Section 261.3101 to read as follows:

23 Sec. 261.3101. FORENSIC INVESTIGATION SUPPORT. The
24 department shall, subject to the availability of money:

25 (1) employ or contract with medical and law
26 enforcement professionals who shall be strategically placed
27 throughout the state to provide forensic investigation support and

1 to assist caseworkers with assessment decisions and intervention
2 activities;

3 (2) employ or contract with subject matter experts to
4 serve as consultants to department caseworkers in all aspects of
5 their duties; and

6 (3) designate persons who shall act as liaisons within
7 the department whose primary functions are to develop relationships
8 with local law enforcement agencies and courts.

9 SECTION 1.22. Section 261.3125, Family Code, is amended to
10 read as follows:

11 Sec. 261.3125. CHILD SAFETY SPECIALISTS [~~INVESTIGATIONS~~
12 ~~COORDINATOR~~]. (a) The department shall employ in each of the
13 department's administrative regions [~~region of the department for~~
14 ~~child protective services~~] at least one child safety specialist
15 [~~protective services investigations coordinator~~]. The job
16 responsibilities of the child safety specialist [~~investigations~~
17 ~~coordinator~~] must focus [~~only~~] on child abuse and neglect
18 investigation issues, including reports of child abuse required by
19 Section 261.101, to achieve a greater compliance with that section,
20 and on assessing and improving the effectiveness of the department
21 in providing for the protection of children in the region.

22 (b) The duties of a child safety specialist [~~protective~~
23 ~~services investigations coordinator~~] must include the duty to:

24 (1) conduct staff reviews and evaluations of cases
25 determined to involve a high risk to the health or safety of a
26 child, including cases of abuse reported under Section 261.101, to
27 ensure that risk assessment tools are fully and correctly used;

1 (2) review and evaluate [~~monitor~~] cases in which there
2 have been multiple referrals to the department of child abuse or
3 neglect involving the same family, child, or person alleged to have
4 committed the abuse or neglect; and

5 (3) approve decisions and assessments related to
6 investigations of cases of child abuse or neglect that involve a
7 high risk to the health or safety of a child.

8 SECTION 1.23. Subchapter D, Chapter 261, Family Code, is
9 amended by adding Section 261.3126 to read as follows:

10 Sec. 261.3126. COLOCATION OF INVESTIGATORS. (a) In each
11 county, to the extent possible, the department and the local law
12 enforcement agencies that investigate child abuse in the county
13 shall collocate in the same offices investigators from the
14 department and the law enforcement agencies to improve the
15 efficiency of child abuse investigations. The department shall
16 consider locating investigators from the department and county and
17 municipal law enforcement agencies at a children's advocacy center
18 in the county.

19 (b) A law enforcement agency is not required to comply with
20 the collocation requirements of this section if the law enforcement
21 agency does not have a full-time peace officer solely assigned to
22 investigate reports of child abuse and neglect.

23 (c) If a county does not have a children's advocacy center,
24 the department shall, if practicable, establish a children's
25 advocacy center in the county as provided by Section 264.402 and
26 locate investigators from the department and county and municipal
27 law enforcement agencies at the center.

1 SECTION 1.24. Subchapter B, Chapter 262, Family Code, is
2 amended by adding Section 262.114 to read as follows:

3 Sec. 262.114. EVALUATION OF IDENTIFIED RELATIVES AND OTHER
4 DESIGNATED INDIVIDUALS; PLACEMENT. (a) Before a full adversary
5 hearing under Subchapter C, the Department of Family and Protective
6 Services must perform a background and criminal history check of
7 the relatives or other designated individuals identified as a
8 potential relative or designated caregiver, as defined by Section
9 264.751, on the proposed child placement resources form provided
10 under Section 261.307. The department shall evaluate each person
11 listed on the form to determine the relative or other designated
12 individual who would be the most appropriate substitute caregiver
13 for the child and must complete a home study of the most appropriate
14 substitute caregiver, if any, before the full adversary hearing.
15 Until the department identifies a relative or other designated
16 individual qualified to be a substitute caregiver, the department
17 must continue to explore substitute caregiver options. The time
18 frames in this subsection do not apply to a relative or other
19 designated individual located in another state.

20 (b) The department may place a child with a relative or
21 other designated individual identified on the proposed child
22 placement resources form if the department determines that the
23 placement is in the best interest of the child. The department may
24 place the child with the relative or designated individual before
25 conducting the background and criminal history check or home study
26 required under Subsection (a). The department shall provide a copy
27 of an informational manual required under Section 261.3071 to the

1 relative or other designated caregiver at the time of the child's
2 placement.

3 SECTION 1.25. (a) Section 262.201(c), Family Code, is
4 amended to read as follows:

5 (c) If the court finds sufficient evidence to satisfy a
6 person of ordinary prudence and caution that there is a continuing
7 danger to the physical health or safety of the child and for the
8 child to remain in the home is contrary to the welfare of the child,
9 the court shall issue an appropriate temporary order under Chapter
10 105. The court shall require each parent, alleged father, or
11 relative of the child before the court to submit the proposed child
12 placement resources form provided under Section 261.307, if the
13 form has not been previously provided, and provide the Department
14 of Family and Protective [~~and Regulatory~~] Services with information
15 necessary to locate any other absent parent, alleged father, or
16 relative of the child. The court shall inform each parent in open
17 court that parental and custodial rights and duties may be subject
18 to restriction or to termination unless the parent or parents are
19 willing and able to provide the child with a safe environment. If
20 the court finds that the child requires protection from family
21 violence by a member of the child's family or household, the court
22 shall render a protective order under Title 4 for the child. In
23 this subsection, "family violence" has the meaning assigned by
24 Section 71.004.

25 (b) The change in law made by this section to Section
26 262.201(c), Family Code, applies only to a full adversary hearing
27 that occurs on or after November 1, 2005. A full adversary hearing

1 that occurs before that date is governed by the law as it existed
2 before amendment by this section, and the former law is continued in
3 effect for that purpose.

4 SECTION 1.26. Section 263.001(a)(1), Family Code, is
5 amended to read as follows:

6 (1) "Department" means the Department of Family and
7 Protective [~~and Regulatory~~] Services.

8 SECTION 1.27. (a) Section 263.102, Family Code, is amended
9 by amending Subsection (a) and adding Subsection (d) to read as
10 follows:

11 (a) The service plan must:

12 (1) be specific;

13 (2) be in writing;

14 (3) be prepared by the department or other agency in
15 conference with the child's parents;

16 (4) state appropriate deadlines;

17 (5) state whether the goal of the plan is:

18 (A) return of the child to the child's parents;

19 (B) termination of parental rights and placement
20 of the child for adoption; or

21 (C) because of the child's special needs or
22 exceptional circumstances, continuation of the child's care out of
23 the child's home;

24 (6) state steps that are necessary to:

25 (A) return the child to the child's home if the
26 placement is in foster care;

27 (B) enable the child to remain in the child's

1 home with the assistance of a service plan if the placement is in
2 the home under the department's or other agency's supervision; or

3 (C) otherwise provide a permanent safe placement
4 for the child;

5 (7) state the actions and responsibilities that are
6 necessary for the child's parents to take to achieve the plan goal
7 during the period of the service plan and the assistance to be
8 provided to the parents by the department or other authorized
9 agency toward meeting that goal;

10 (8) state any specific skills or knowledge that the
11 child's parents must acquire or learn to achieve the plan goal;

12 (9) state the name of the person with the department or
13 other agency whom the child's parents may contact for information
14 relating to the child if other than the person preparing the plan;
15 and

16 (10) [~~9~~] prescribe any other term or condition that
17 the department or other agency determines to be necessary to the
18 service plan's success.

19 (d) The department or other authorized entity must write the
20 service plan in a clear and understandable manner in order to
21 facilitate a parent's ability to follow the requirements of the
22 service plan.

23 (b) Section 263.202(c), Family Code, is amended to read as
24 follows:

25 (c) The court shall advise the parties that progress under
26 the service plan will be reviewed at all subsequent hearings,
27 including a review of whether the parties have acquired or learned

1 any specific skills or knowledge stated in the service plan.

2 (c) The changes in law made by Sections 263.102 and
3 263.202(c), Family Code, as amended by this section, apply only to a
4 child placed in the custody of the Department of Family and
5 Protective Services on or after the effective date of this section.
6 A child placed in the custody of the department before the effective
7 date of this section is governed by the law in effect on the date the
8 child was placed in the department's custody, and the former law is
9 continued in effect for that purpose.

10 SECTION 1.28. (a) Section 263.201, Family Code, is amended
11 by adding Subsection (c) to read as follows:

12 (c) The court shall require each parent, alleged father, or
13 relative of the child before the court to submit the proposed child
14 placement resources form provided under Section 261.307 at the
15 status hearing, if the form has not previously been submitted.

16 (b) The change in law made by this section to Section
17 263.201, Family Code, applies only to a status hearing that occurs
18 on or after November 1, 2005. A status hearing that occurs before
19 that date is governed by the law as it existed before amendment by
20 this section, and the former law is continued in effect for that
21 purpose.

22 SECTION 1.29. (a) Section 263.502(c), Family Code, is
23 amended to read as follows:

24 (c) The placement review report must:

25 (1) evaluate whether the child's current placement is
26 appropriate for meeting the child's needs;

27 (2) evaluate whether efforts have been made to ensure

1 placement of the child in the least restrictive environment
2 consistent with the best interest and special needs of the child if
3 the child is placed in institutional care;

4 (3) contain a discharge plan for a child who is at
5 least 16 years of age that identifies [~~identify~~] the services and
6 specific tasks that are needed to assist the [a] child [~~who is at~~
7 ~~least 16 years of age~~] in making the transition from substitute care
8 to adult [~~independent~~] living [~~if the services are available in the~~
9 ~~community~~];

10 (4) evaluate whether the child's current educational
11 placement is appropriate for meeting the child's academic needs;

12 (5) identify other plans or services that are needed
13 to meet the child's special needs or circumstances; and

14 (6) [~~(5)~~] describe the efforts of the department or
15 authorized agency to place the child for adoption if parental
16 rights to the child have been terminated and the child is eligible
17 for adoption.

18 (b) In implementing the provisions of Section
19 263.502(c)(3), Family Code, as amended by this section, the
20 Department of Family and Protective Services shall, to the extent
21 that funding is appropriated for this purpose, contract with
22 outside entities to assist in the discharge planning process.

23 SECTION 1.30. Subtitle D, Title 2, Human Resources Code, is
24 amended by adding Chapter 45 to read as follows:

25 CHAPTER 45. PRIVATIZATION OF SUBSTITUTE CARE AND CASE MANAGEMENT

26 SERVICES

27 SUBCHAPTER A. GENERAL PROVISIONS

1 Sec. 45.001. DEFINITIONS. In this chapter:

2 (1) "Case management services" means the provision of
3 case management services to a child for whom the department has been
4 appointed temporary or permanent managing conservator, including
5 caseworker-child visits, family visits, the convening of family
6 group conferences, the development and revision of the case plan,
7 the coordination and monitoring of services needed by the child and
8 family, and the assumption of court-related duties, including
9 preparing court reports, attending judicial hearings and
10 permanency hearings, and ensuring that the child is progressing
11 toward permanency within state and federal mandates.

12 (2) "Commission" means the Health and Human Services
13 Commission.

14 (3) "Department" means the Department of Family and
15 Protective Services.

16 (4) "Executive commissioner" means the executive
17 commissioner of the Health and Human Services Commission.

18 (5) "Family-based safety services" means services
19 designed to help children at risk of being placed in foster care to
20 remain safely with their families.

21 (6) "Independent administrator" means an independent
22 agency selected through a competitive procurement process to:

23 (A) secure, coordinate, and manage substitute
24 care services and case management services in a geographically
25 designated area of the state; and

26 (B) ensure continuity of care for a child
27 referred to the administrator by the department and the child's

1 family from the day a child enters the child protective services
2 system until the child leaves the system.

3 (7) "Performance-based contracting" means the
4 structuring of all aspects of the procurement of services around
5 the purpose of the work to be performed and the desired results with
6 the contract requirements set forth in clear, specific, and
7 objective terms with measurable outcomes. Contracts may also
8 include provisions that link the performance of the contractor to
9 the level and timing of reimbursement.

10 (8) "Permanency services" means services, other than
11 family-based safety services, provided to secure a child's safety,
12 permanency, and well-being, including substitute care services,
13 family reunification services, adoption and postadoption services,
14 preparation for adult living services, and case management
15 services.

16 (9) "Placement assessment" means the process used by
17 the department or another authorized entity to determine the most
18 appropriate, least restrictive, safe placement resource for a child
19 who must be separated temporarily from the care of the child's
20 parents.

21 (10) "Privatize" means to contract with a private
22 entity to provide certain governmental services.

23 (11) "Psychotropic medication" means a drug that
24 affects the mind through action on the central nervous system and is
25 prescribed for depression, schizophrenia, attention deficit
26 hyperactivity disorder, seizures, and a variety of other similar
27 conditions.

1 (12) "Substitute care provider" means a child-care
2 institution or a child-placing agency, as defined by Section
3 42.002.

4 (13) "Substitute care services" means services
5 provided to or for children in substitute care and their families,
6 including the recruitment, training, and management of foster
7 parents, the recruitment of adoptive families, and the facilitation
8 of the adoption process, family reunification, independent living,
9 emergency shelter, residential group care, foster care,
10 therapeutic foster care, and post-placement supervision, including
11 relative placement. The term does not include the regulation of
12 facilities under Subchapter C, Chapter 42.

13 Sec. 45.002. PRIVATIZING SUBSTITUTE CARE AND CASE
14 MANAGEMENT SERVICES; DEPARTMENT DUTIES. (a) Not later than
15 September 1, 2009, the department shall complete the statewide
16 privatization of the provision of substitute care and case
17 management services in this state.

18 (b) On and after September 1, 2009:

19 (1) all substitute care and case management services
20 for children for whom the department has been appointed temporary
21 or permanent managing conservator must be provided by child-care
22 institutions and child-placing agencies; and

23 (2) except as provided by Subsection (d) and
24 notwithstanding any other law, the department may not directly
25 provide those services.

26 (c) On and after September 1, 2009, the department shall:

27 (1) monitor the quality of services for which the

1 department and each independent administrator contract under this
2 chapter; and

3 (2) ensure that the services are provided in
4 accordance with federal law and the laws of this state, including
5 department rules and rules of the Department of State Health
6 Services and the Texas Commission on Environmental Quality.

7 (d) On and after September 1, 2009, the department may
8 provide substitute care and case management services in an
9 emergency. The executive commissioner shall adopt rules describing
10 the circumstances in which the department may provide those
11 services.

12 Sec. 45.003. HIRING PREFERENCE. A substitute care or case
13 management services provider that contracts with the department to
14 provide substitute care services or case management services shall
15 give a preference in hiring to qualified department employees in
16 good standing with the department who provide substitute care or
17 case management services and whose positions with the department
18 may be eliminated as a result of the privatization of substitute
19 care and case management services.

20 Sec. 45.004. INDEPENDENT ADMINISTRATORS; DEPARTMENT
21 DUTIES. (a) The department shall research and develop a
22 comprehensive strategy for contracting for management support
23 services from independent administrators on a regional basis. If
24 the department determines that an independent administrator could
25 manage and procure substitute care and case management services
26 contracts with private agencies and conduct placement assessments
27 in a more cost-beneficial manner, the department shall implement a

1 transition plan to transfer the procurement, management, and
2 oversight of substitute care and case management services from the
3 department to an independent administrator, as well as
4 responsibility for placement assessments. If the department
5 determines that contracting for management support from an
6 independent administrator is not cost beneficial, the
7 privatization of substitute care and case management services will
8 occur as provided by Section 45.002(b).

9 (b) The comprehensive strategy, at a minimum, must:

10 (1) use competitively procured independent
11 administrators to procure and manage substitute care and case
12 management providers in a geographic region designated by the
13 department;

14 (2) require independent administrators to contract
15 with private agencies that will:

16 (A) increase local foster and adoptive placement
17 options for all children, especially teenagers, sibling groups,
18 children whose race or ethnicity is disproportionately represented
19 in foster care, children with severe or multiple disabilities, and
20 other children who are difficult to place; and

21 (B) expand efforts to recruit foster families,
22 adoptive families, and alternative care providers through
23 faith-based and other targeted recruitment programs; and

24 (3) allow permanency services providers to enter
25 client, service, and outcome information into the department's
26 client data system.

27 (c) Subject to the appropriation of funds, the department

1 shall:

2 (1) enhance existing data systems to include contract
3 performance information; and

4 (2) implement a contracting data system developed or
5 procured by the department, to track quality assurance and other
6 contracting tools to effectively manage, monitor, and evaluate
7 performance-based contracting functions.

8 [Sections 45.005-45.050 reserved for expansion]

9 SUBCHAPTER B. DEPARTMENT DUTIES

10 Sec. 45.051. REORGANIZING STAFF RESPONSIBILITIES. Not
11 later than March 1, 2006, the department shall develop a plan for
12 reorganizing the department's operation to support future
13 procurement of, contracting with, and monitoring of private
14 contractors and enforcement of the licensing of facilities. The
15 plan must include provisions for reducing duplication of the
16 department's program monitoring activities.

17 Sec. 45.052. FINANCING. The department shall create
18 financing and payment arrangements that provide incentives for an
19 independent administrator and its subcontract providers to achieve
20 safety, permanency, and well-being outcomes and improved system
21 performance. In developing this financing arrangement, the
22 department shall examine:

23 (1) the use of case rates or performance-based
24 fee-for-service contracts that include incentive payments or
25 payment schedules that link reimbursement to results; and

26 (2) ways to reduce a contractor's financial risk that
27 could jeopardize the solvency of the contractor, including the use

1 of a risk-reward corridor that limits risk of loss and potential
2 profits or the establishment of a statewide risk pool.

3 Sec. 45.053. ADOPTION OF TRANSITION PLAN. (a) Not later
4 than September 30, 2005, the commission and the department shall
5 submit to the legislature a plan for the development of the
6 transition plan, including the planning structure and process,
7 engagement of stakeholders, and access to experienced consultation
8 and technical assistance.

9 (b) Not later than March 1, 2006, the commission and the
10 department shall, in consultation with private entities under
11 contract to provide substitute care services for the department,
12 including members of the boards of directors of the private
13 entities and other community stakeholders, develop and adopt a
14 substitute care and case management services transition plan
15 consistent with the requirements of Subchapter C.

16 (c) The executive commissioner shall adopt rules to
17 implement the privatization of substitute care and case management
18 services in this state.

19 Sec. 45.054. REGIONAL IMPLEMENTATION. (a) The department
20 shall implement the privatization of substitute care and case
21 management services on a regional basis. The transition plan must
22 include a schedule with deadlines for implementation of the plan in
23 each region of the state. The plan must ensure that the transition
24 is completed in the first region not later than December 31, 2006,
25 and that the transition is completed statewide not later than
26 September 1, 2009.

27 (b) The transition plan must include a schedule with the

1 following deadlines for implementation of the plan:

2 (1) completion of the transition plan, not later than
3 March 1, 2006;

4 (2) release of a request for proposal for a geographic
5 region of the state designated by the department, not later than
6 April 30, 2006;

7 (3) the awarding of the contract described by
8 Subdivision (2), not later than September 30, 2006;

9 (4) establishment of the multidisciplinary team and
10 necessary processes, evaluation criteria, and monitoring tools to
11 be used to monitor and evaluate the performance of the contractor,
12 not later than September 30, 2006;

13 (5) the review and evaluation of the multidisciplinary
14 team's reports pertaining to the contractor's achievement of
15 performance-based milestones and the effect on the quality of
16 permanency services provided, not later than December 31, 2007;

17 (6) release of a request for proposal for additional
18 geographic regions of the state designated by the department, not
19 later than March 31, 2008;

20 (7) the awarding of the contracts described by
21 Subdivision (6), not later than July 31, 2008;

22 (8) release of a request for proposal for all
23 remaining geographic regions of the state designated by the
24 department, not later than December 31, 2008; and

25 (9) the awarding of the contracts described by
26 Subdivision (8), not later than May 31, 2009.

27 (c) Not later than the first anniversary of the date the

1 department enters into the first contract under this section, the
2 department shall institute an independent evaluation of the
3 implementation of the privatization of substitute care and case
4 management services. The department shall report the results of
5 the evaluation to the legislature to determine whether to refine
6 the service delivery model for the remaining regional transitions.
7 The evaluation must assess performance based on compliance with
8 defined quality outcomes for children.

9 [Sections 45.055-45.100 reserved for expansion]

10 SUBCHAPTER C. TRANSITION PLAN

11 Sec. 45.101. GOALS FOR PRIVATIZATION. The transition plan
12 adopted under Section 45.053 must provide for a new structural
13 model for the community-centered delivery of substitute care and
14 case management services that is based on a goal of improving
15 protective services, achieving timely permanency for children in
16 substitute care, including family reunification, placement with a
17 relative, or adoption, and improving the overall well-being of
18 children in substitute care consistent with federal and state
19 mandates.

20 Sec. 45.102. TRANSITION PLAN REQUIREMENTS. The transition
21 plan developed by the department and the commission must:

22 (1) identify barriers to privatization, including
23 regional disparities in resources, provider capacity, and
24 population, and propose solutions to stimulate capacity and adjust
25 program delivery;

26 (2) provide details regarding the target population
27 and services by region that will be part of the system redesign,

1 including the number of children and families, historic caseload
2 trends and service utilization information, and projected
3 caseloads;

4 (3) provide details regarding the roles,
5 responsibilities, and authority assigned to the public and private
6 entities, including the department, independent administrators,
7 and substitute care and case management providers, in making key
8 decisions throughout the child and family case;

9 (4) include an implementation plan to transfer all
10 foster homes certified by the department to private child-placing
11 agencies, ensuring minimum disruption to the children in foster
12 care and to current foster parents;

13 (5) specify the limited circumstances under which a
14 foster home verified by the department may continue to be verified
15 by the department when continuation would be in the best interest of
16 a child in the care of the foster home;

17 (6) include a process for assessing each child who is
18 transferred to a private substitute care provider to verify the
19 child's service needs;

20 (7) include an implementation plan to transfer all
21 adoption services to private agencies, including details of how and
22 when cases will be transferred and how adoption provider contracts
23 and reimbursements methods will be structured;

24 (8) describe the process to transfer the duties of
25 case management and family reunification services from department
26 staff to private agency staff, including the integration of family
27 group conferencing into private agency case management;

1 (9) describe the manner in which the department will
2 procure and contract for kinship services that are funded by the
3 state;

4 (10) provide details regarding financial arrangements
5 and performance expectations for independent administrators and
6 substitute care and case management providers that:

7 (A) provide incentives for desired results and
8 explicit contract performance and outcome indicators;

9 (B) describe how various risk-based arrangements
10 will be weighed and realistically assessed using sound actuarial
11 data and risk modeling and how mechanisms will be selected to limit
12 uncontrollable risks that could threaten provider stability and
13 quality;

14 (C) describe how financing options will increase
15 flexibility to promote innovation and efficiency in service
16 delivery; and

17 (D) provide balance between control over key
18 decisions and the level of risk the contractor assumes;

19 (11) require the executive commissioner to evaluate
20 whether existing rate structures are appropriate to compensate
21 substitute care providers who enter into contracts with an
22 independent administrator under Section 264.106, Family Code,
23 considering new functions to be served by the providers, and, if
24 necessary, require the executive commissioner to adjust the rates
25 accordingly;

26 (12) require the department to enter into contracts
27 for the provision of substitute care and case management services

1 as required by Section 264.106, Family Code, and describe the
2 procurement and contracting process, including:

3 (A) stating how the department will shift from an
4 open-enrollment system to a competitive procurement system;

5 (B) identifying the services that will be
6 procured and contracted for directly with the department and the
7 services that will be procured by an independent administrator; and

8 (C) developing a procurement and contracting
9 schedule to ensure full implementation not later than September 1,
10 2009;

11 (13) provide for the implementation of Sections
12 264.1062 and 264.107, Family Code, by describing each party's
13 responsibility and ensuring that the department retains the legal
14 authority to effectively provide oversight;

15 (14) describe formal training required for department
16 staff, independent administrators, and substitute care and case
17 management providers;

18 (15) define roles and expectations related to
19 reporting and managing data required to ensure quality services and
20 meet state and federal requirements, including data collection
21 responsibilities for an independent administrator and service
22 provider;

23 (16) describe how the transition will impact the
24 state's ability to obtain federal funding and examine options to
25 further maximize federal funding opportunities and increased
26 flexibility; and

27 (17) describe the costs of the transition, the initial

1 start-up costs, and mechanisms to periodically assess the overall
2 adequacy of funds and the fiscal impact of the change.

3 [Sections 45.103-45.150 reserved for expansion]

4 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

5 Sec. 45.151. EXPIRATION. This chapter expires September 1,
6 2010.

7 SECTION 1.31. Subchapter A, Chapter 264, Family Code, is
8 amended by adding Section 264.0091 to read as follows:

9 Sec. 264.0091. USE OF TELECONFERENCING AND
10 VIDEOCONFERENCING TECHNOLOGY. The department, in cooperation with
11 district and county courts, shall expand the use of
12 teleconferencing and videoconferencing to facilitate participation
13 by medical experts and other individuals in court proceedings.

14 SECTION 1.32. Section 264.001, Family Code, is amended to
15 read as follows:

16 Sec. 264.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

17 (1) "Commission" means the Health and Human Services
18 Commission.

19 (2) "Department" [~~,"department"~~] means the Department
20 of Family and Protective [~~and Regulatory~~] Services.

21 (3) "Executive commissioner" means the executive
22 commissioner of the Health and Human Services Commission.

23 SECTION 1.33. Section 264.106, Family Code, is amended to
24 read as follows:

25 Sec. 264.106. REQUIRED CONTRACTS FOR SUBSTITUTE CARE AND
26 CASE MANAGEMENT SERVICES. (a) In this section:

27 (1) "Case management services" means the provision of

1 case management services to a child for whom the department has been
2 appointed temporary or permanent managing conservator, including
3 caseworker-child visits, family visits, the convening of family
4 group conferences, the development and revision of the case plan,
5 the coordination and monitoring of services needed by the child and
6 family, and the assumption of court-related duties, including
7 preparing court reports, attending judicial hearings and
8 permanency hearings, and ensuring that the child is progressing
9 toward permanency within state and federal mandates.

10 (2) "Independent administrator" means an independent
11 agency selected through a competitive procurement process to:

12 (A) secure, coordinate, and manage substitute
13 care services and case management services in a geographically
14 designated area of the state; and

15 (B) ensure continuity of care for a child
16 referred to the administrator by the department and the child's
17 family from the day a child enters the child protective services
18 system until the child leaves the system.

19 (3) "Permanency services" means services, other than
20 family-based safety services, provided to secure a child's safety,
21 permanency, and well-being, including substitute care services,
22 family reunification services, adoption and postadoption services,
23 preparation for adult living services, and case management
24 services.

25 (4) "Substitute care provider" means a child-care
26 institution or a child-placing agency, as defined by Section
27 42.002, Human Resources Code.

1 (5) "Substitute care services" means services
2 provided to or for children in substitute care and their families,
3 including the recruitment, training, and management of foster
4 parents, the recruitment of adoptive families, and the facilitation
5 of the adoption process, family preservation, independent living,
6 emergency shelter, residential group care, foster care,
7 therapeutic foster care, and post-placement supervision, including
8 relative placement. The term does not include the regulation of
9 facilities under Subchapter C, Chapter 42, Human Resources Code.

10 (b) The department shall, in accordance with Section
11 45.004, Human Resources Code:

12 (1) assess the need for substitute care and case
13 management services throughout the state; ~~and~~

14 (2) contract with private agencies as part of regional
15 community-centered networks managed by independent administrators
16 ~~[substitute care providers only to the extent necessary to meet the~~
17 ~~need]~~ for the provision of all necessary substitute care and case
18 management ~~[those]~~ services;

19 (3) contract with an independent administrator to
20 coordinate and manage all services needed for children in the
21 temporary or permanent managing conservatorship of the department
22 in a designated geographic area;

23 (4) monitor the quality of services for which the
24 department and each independent administrator contract under this
25 section; and

26 (5) ensure that the services are provided in
27 accordance with federal law and the laws of this state, including

1 department rules and rules of the Department of State Health
2 Services and the Texas Commission on Environmental Quality.

3 (c) An independent administrator may not:

4 (1) directly provide substitute care services; or

5 (2) have a financial interest in or a financial
6 interest connected to a community-based organization that provides
7 permanency services in the state.

8 (d) Administrative services to be provided by an
9 independent administrator include:

10 (1) recruiting and subcontracting with
11 community-based substitute care providers to ensure a full array of
12 services in defined geographic areas;

13 (2) managing placements and making referrals for
14 placement based on department-approved protocols;

15 (3) monitoring services delivered by subcontractors;

16 (4) providing training and technical assistance to
17 contract providers;

18 (5) maintaining data systems that support tracking and
19 reporting key performance and outcome data; and

20 (6) ensuring accountability for achieving defined
21 client and system outcomes.

22 (e) [~~(b) Before contracting with a substitute care~~
23 ~~provider, the department shall determine whether:~~

24 ~~(1) community resources are available to support~~
25 ~~children placed under the provider's care; and~~

26 ~~(2) the appropriate public school district has~~
27 ~~sufficient resources to support children placed under the~~

1 ~~provider's care if the children will attend public school.~~

2 ~~[(c)]~~ In addition to the requirements of Section 40.058(b),
3 Human Resources Code, a contract with an independent administrator
4 ~~[a substitute care provider]~~ must include provisions that:

5 (1) enable the department to monitor the effectiveness
6 of the ~~[provider's]~~ services; ~~[and]~~

7 (2) specify performance outcomes;

8 (3) authorize the department to terminate the contract
9 or impose sanctions for a violation of a provision of the contract
10 that specifies performance criteria;

11 (4) ensure that an independent administrator may not
12 refuse to accept a client who is referred for services or reject a
13 client who is receiving services unless the department has reviewed
14 the independent administrator's decision and approved the decision
15 in writing;

16 (5) authorize the department, an agent of the
17 department, and the state auditor to inspect all books, records,
18 and files maintained by an independent administrator relating to
19 the contract; and

20 (6) the department determines are necessary to ensure
21 accountability for the delivery of services and for the expenditure
22 of public funds.

23 (f) A contract with an independent administrator for
24 substitute care and case management services must include
25 department-approved provisions that:

26 (1) enable the independent administrator and the
27 department to:

1 (A) monitor the effectiveness of substitute care
2 and case management services; and

3 (B) specify performance standards and authorize
4 termination of the contract for cause;

5 (2) describe how performance is linked to
6 reimbursement amounts or schedules to provide incentives for
7 desired results;

8 (3) require all independent administrators and
9 private contractors to disclose to the department any information
10 that may indicate an actual or potential conflict of interest with
11 the commission, the department, or another health and human
12 services agency, including information regarding actual or
13 potential related-party transactions, relationships, interests, or
14 business history, and any other factor that may indicate an actual
15 or potential conflict of interest;

16 (4) authorize the independent administrator, an agent
17 of the independent administrator, the department, an agent of the
18 department, and the state auditor to inspect all books, records,
19 and files maintained by a contractor relating to the contract; and

20 (5) the department determines are necessary to ensure
21 accountability for the delivery of services and for the expenditure
22 of public funds.

23 (g) [~~(d)~~] In determining whether to contract with a
24 substitute care provider or an independent administrator, the
25 department shall consider the provider's or administrator's
26 performance under any previous contract [~~for substitute care~~
27 services] between the department and the provider or administrator.

1 (h) A contract under this section does not affect the rights
2 and duties of the department in the department's capacity as the
3 temporary or permanent managing conservator of a child.

4 (i) Except as provided by Subsection (j) and
5 notwithstanding any other law, on and after September 1, 2009, the
6 department may not directly provide substitute care and case
7 management services for children for whom the department has been
8 appointed temporary or permanent managing conservator.

9 (j) On and after September 1, 2009, the department may
10 provide substitute care and case management services in an
11 emergency. The executive commissioner shall adopt rules describing
12 the circumstances in which the department may provide those
13 services.

14 ~~[(c) In this section, "substitute care provider" means a~~
15 ~~person who provides residential care for children for 24 hours a~~
16 ~~day, including:~~

17 ~~[(1) a child-care institution, as defined by Section~~
18 ~~42.002, Human Resources Code,~~

19 ~~[(2) a child-placing agency, as defined by Section~~
20 ~~42.002, Human Resources Code,~~

21 ~~[(3) a foster group home or foster family home, as~~
22 ~~defined by Section 42.002, Human Resources Code, and~~

23 ~~[(4) an agency group home or agency home, as defined by~~
24 ~~Section 42.002, Human Resources Code, other than an agency group~~
25 ~~home, agency home, or a foster home verified or certified by the~~
26 ~~department.]~~

27 SECTION 1.34. Subchapter B, Chapter 264, Family Code, is

1 amended by adding Section 264.1062 to read as follows:

2 Sec. 264.1062. EVALUATION OF INDEPENDENT ADMINISTRATORS.

3 The department shall develop and implement a comprehensive
4 multidisciplinary team to monitor and evaluate the performance of
5 independent administrators. The team must consist of specialized
6 staff who can enable the department to measure critical dimensions
7 of community-based organization performance, obtained through the
8 quality assurance functions of the independent administrator,
9 including:

10 (1) achievement of client and system outcomes;

11 (2) compliance with contractual terms and conditions;

12 and

13 (3) any history of the community-based organization's
14 noncompliance with the department's licensing standards.

15 SECTION 1.35. Subchapter B, Chapter 264, Family Code, is
16 amended by adding Section 264.1063 to read as follows:

17 Sec. 264.1063. MONITORING PERFORMANCE OF SUBSTITUTE CARE

18 AND CASE MANAGEMENT PROVIDERS. (a) The department, in
19 consultation with private entities under contract with an
20 independent administrator to provide substitute care or case
21 management services, shall establish a quality assurance program
22 that uses comprehensive, multitiered assurance and improvement
23 systems based, subject to the availability of funds, on real-time
24 data to evaluate performance.

25 (b) The contract performance outcomes specified in a
26 contract under Section 264.106 must be consistent with the fiscal
27 goals of privatizing substitute care and case management services

1 and must be within the contractor's authority to deliver. The
2 contract must clearly define the manner in which the substitute
3 care or case management provider's performance will be measured and
4 identify the information sources the department and independent
5 administrator will use to evaluate the performance.

6 SECTION 1.36. Section 264.107, Family Code, is amended by
7 adding Subsections (c)-(f) to read as follows:

8 (c) The contract between the department and an independent
9 administrator or other authorized entity must require, not later
10 than September 1, 2012, the use of real-time technology in the
11 independent administrator's or other authorized entity's placement
12 system to screen possible placement options for a child and match
13 the child's needs with the most qualified providers with vacancies.

14 (d) The department shall institute a quality assurance
15 system in monitoring the independent administrators or other
16 authorized entities to ensure that placement decisions are reliable
17 and are made in a consistent manner.

18 (e) In making placement decisions, an independent
19 administrator or other authorized entity shall use clinical
20 protocols to match a child to the most appropriate placement
21 resource.

22 (f) The department may create a regional advisory council in
23 a region to assist the department and independent administrator or
24 other authorized entity in:

25 (1) assessing the need for resources in the region;

26 and

27 (2) locating substitute care services in the region

1 for hard-to-place children.

2 SECTION 1.37. Section 264.1075, Family Code, is amended to
3 read as follows:

4 Sec. 264.1075. ASSESSING NEEDS OF CHILD [~~USE OF ASSESSMENT~~
5 ~~SERVICES~~]. (a) On removing a child from the child's home [~~Before~~
6 ~~placing a child in substitute care~~], the department shall use
7 assessment services provided by a child-care facility, a [~~or~~]
8 child-placing agency, or the child's medical home during the
9 initial substitute care placement. The assessment may be used [~~in~~
10 ~~accordance with Section 42.0425, Human Resources Code,~~] to
11 determine the most appropriate substitute care placement for the
12 child, if needed.

13 (b) As soon as possible after a child begins receiving
14 foster care under this subchapter, the department shall assess
15 whether the child has a developmental disability or mental
16 retardation. The commission shall establish the procedures that
17 the department must use in making an assessment under this
18 subsection. The procedures may include screening or participation
19 by:

20 (1) a person who has experience in childhood
21 developmental disabilities or mental retardation;

22 (2) a local mental retardation authority; or

23 (3) a provider in a county with a local child welfare
24 board.

25 SECTION 1.38. Subchapter B, Chapter 264, Family Code, is
26 amended by adding Sections 264.115 and 264.116 to read as follows:

27 Sec. 264.115. PREPARATION FOR ADULT LIVING PROGRAM. (a) To

1 assist children in the conservatorship of the department in
2 transitioning to independent living, the department shall:

3 (1) expand efforts to improve discharge planning and
4 increase the availability of transitional family group
5 decision-making for each child in the department's permanent
6 managing conservatorship who is at least 16 years of age;

7 (2) coordinate with the commission to obtain
8 authority, to the extent allowed by federal law, the Medicaid state
9 plan, or the Title IV-E state plan, or by any waiver or amendment to
10 either plan, necessary to:

11 (A) extend foster care eligibility and
12 transition services for youth 21 years of age or younger and develop
13 policies to permit eligible youth to return to foster care as
14 necessary to achieve the goals of the Preparation for Adult Living
15 Program; and

16 (B) extend Medicaid coverage for youth 21 years
17 of age or younger who are in foster care or were formerly in foster
18 care, with a single application at the time the youth leaves foster
19 care; and

20 (3) enter into cooperative agreements with the Texas
21 Workforce Commission and local workforce development boards to
22 further the objectives of the Preparation for Adult Living Program.

23 (b) The department, the Texas Workforce Commission, and the
24 local workforce development boards shall ensure that services are
25 prioritized and targeted to meet the needs of foster care and former
26 foster care children and ensure that the services include, if
27 feasible, referrals for short-term stays for children needing

1 housing.

2 Sec. 264.116. ANNUAL SURVEY. (a) The department shall
3 conduct an annual random survey of a sample of children from each
4 region of the state who are at least 14 years of age and who receive
5 substitute care services. The survey must include questions
6 regarding:

7 (1) the quality of the substitute care services
8 provided to the child;

9 (2) any improvements that could be made to better
10 support the child; and

11 (3) any other factor that the department considers
12 relevant to enable the department to identify potential program
13 enhancements.

14 (b) The identity of each child participating in a department
15 survey is confidential and not subject to public disclosure under
16 Chapter 552, Government Code. The department shall adopt
17 procedures to ensure that the identity of each child participating
18 in a department survey remains confidential.

19 SECTION 1.39. Subchapter C, Chapter 264, Family Code, is
20 amended by adding Section 264.2015 to read as follows:

21 Sec. 264.2015. FAMILY GROUP CONFERENCING. The department
22 may collaborate with the courts and other appropriate local
23 entities to develop and implement family group conferencing as a
24 strategy for promoting family preservation and permanency for
25 children.

26 SECTION 1.40. Section 264.203(c), Family Code, is amended
27 to read as follows:

1 (c) If the person ordered to participate in the services
2 fails to follow the court's order, the court may impose appropriate
3 sanctions in order to protect the health and safety of the child,
4 including the removal of the child as specified by Chapter 262
5 [community service as a sanction for contempt].

6 SECTION 1.41. Subchapter C, Chapter 264, Family Code, is
7 amended by adding Sections 264.204 and 264.205 to read as follows:

8 Sec. 264.204. COMMUNITY-BASED FAMILY SERVICES. (a) The
9 department shall administer a grant program to provide funding to
10 community organizations, including faith-based or county
11 organizations, to respond to:

12 (1) low-priority, less serious cases of abuse and
13 neglect; and

14 (2) cases in which an allegation of abuse or neglect of
15 a child was unsubstantiated but involved a family that has been
16 previously investigated for abuse or neglect of a child.

17 (b) The executive commissioner shall adopt rules to
18 implement the grant program, including rules governing the
19 submission and approval of grant requests and the cancellation of
20 grants.

21 (c) To receive a grant, a community organization whose grant
22 request is approved must execute an interagency agreement or a
23 contract with the department. The contract must require the
24 organization receiving the grant to perform the services as stated
25 in the approved grant request. The contract must contain
26 appropriate provisions for program and fiscal monitoring.

27 (d) In areas of the state in which community organizations

1 receive grants under the program, the department shall refer
2 low-priority, less serious cases of abuse and neglect to a
3 community organization receiving a grant under the program.

4 (e) A community organization receiving a referral under
5 Subsection (d) shall make a home visit and offer family social
6 services to enhance the parents' ability to provide a safe and
7 stable home environment for the child. If the family chooses to use
8 the family services, a case manager from the organization shall
9 monitor the case and ensure that the services are delivered.

10 (f) If after the home visit the community organization
11 determines that the case is more serious than the department
12 indicated, the community organization shall refer the case to the
13 department for a full investigation.

14 (g) The department may not award a grant to a community
15 organization in an area of the state in which a similar program is
16 already providing effective family services in the community.

17 (h) For purposes of this section, a case is considered to be
18 a less serious case of abuse or neglect if:

19 (1) the circumstances of the case do not appear to
20 involve a reasonable likelihood that the child will be abused or
21 neglected in the foreseeable future; or

22 (2) the allegations in the report of child abuse or
23 neglect:

24 (A) are general in nature or vague and do not
25 support a determination that the child who is the subject of the
26 report has been abused or neglected or will likely be abused or
27 neglected; or

1 (B) if substantiated, would not be considered
2 abuse or neglect under this chapter.

3 Sec. 264.205. CULTURAL AWARENESS. If the department
4 determines that the number of children of a particular race or
5 ethnicity in the child protective services system is not
6 proportionate to the general population, the department shall
7 attempt to reduce the disproportionate representation by:

8 (1) documenting any disproportionate representation
9 and instituting policies and practices to promote parity in
10 outcomes for all children;

11 (2) prioritizing prevention and early intervention
12 services for communities and groups with disproportionate
13 representation in the child protective services population;

14 (3) developing and providing cultural competency
15 training to department staff members who provide child protective
16 services;

17 (4) increasing targeted recruitment efforts of foster
18 and adoptive families who can meet the needs of children who are
19 waiting for permanent homes;

20 (5) targeting recruitment efforts to ensure diversity
21 among department staff; and

22 (6) developing collaborative partnerships with
23 community groups, agencies, faith-based organizations, and other
24 community-based organizations to provide culturally competent
25 services to children and families of every race and ethnicity.

26 SECTION 1.42. Section 264.503, Family Code, is amended by
27 amending Subsections (b)-(e) and adding Subsection (d-1) to read as

1 follows:

2 (b) To ensure that the committee achieves its purpose, the
3 department and the [~~Texas~~] Department of State Health Services
4 shall perform the duties specified by this section.

5 (c) The department shall:

6 (1) recognize the creation and participation of review
7 teams; and

8 (2) work cooperatively with the committee and with
9 individual child fatality review teams [~~promote and coordinate~~
10 ~~training to assist the review teams in carrying out their duties;~~

11 [~~(3) assist the committee in developing model~~
12 ~~protocols for:~~

13 [~~(A) the reporting and investigating of child~~
14 ~~fatalities for law enforcement agencies, child protective~~
15 ~~services, justices of the peace and medical examiners, and other~~
16 ~~professionals involved in the investigations of child deaths;~~

17 [~~(B) the collection of data regarding child~~
18 ~~deaths; and~~

19 [~~(C) the operation of the review teams; and~~

20 [~~(4) develop and implement procedures necessary for~~
21 ~~the operation of the committee].~~

22 (d) The Department of State Health Services [~~department~~]
23 shall:

24 (1) promote and coordinate training to assist the
25 review teams in carrying out their duties;

26 (2) assist the committee in developing model protocols
27 for:

1 (A) the reporting and investigating of child
2 fatalities for law enforcement agencies, child protective
3 services, justices of the peace and medical examiners, and other
4 professionals involved in the investigations of child deaths;

5 (B) the collection of data regarding child
6 deaths; and

7 (C) the operation of the review teams;

8 (3) develop and implement procedures necessary for the
9 operation of the committee; and

10 (4) promote education of the public regarding the
11 incidence and causes of child deaths, the public role in preventing
12 child deaths, and specific steps the public can undertake to
13 prevent child deaths.

14 (d-1) The committee shall enlist the support and assistance
15 of civic, philanthropic, and public service organizations in the
16 performance of the duties imposed under Subsection (d) [~~this~~
17 ~~subsection~~].

18 (e) In addition to the duties under Subsection (d), the [~~The~~
19 ~~Texas~~] Department of State Health Services shall:

20 (1) collect data under this subchapter and coordinate
21 the collection of data under this subchapter with other data
22 collection activities; and

23 (2) perform annual statistical studies of the
24 incidence and causes of child fatalities using the data collected
25 under this subchapter.

26 SECTION 1.43. Section 264.602, Family Code, is amended by
27 adding Subsection (e) to read as follows:

1 home, agency foster home, or agency foster group home under Chapter
2 42, Human Resources Code; or

3 (B) is subsequently appointed permanent managing
4 conservator of the child after providing the care described by
5 Paragraph (A).

6 Sec. 264.752. RELATIVE AND OTHER DESIGNATED CAREGIVER
7 PLACEMENT PROGRAM. (a) The department shall develop and
8 administer a program to:

9 (1) promote continuity and stability for children for
10 whom the department is appointed managing conservator by placing
11 those children with relative or other designated caregivers; and

12 (2) facilitate relative or other designated caregiver
13 placements by providing assistance and services to those caregivers
14 in accordance with this subchapter and rules adopted by the
15 executive commissioner.

16 (b) The executive commissioner shall adopt rules necessary
17 to implement this subchapter. The rules must include eligibility
18 criteria for receiving assistance and services under this
19 subchapter.

20 Sec. 264.753. EXPEDITED PLACEMENT. The department shall
21 expedite the completion of the background and criminal history
22 check, the home study, and any other administrative procedure to
23 ensure that the child is placed with a qualified relative or
24 caregiver as soon as possible after the date the caregiver is
25 identified.

26 Sec. 264.754. INVESTIGATION OF PROPOSED PLACEMENT. Before
27 placing a child with a proposed relative or other designated

1 caregiver, the department must conduct an investigation to
2 determine whether the proposed placement is in the child's best
3 interests.

4 Sec. 264.755. CAREGIVER ASSISTANCE AGREEMENT. The
5 department shall, subject to the availability of funds, enter into
6 a caregiver assistance agreement with each relative or other
7 designated caregiver to provide monetary assistance and additional
8 support services to the caregiver. The monetary assistance and
9 support services shall be based on a family's need, as determined by
10 rules adopted by the executive commissioner, and may include:

11 (1) a one-time cash payment of not more than \$1,000 to
12 the caregiver on the initial placement of a child or, if the child
13 and at least one of the child's siblings are placed with the
14 caregiver, a one-time cash payment of not more than \$1,000 to the
15 caregiver on the initial placement of the sibling group, to assist
16 the caregiver in purchasing essential child-care items such as
17 furniture and clothing;

18 (2) case management services and training and
19 information about the child's needs until the caregiver is
20 appointed permanent managing conservator;

21 (3) referrals to appropriate state agencies
22 administering public benefits or assistance programs for which the
23 child, the caregiver, or the caregiver's family may qualify;

24 (4) family counseling not provided under the Medicaid
25 program for the caregiver's family for a period not to exceed two
26 years from the date of initial placement;

27 (5) if the caregiver meets the eligibility criteria

1 determined by rules adopted by the executive commissioner,
2 reimbursement of all child-care expenses incurred while the child
3 is under 13 years of age, or under 18 years of age if the child has a
4 developmental disability, and while the department is the child's
5 managing conservator;

6 (6) if the caregiver meets the eligibility criteria
7 determined by rules adopted by the executive commissioner,
8 reimbursement of 50 percent of child-care expenses incurred after
9 the caregiver is appointed permanent managing conservator of the
10 child while the child is under 13 years of age, or under 18 years of
11 age if the child has a developmental disability; and

12 (7) reimbursement of other expenses, as determined by
13 rules adopted by the executive commissioner, not to exceed \$500 per
14 year for each child.

15 Sec. 264.756. ASSISTANCE WITH PERMANENT PLACEMENT. The
16 department shall collaborate with the State Bar of Texas and local
17 community partners to identify legal resources to assist relatives
18 and other designated caregivers in obtaining conservatorship,
19 adoption, or other permanent legal status for the child.

20 Sec. 264.757. COORDINATION WITH OTHER AGENCIES. The
21 department shall coordinate with other health and human services
22 agencies, as defined by Section 531.001, Government Code, to
23 provide assistance and services under this subchapter.

24 Sec. 264.758. FUNDS. The department and other state
25 agencies shall actively seek and use federal funds available for
26 the purposes of this subchapter.

27 (b) Not later than December 1, 2005, the executive

1 commissioner of the Health and Human Services Commission shall
2 adopt rules for implementing and administering the relative and
3 other designated caregiver placement program under Subchapter I,
4 Chapter 264, Family Code, as added by this section.

5 (c) Not later than March 1, 2006, the Department of Family
6 and Protective Services shall implement the relative and other
7 designated caregiver placement program in accordance with
8 Subchapter I, Chapter 264, Family Code, as added by this section.

9 SECTION 1.45. (a) Subtitle E, Title 5, Family Code, is
10 amended by adding Chapter 266 to read as follows:

11 CHAPTER 266. MEDICAL CARE AND EDUCATIONAL SERVICES FOR CHILDREN IN
12 FOSTER CARE

13 Sec. 266.001. DEFINITIONS. In this chapter:

14 (1) "Commission" means the Health and Human Services
15 Commission.

16 (2) "Department" means the Department of Family and
17 Protective Services.

18 Sec. 266.002. CONSTRUCTION WITH OTHER LAW. This chapter
19 does not limit the right to consent to medical, dental,
20 psychological, and surgical treatment under Chapter 32.

21 Sec. 266.003. MEDICAL SERVICES FOR CHILD ABUSE AND NEGLECT
22 VICTIMS. (a) Subject to the availability of funds, the commission
23 shall collaborate with health care and child welfare professionals
24 to design a comprehensive, cost-effective medical services
25 delivery model to meet the needs of children served by the
26 department, either directly or by contract. The medical services
27 delivery model must include:

1 (1) the designation of health care facilities with
2 expertise in the forensic assessment, diagnosis, and treatment of
3 child abuse and neglect as pediatric centers of excellence;

4 (2) a statewide telemedicine system to link department
5 investigators and caseworkers with pediatric centers of excellence
6 or other medical experts for consultation;

7 (3) identification of a medical home for each foster
8 child on entering foster care at which the child will receive an
9 initial comprehensive assessment as well as preventive treatments,
10 acute medical services, and therapeutic and rehabilitative care to
11 meet the child's ongoing physical and mental health needs
12 throughout the duration of the child's stay in foster care;

13 (4) a review system composed of medical and mental
14 health professionals to assess clinical care recommendations as
15 needed for individual foster children; and

16 (5) development of protocols for use of psychotropic
17 medications for foster children based on the recommendations and
18 best practices manual developed by an ad hoc work group consisting
19 of experts from the fields of pharmacy, psychiatry, pediatrics,
20 family practice, and internal medicine and staff from the
21 commission.

22 (b) The commission shall collaborate with health and human
23 services agencies, community partners, the health care community,
24 and federal health and social services programs to maximize
25 services and benefits available under this section.

26 (c) The executive commissioner shall adopt rules necessary
27 to implement this chapter.

1 Sec. 266.004. CONSENT FOR MEDICAL CARE. (a) Medical care
2 may not be provided to a child in foster care unless the person
3 authorized by this section has provided consent.

4 (b) Unless the court has specifically authorized a relative
5 caregiver who lives with the child to give medical consent, the
6 following persons may provide consent required by Subsection (a):

7 (1) the caseworker, supervisor, or program director
8 responsible for the child's case;

9 (2) medical personnel employed by the department; or

10 (3) a caregiver designated by the department.

11 (c) The department shall file with the court the name of
12 each person who may provide consent for medical care. The
13 department shall notify the court of any change to the list of
14 persons authorized to provide consent for medical care in the
15 department's next report to the court following the date of the
16 change.

17 (d) A physician or other provider of medical care acting in
18 good faith may rely on the representation by a person that the
19 person has the authority to consent to the provision of medical care
20 to a child in foster care as provided by Subsection (b).

21 (e) The department, a person authorized to consent to
22 medical care under Subsection (b), the child's parent if the
23 parent's rights have not been terminated, a guardian ad litem or
24 attorney ad litem if one has been appointed, or the person providing
25 foster care to the child may petition the court for any order
26 related to medical care of a child in foster care that the
27 department or other person believes is in the best interest of the

1 child. Notice of the petition must be given to each person entitled
2 to notice under Section 263.301(b).

3 (f) On its own motion or in response to a petition under
4 Subsection (e), the court may issue any order related to the medical
5 care of a child in foster care that the court determines is in the
6 best interest of the child.

7 (g) Notwithstanding Subsection (b), a person may not be
8 authorized to consent to medical care provided to a child in foster
9 care unless the person has completed a department-approved training
10 program related to consenting to medical care. This subsection
11 does not apply to a parent whose rights have not been terminated
12 unless the court orders the parent to complete the training.

13 (h) A person authorized under Subsection (b) to consent to
14 medical care for a child in foster care shall participate in each
15 appointment of the child with the provider of the medical care. The
16 level of participation may vary depending on the nature of the
17 appointment. The authorized person may designate another person to
18 participate in the appointment for the authorized person.

19 (i) A person authorized under Subsection (b) to give consent
20 to medical care for a child in foster care must be aware of a child's
21 medical condition and history before giving consent.

22 Sec. 266.005. PARENTAL NOTIFICATION OF SIGNIFICANT MEDICAL
23 CONDITIONS. (a) In this section, "significant medical condition"
24 means an injury or illness that is life-threatening or has
25 potentially serious long-term health consequences, including
26 hospitalization for surgery or other procedures, except minor
27 emergency care.

1 (b) Except as provided by Subsection (c), the department
2 shall notify the child's parents of any significant medical
3 condition involving a child in foster care as soon as practicable,
4 but not later than 24 hours after the department learns of the
5 significant medical condition.

6 (c) The department is not required to provide notice under
7 Subsection (b) to a parent who:

8 (1) has failed to give the department current contact
9 information and cannot be located; or

10 (2) has executed an affidavit of relinquishment of
11 parental rights.

12 Sec. 266.006. HEALTH PASSPORTS. (a) The commission shall
13 make available to the person authorized to consent to medical care
14 under Section 266.004(b) and any provider of health care to a child
15 in foster care the most complete health history of the child
16 available to the department.

17 (b) The commission shall develop a health passport for each
18 child in foster care. The commission in conjunction with the
19 department shall determine the format of the passport. The
20 passport may be maintained in an electronic format. The health
21 passport must include the most complete medical history of the
22 child available to the department and must be readily accessible to
23 medical care providers.

24 (c) The department shall maintain the passport as part of
25 the department's records for the child as long as the child remains
26 in foster care.

27 Sec. 266.007. JUDICIAL REVIEW OF MEDICAL CARE. (a) At each

1 hearing under Chapter 263, or more frequently if ordered by the
2 court, the court shall review a summary of the medical care provided
3 to the child since the last hearing. The summary must include
4 information regarding:

5 (1) the nature of any emergency medical care provided
6 to the child and the circumstances necessitating emergency medical
7 care, including any injury or acute illness suffered by the child;

8 (2) any medication prescribed for the child and the
9 condition for which the medication was prescribed;

10 (3) the degree to which the child or foster care
11 provider has complied or failed to comply with any plan of medical
12 treatment for the child;

13 (4) any adverse reaction to or side effects of any
14 medical treatment provided to the child;

15 (5) any specific medical condition of the child that
16 has been diagnosed or for which tests are being conducted to make a
17 diagnosis;

18 (6) any activity that the child should avoid or should
19 engage in that might affect the effectiveness of the treatment,
20 including physical activities, other medications, and diet; and

21 (7) other information required by department rule or
22 by the court.

23 (b) At or before each hearing under Chapter 263, the
24 department shall provide the summary of medical care described by
25 Subsection (a) to:

26 (1) the court;

27 (2) the person authorized to consent to medical

1 treatment for the child;

2 (3) the guardian ad litem or attorney ad litem, if one
3 has been appointed by the court;

4 (4) the child's parent, if the parent's rights have not
5 been terminated; and

6 (5) any other person determined by the department or
7 the court to be necessary or convenient to the provision of medical
8 care to children in foster care.

9 Sec. 266.008. MONITORING USE OF MEDICATIONS. As part of the
10 commission's drug utilization review, the commission shall
11 annually monitor the use of medications for foster children.

12 Sec. 266.009. EDUCATION. (a) The commission shall develop
13 an education passport for each child in foster care. The
14 commission, in conjunction with the department, shall determine the
15 format of the passport. The passport may be maintained in an
16 electronic format. The passport must contain educational records
17 of the child, including the names and addresses of educational
18 providers, the child's grade-level performance, and any other
19 educational information the commission determines is important.

20 (b) The department shall maintain the passport as part of
21 the department's records for the child as long as the child remains
22 in foster care.

23 (c) The department and the commission shall collaborate
24 with the Texas Education Agency to develop policies and procedures
25 to ensure that the needs of foster children are met in every school
26 district.

27 (b) The Health and Human Services Commission is required to

1 develop and implement the passport programs required by Sections
2 266.006 and 266.009, Family Code, as added by this section, if the
3 legislature appropriates money specifically for that purpose. If
4 the legislature does not appropriate money specifically for that
5 purpose, the commission may, but is not required to, develop and
6 implement the passport programs using other appropriations
7 available for that purpose. In addition, the commission may
8 develop and implement the passport programs required by Sections
9 266.006 and 266.009, Family Code, as added by this section, only if
10 technology necessary to ensure privacy is available.

11 (c) If the Health and Human Services Commission develops
12 and implements the passport programs required by Sections 266.006
13 and 266.009, Family Code, as added by this section, the commission
14 shall finalize the form and content of the passports not later than
15 March 1, 2006.

16 (d) Not later than September 1, 2007, the Health and Human
17 Services Commission shall make the health passport required by
18 Section 266.006, Family Code, as added by this section, available
19 in an electronic format.

20 (e) Not later than September 1, 2008, the Health and Human
21 Services Commission shall ensure that the health passport required
22 by Section 266.006, Family Code, as added by this section, can
23 interface directly with other electronic health record systems that
24 contain information that impacts the health care of the child.

25 SECTION 1.46. Chapter 265, Family Code, is amended by
26 adding Section 265.004 to read as follows:

27 Sec. 265.004. USE OF EVIDENCE-BASED PROGRAMS FOR AT-RISK

1 FAMILIES. (a) To the extent that money is appropriated for the
2 purpose, the department shall fund evidence-based programs offered
3 by community-based organizations that are designed to prevent or
4 ameliorate child abuse and neglect.

5 (b) The department shall place priority on programs that
6 target children whose race or ethnicity is disproportionately
7 represented in the child protective services system.

8 (c) The department shall periodically evaluate the
9 evidence-based abuse and neglect prevention programs to determine
10 the continued effectiveness of the programs.

11 SECTION 1.47. Section 651.004, Government Code, is amended
12 by adding Subsection (e) to read as follows:

13 (e) The Department of Family and Protective Services is not
14 required to comply with management-to-staff ratio requirements of
15 this section with respect to caseworker supervisors, program
16 directors, and program administrators.

17 SECTION 1.48. (a) Subchapter C, Chapter 2155, Government
18 Code, is amended by adding Section 2155.1442 to read as follows:

19 Sec. 2155.1442. FOSTER CARE RESIDENTIAL CONTRACT
20 MANAGEMENT. (a) The Health and Human Services Commission shall
21 contract with the state auditor to perform on-site financial audits
22 of selected residential contractors as necessary. The state
23 auditor, in consultation with the commission, shall select the
24 contractors to audit based on the contract's risk assessment
25 rating, allegations of fraud or misuse of state or other contract
26 funds, or other appropriate audit selection criteria. The
27 residential contractors selected to be audited must be included in

1 the audit plan and approved by the legislative audit committee
2 under Section 321.013.

3 (b) The Department of Family and Protective Services shall
4 require that all files related to contracts for residential care of
5 foster children:

6 (1) are complete and accurately reflect the
7 contractor's actual updated contract performance; and

8 (2) are maintained in accordance with the department's
9 record retention procedures and made available to the state auditor
10 when requested.

11 (c) Subject to the availability of funds appropriated for
12 the purpose, the Department of Family and Protective Services may
13 develop an Internet-based system to enable residential contractors
14 to review their reimbursement accounts or other pertinent financial
15 data and reconcile their accounts.

16 (b) Section 2155.1442, Government Code, as added by this
17 section, applies only to a contract that is entered into or renewed
18 on or after the effective date of this section. A contract entered
19 into or renewed before that date is governed by the law in effect on
20 the date the contract is entered into or renewed, and the former law
21 is continued in effect for that purpose.

22 (c) Not later than October 1, 2009, the state auditor shall
23 begin the on-site financial audits of selected contractors as
24 provided by Section 2155.1442(a), Government Code, as added by this
25 section.

26 SECTION 1.49. Section 22.035(j), Human Resources Code, is
27 amended to read as follows:

1 (j) The work group shall study and make recommendations in
2 the following areas:

3 (1) access of a child or a child's family to effective
4 case management services, including case management services with a
5 single case manager, parent case managers, or independent case
6 managers;

7 (2) the transition needs of children who reach an age
8 at which they are no longer eligible for services at the [~~Texas~~]
9 Department of State Health Services, the Texas Education Agency,
10 and other applicable state agencies;

11 (3) the blending of funds, including case management
12 funding, for children needing long-term care and health services;

13 (4) collaboration and coordination of children's
14 services between the department, the [~~Texas~~] Department of State
15 Health Services, the [~~Texas~~] Department of Aging and Disability
16 Services, the Department of Assistive and Rehabilitative Services
17 [~~Mental Health and Mental Retardation~~], and any other agency
18 determined to be applicable by the work group;

19 (5) budgeting and the use of funds appropriated for
20 children's long-term care services and children's health services;

21 (6) services and supports for families providing care
22 for children with disabilities;

23 (7) effective permanency planning for children who
24 reside in institutions or who are at risk of placement in an
25 institution;

26 (8) barriers to enforcement of regulations regarding
27 institutions that serve children with disabilities; [~~and~~]

1 Code, are amended to read as follows:

2 (3) "Department" means the Department of Family and
3 Protective [and Regulatory] Services.

4 (5) "Family preservation" includes the provision of
5 services designed to assist families, including adoptive and
6 extended families, who are at risk or in crisis, including:

7 (A) preventive services designed to help a child
8 at risk of foster care placement remain safely with the child's
9 family; and

10 (B) services designed to help a child return,
11 when the return is safe and appropriate, to the family from which
12 the child was removed [protection of parents and their children
13 from needless family disruption because of unfounded accusations of
14 child abuse or neglect. It does not include the provision of state
15 social services for the rehabilitation of parents convicted of
16 abusing or neglecting their children].

17 SECTION 1.53. Section 40.002(b), Human Resources Code, is
18 amended to read as follows:

19 (b) Notwithstanding any other law, the department shall:

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

25 (2) provide family support and family preservation
26 services that respect the fundamental right of parents to control
27 the education and upbringing of their children;

1 (3) license, register, and enforce regulations
2 applicable to child-care facilities, ~~[and]~~ child-care
3 administrators, and child-placing agency administrators; and

4 (4) implement and manage programs intended to provide
5 early intervention or prevent at-risk behaviors that lead to child
6 abuse, delinquency, running away, truancy, and dropping out of
7 school.

8 SECTION 1.54. Section 40.003, Human Resources Code, is
9 amended to read as follows:

10 Sec. 40.003. SUNSET PROVISION. The Department of Family
11 and Protective ~~[and Regulatory]~~ Services is subject to Chapter 325,
12 Government Code (Texas Sunset Act). Unless continued in existence
13 as provided by that chapter, the department is abolished and this
14 chapter expires September 1, 2013 ~~[2009]~~.

15 SECTION 1.55. Section 40.030, Human Resources Code, is
16 amended to read as follows:

17 Sec. 40.030. ADVISORY COMMITTEES. The executive
18 commissioner or the executive commissioner's designee ~~[board]~~ may
19 appoint advisory committees in accordance with Chapter 2110,
20 Government Code ~~[Article 6252-33, Revised Statutes]~~.

21 SECTION 1.56. The heading to Section 40.0305, Human
22 Resources Code, is amended to read as follows:

23 Sec. 40.0305. STRATEGIC USE OF TECHNOLOGY ~~[STEERING~~
24 ~~COMMITTEE]~~.

25 SECTION 1.57. Sections 40.0305(a), (d), and (e), Human
26 Resources Code, are amended to read as follows:

27 (a) The department shall continually explore the strategic

1 use of technology as a means to improve services, reduce workload
2 burdens, increase accountability, and enhance the overall
3 efficiency and effectiveness of department operations. The
4 department shall develop strategic plans and seek funding to
5 implement technology enhancements that the department determines
6 are feasible and cost-effective [~~establish a strategic technology~~
7 ~~steering committee within the department to evaluate major~~
8 ~~information technology project proposals~~].

9 (d) In evaluating major information technology project
10 proposals, the department, in cooperation with the commission,
11 [~~steering committee~~] shall:

12 (1) assess the major information needs of the
13 department;

14 (2) define standard criteria for setting priorities
15 for the department's information needs;

16 (3) forecast the returns to the department on project
17 investments;

18 (4) evaluate the department's available information
19 resources; and

20 (5) review, approve, and evaluate the status of
21 projected costs and benefits related to project proposals.

22 (e) To the extent that funds are appropriated for these
23 specific purposes, the department shall implement the following
24 technology projects:

25 (1) a mobile technology project, including online
26 transcription services designed to:

27 (A) increase caseworker access to department

1 policy and family case history;

2 (B) facilitate communication between caseworkers
3 and supervisors;

4 (C) allow timely and accurate data entry; and

5 (D) reduce backlogged investigations; and

6 (2) a modified design of the department's automated
7 case management system to improve risk and safety assessment and
8 service plan development, and to facilitate incorporation of
9 historical case data. [The steering committee shall make
10 recommendations to the executive director based on the committee's
11 performance of its duties.]

12 SECTION 1.58. Subchapter B, Chapter 40, Human Resources
13 Code, is amended by adding Section 40.03051 to read as follows:

14 Sec. 40.03051. PAPERLESS INFORMATION EXCHANGE PILOT
15 PROGRAM. (a) The department shall develop and implement a pilot
16 program to allow the paperless exchange of information between the
17 department and courts with jurisdiction over child protective
18 services cases.

19 (b) The pilot program must:

20 (1) include one or more courts with jurisdiction over
21 child protective services cases; and

22 (2) be designed to facilitate the progression of child
23 protective services cases through the judicial process.

24 (c) The executive commissioner shall adopt rules necessary
25 to implement this section.

26 (d) Notwithstanding any other provision of this section,
27 the department is not required to implement the pilot program

1 unless funds are appropriated for that purpose.

2 (e) Not later than December 1, 2006, the department shall
3 submit a report to the governor, the lieutenant governor, and the
4 speaker of the house of representatives regarding the preliminary
5 results of the pilot program. The report must include:

6 (1) a description of the status of the pilot program;

7 (2) a description of the effects of the pilot program
8 on the progression of child protective services cases through the
9 judicial process; and

10 (3) an evaluation of the feasibility of expanding the
11 system statewide.

12 (f) This section expires September 1, 2009.

13 SECTION 1.59. Section 40.031, Human Resources Code, is
14 amended to read as follows:

15 Sec. 40.031. DIVISIONS OF DEPARTMENT. (a) The executive
16 commissioner [~~board~~] may establish divisions within the department
17 as necessary for efficient administration and for the discharge of
18 the department's functions.

19 (b) The executive commissioner shall establish an
20 investigations division to oversee and direct the investigation
21 functions of the child protective services program, including the
22 receipt and screening of all reports of alleged child abuse or
23 neglect.

24 (c) The commissioner shall designate a person with law
25 enforcement experience as the director of the investigations
26 division.

27 (d) The investigations division shall, as appropriate,

1 refer children and families in need of services to other department
2 divisions or to other persons or entities with whom the department
3 contracts for the provision of the needed services.

4 (e) Reports of alleged child abuse or neglect investigated
5 under Subchapter E, Chapter 261, Family Code, are not subject to
6 investigation by the investigations division [~~board may allocate~~
7 ~~and reallocate functions, programs, and activities among the~~
8 ~~department's divisions~~].

9 SECTION 1.60. Subchapter B, Chapter 40, Human Resources
10 Code, is amended by adding Section 40.035 to read as follows:

11 Sec. 40.035. ENHANCED TRAINING OF CHILD PROTECTIVE SERVICES
12 CASEWORKERS. To improve the quality and consistency of training
13 provided to child protective services caseworkers, the department
14 shall:

15 (1) augment classroom-based training with a blended
16 learning environment using computer-based modules, structured
17 field experience, and simulation for skills development;

18 (2) use a core curriculum for all new department
19 caseworkers and specialized training for specific jobs;

20 (3) require that department caseworkers transferring
21 from one specialty to another complete the core curriculum and
22 advanced training for the new specialty before assuming their new
23 responsibilities; and

24 (4) centralize accountability and oversight of all
25 department training in order to ensure statewide consistency.

26 SECTION 1.61. Section 40.0525(c), Human Resources Code, is
27 amended to read as follows:

1 (c) Subject to Section 40.031(b), this [~~This~~] section does
2 not require the department to establish separate departments for
3 investigations and service delivery.

4 SECTION 1.62. Subchapter C, Chapter 40, Human Resources
5 Code, is amended by adding Section 40.0526 to read as follows:

6 Sec. 40.0526. BUILDING COMMUNITY PARTNERSHIPS TO SUPPORT
7 CHILDREN AND FAMILIES. (a) The department shall develop a
8 statewide strategy to build alliances and networks at the local
9 level that support the detection and treatment of child abuse and
10 neglect and enhance the coordination and delivery of services to
11 children and families.

12 (b) The strategy must include plans to:

13 (1) move staff from centralized office sites into
14 community-based settings to the greatest extent feasible; and

15 (2) enter into agreements for the establishment or
16 development of joint offices or workplaces with local officials and
17 organizations, including:

18 (A) children's advocacy centers;

19 (B) law enforcement officials;

20 (C) prosecutors;

21 (D) health care providers; and

22 (E) domestic violence shelters.

23 (c) The department may employ specialized staff, to the
24 extent that funds are appropriated for that purpose, to serve as:

25 (1) local legal liaisons who support the prosecution
26 in each region of legal cases through the judicial system by
27 improving coordination and cooperation in case consultation and

1 preparation of cases for court; and

2 (2) local community initiative specialists in each
3 region who focus on building community alliances and networks.

4 (d) An agreement made in accordance with this section for
5 the joint location of department personnel with other local
6 officials or organizations is not subject to Chapter 2167,
7 Government Code.

8 SECTION 1.63. Subchapter C, Chapter 40, Human Resources
9 Code, is amended by adding Section 40.0527 to read as follows:

10 Sec. 40.0527. COMPREHENSIVE STAFFING AND WORKLOAD
11 DISTRIBUTION PLAN FOR CHILD PROTECTIVE SERVICES. (a) The
12 department shall develop and implement a staffing and workload
13 distribution plan for the child protective services program to:

14 (1) reduce caseloads;

15 (2) enhance accountability;

16 (3) improve the quality of investigations;

17 (4) eliminate delays; and

18 (5) ensure the most efficient and effective use of
19 child protective services staff and resources.

20 (b) In developing and implementing the plan, the department
21 shall, subject to available funds:

22 (1) develop a methodology for the equitable
23 distribution of investigative and other staff to ensure an
24 equitable assignment of cases in each area of the state;

25 (2) evaluate the duties of investigators and
26 supervisors and identify and reassign functions that may be
27 performed more efficiently by support or other paraprofessional

1 staff;

2 (3) ensure that investigative and service units
3 contain adequate supervisory and support staff;

4 (4) provide incentives to recruit and retain:

5 (A) caseworkers and supervisors assigned to
6 investigative units; and

7 (B) specialized staff with law enforcement or
8 forensic investigation experience;

9 (5) ensure that caseworkers and supervisors who are in
10 an investigations unit are paid appropriately to increase employee
11 retention;

12 (6) when appropriate, identify and use alternative
13 work schedules;

14 (7) develop a program to replace caseworkers and
15 investigators with trainees hired in anticipation of vacant
16 positions or mobile caseworkers who provide coverage for vacancies
17 as needed;

18 (8) use a system of regional hiring supervisors for
19 targeted recruitment efforts;

20 (9) improve staff recruitment and screening methods to
21 promote the hiring of the most qualified candidates and improve an
22 applicant's understanding of the job requirements;

23 (10) reduce the time necessary to complete a plan of
24 service for a child and family when providing family-based safety
25 services; and

26 (11) identify methods to reduce the administrative
27 area that a manager is responsible for to increase accountability.

1 SECTION 1.64. Section 40.058, Human Resources Code, is
2 amended by adding Subsection (b-1) to read as follows:

3 (b-1) A contract for the purchase of substitute care
4 services, as defined by Section 264.106, Family Code, must be
5 procured using:

6 (1) department procurement procedures; or

7 (2) procurement procedures approved by the executive
8 commissioner that promote open and fair competition.

9 SECTION 1.65. Subchapter C, Chapter 40, Human Resources
10 Code, is amended by adding Sections 40.071 and 40.072 to read as
11 follows:

12 Sec. 40.071. DRUG-ENDANGERED CHILD INITIATIVE. The
13 department shall establish a drug-endangered child initiative
14 aimed at protecting children who are exposed to methamphetamine or
15 to chemicals and other hazardous materials used in the illicit
16 manufacture of methamphetamine.

17 Sec. 40.072. DUTY TO REPORT; DEPARTMENT RECORDS. (a) To
18 the extent that reporting does not interfere with an ongoing
19 criminal investigation, the Department of Public Safety and each
20 local law enforcement agency shall report to the department on
21 discovering the presence of a child in a location where
22 methamphetamine is manufactured.

23 (b) The department shall maintain a record of reports
24 received under this section and shall include in the record
25 information regarding actions taken by the department to ensure the
26 child's safety and well-being.

27 SECTION 1.66. Section 42.002, Human Resources Code, is

1 amended by adding Subdivisions (18) and (19) to read as follows:

2 (18) "Controlling person" means a person who, either
3 alone or in connection with others, has the ability to directly or
4 indirectly influence or direct the management, expenditures, or
5 policies of a residential child-care facility.

6 (19) "Residential child-care facility" means a
7 facility licensed or certified by the department to provide
8 assessment, care, training, education, custody, treatment, or
9 supervision for a child who is not related by blood, marriage, or
10 adoption to the owner or operator of the facility, for all of the
11 24-hour day, whether or not the facility is operated for profit or
12 charges for the services it offers. The term includes child-care
13 institutions, child-placing agencies, foster group homes, foster
14 homes, agency foster group homes, and agency foster homes.

15 SECTION 1.67. Sections 42.021(b) and (d), Human Resources
16 Code, are amended to read as follows:

17 (b) The commissioner [~~executive director of the department~~]
18 shall appoint as director of a division designated under Subsection
19 (a) a person who meets the qualifications set by the executive
20 commissioner [~~board~~].

21 (d) The commissioner [~~director~~] may divide the state into
22 regions for the purpose of administering this chapter.

23 SECTION 1.68. Sections 42.023(a) and (b), Human Resources
24 Code, are amended to read as follows:

25 (a) The department [~~executive director~~] shall prepare an
26 annual written report regarding the department's activities under
27 this chapter.

1 (b) The annual report shall include:

2 (1) a report by regions of applications for licensure
3 or certification, of initial [~~provisional~~] licenses issued,
4 denied, or revoked, of licenses issued, denied, suspended or
5 revoked, of emergency closures and injunctions, and of the
6 compliance of state-operated agencies, if such agencies exist, with
7 certification requirements;

8 (2) a summary of the training programs required by the
9 department and their effectiveness [~~amount and kind of in-service~~
10 ~~training and other professional development opportunities provided~~
11 ~~for department staff~~];

12 (3) a summary of training and other professional
13 development opportunities offered to facilities' staffs; [~~and~~]

14 (4) a report of new administrative procedures, of the
15 number of staff and staff changes, and of plans for the coming year;
16 and

17 (5) a report of trends in licensing violations on a
18 statewide and regional basis and the department's plans to address
19 those trends through the provision of technical assistance.

20 SECTION 1.69. (a) Section 42.041(c), Human Resources Code,
21 is amended to read as follows:

22 (c) A single license that lists addresses and the
23 appropriate facilities may be issued to a child-care institution
24 that operates noncontiguous facilities that are across the street
25 from, in the same city block as, or on the same property as one
26 another [~~nearby~~] and that are demonstrably a single operation as
27 indicated by patterns of staffing, finance, administrative

1 supervision, and programs.

2 (b) Section 42.041(c), Human Resources Code, as amended by
3 this section, applies only to a license issued or renewed on or
4 after the effective date of this section. A license issued or
5 renewed before the effective date of this section is governed by the
6 law in effect at the time the license is issued or renewed, and the
7 former law is continued in effect for that purpose.

8 SECTION 1.70. (a) Section 42.042, Human Resources Code, is
9 amended by adding Subsections (d-1), (g-1), (h-1), and (q) to read
10 as follows:

11 (d-1) The department shall provide a standard inspection
12 checklist and other forms for use in conducting inspections of
13 residential child-care facilities and issuing inspection reports.

14 (g-1) In promulgating minimum standards under this section,
15 the department shall assign a tested weighted value for each
16 standard that correlates to that standard's potential impact on the
17 health and safety of children. In developing a methodology to
18 classify and assign weighted values to designate the risk
19 associated with each minimum standard, the department may consult
20 with a committee appointed by the executive commissioner composed
21 of representatives of public and private entities.

22 (h-1) The executive commissioner shall adopt rules
23 governing:

24 (1) the placement and care of children by a
25 child-placing agency, as necessary to ensure the health and safety
26 of those children;

27 (2) the verification and monitoring of agency foster

1 homes, agency foster group homes, and adoptive homes by a
2 child-placing agency; and

3 (3) if appropriate, child-placing agency staffing
4 levels, office locations, and administration.

5 (q) The executive commissioner shall require residential
6 child-care facilities to immediately report to the department when
7 the facility determines that a child is missing or if there is a
8 serious incident involving a child, including death or serious
9 injury, abuse or neglect, or arrest or truancy.

10 (b) Except as provided by Subsection (c) of this section,
11 the executive commissioner of the Health and Human Services
12 Commission shall adopt rules and establish standards, policies, and
13 procedures to implement and administer Sections 42.042(d-1),
14 (g-1), (h-1), and (q), Human Resources Code, as added by this
15 section, as soon as possible after the effective date of this
16 section.

17 (c) The executive commissioner shall adopt rules and
18 establish standards under Section 42.042(g-1) for facilities other
19 than a residential child-care facility when the Department of
20 Family and Protective Services and the Health and Human Services
21 Commission perform a comprehensive review of those standards.

22 SECTION 1.71. Section 42.0426, Human Resources Code, is
23 amended to read as follows:

24 Sec. 42.0426. TRAINING OF PERSONNEL. (a) A licensed
25 facility shall provide training for staff members in:

26 (1) the recognition of symptoms of child abuse,
27 neglect, and sexual molestation and the responsibility and

1 procedure of reporting suspected occurrences of child abuse,
2 neglect, and sexual molestation to the department or other
3 appropriate entity;

4 (2) the application of first aid; and

5 (3) the prevention and spread of communicable
6 diseases.

7 (b) A residential child-care facility shall implement a
8 behavior intervention program approved by the department for the
9 benefit of a child served by the facility who needs assistance in
10 managing the child's conduct. The program must include:

11 (1) behavior intervention instruction for staff
12 members who work directly with children served by the facility; and

13 (2) training for all employees regarding the risks
14 associated with the use of prone restraints.

15 SECTION 1.72. (a) Section 42.044, Human Resources Code, is
16 amended by adding Subsections (e)-(h) to read as follows:

17 (e) The department shall periodically conduct inspections
18 of a random sample of agency foster homes and agency foster group
19 homes. The department shall use the inspections to monitor and
20 enforce compliance by a child-placing agency with rules and
21 standards established under Section 42.042.

22 (f) The department shall use an inspection checklist that
23 includes a list of all required items for inspection in conducting a
24 monitoring inspection under this section.

25 (g) A person assigned to conduct an inspection or
26 investigation of a residential child-care facility under this
27 section must:

1 (1) hold a bachelor's degree and have at least two
2 years of relevant work experience;

3 (2) complete a course of training regarding the
4 minimum standards applicable to the type of facility or facilities
5 to which the person will be assigned; and

6 (3) pass an examination administered by the department
7 relating to the type of facility or facilities to which the person
8 will be assigned.

9 (h) The department shall annually evaluate and determine
10 the effectiveness of the department's required inspection training
11 programs in providing consistent training on the interpretation and
12 enforcement of licensing standards for residential child-care
13 facilities. In conducting the evaluation, the department shall
14 determine the number of residential child-care facility licensing
15 violations identified statewide and identify any regional
16 discrepancies in licensing enforcement.

17 (b) The education and experience requirements required
18 under Section 42.044(g), Human Resources Code, as added by this
19 section, apply only to staff hired or assigned for the first time to
20 conduct inspections or investigations of residential child-care
21 facilities on or after the effective date of this section.

22 SECTION 1.73. The heading to Section 42.0441, Human
23 Resources Code, is amended to read as follows:

24 Sec. 42.0441. INSPECTION RESULTS FOR CERTAIN
25 NONRESIDENTIAL CHILD-CARE FACILITIES.

26 SECTION 1.74. Subchapter C, Chapter 42, Human Resources
27 Code, is amended by adding Section 42.04411 to read as follows:

1 Sec. 42.04411. INSPECTION RESULTS AND EXIT CONFERENCE FOR
2 RESIDENTIAL CHILD-CARE FACILITIES. (a) On completion of an
3 inspection of a residential child-care facility under Section
4 42.044, the inspector shall hold an exit conference with a
5 representative of the inspected facility. The inspector shall
6 provide to the representative a copy of the inspection checklist
7 used by the inspector.

8 (b) The inspector shall provide the representative an
9 opportunity to communicate regarding potential violations.

10 SECTION 1.75. Section 42.046, Human Resources Code, is
11 amended by adding Subsection (e) to read as follows:

12 (e) The department may deny an application under this
13 section if the applicant:

14 (1) has a residential child-care facility license
15 revoked in another state; or

16 (2) is barred from operating a residential child-care
17 facility in another state.

18 SECTION 1.76. Sections 42.0461(f) and (g), Human Resources
19 Code, are amended to read as follows:

20 (f) A child-placing agency that proposes to verify an agency
21 foster home or agency foster group home that is located in a county
22 with a population of less than 300,000 that provides child care for
23 24 hours a day at a location other than the actual residence of a
24 child's primary caretaker shall:

25 (1) comply with the notice and hearing requirements
26 imposed by Subsections (a) and (b); and

27 (2) after conducting the required public hearing,

1 provide the department with information relating to the
2 considerations specified in Subsection (d).

3 (g) The department may prohibit the child-placing agency
4 from verifying the proposed agency foster home or agency foster
5 group home on the same grounds that the department may deny an
6 application under Subsection (e). The department may invalidate
7 the verification of an agency foster home or agency foster group
8 home that was not verified using the procedures required by
9 Subsection (f) on or after September 1, 1997.

10 SECTION 1.77. Section 42.051, Human Resources Code, is
11 amended to read as follows:

12 Sec. 42.051. INITIAL [~~PROVISIONAL~~] LICENSE. (a) The
13 department shall issue an initial [~~a provisional~~] license when a
14 facility's plans meet the department's licensing requirements and
15 one of the following situations exists:

- 16 (1) the facility is not currently operating;
- 17 (2) the facility has relocated and has made changes in
18 the type of child-care service it provides; or
- 19 (3) there is a change in ownership of the facility
20 resulting in changes in policy and procedure or in the staff who
21 have direct contact with the children.

22 (b) An initial [~~A provisional~~] license is valid for six
23 months from the date it is issued and may be renewed for an
24 additional six months.

25 SECTION 1.78. Section 42.054(b), Human Resources Code, is
26 amended to read as follows:

27 (b) The department shall charge each child-care facility a

1 fee of \$35 for an initial [~~a provisional~~] license. The department
2 shall charge each child-placing agency a fee of \$50 for an initial
3 [~~a provisional~~] license.

4 SECTION 1.79. Section 42.072, Human Resources Code, is
5 amended by amending Subsection (c) and adding Subsection (g) to
6 read as follows:

7 (c) The department may not issue a license, listing,
8 registration, or certification to a [A] person whose license,
9 listing, registration, or certification is revoked or whose
10 application for a license, listing, registration, or certification
11 is denied for a substantive reason under this chapter [~~may not apply~~
12 ~~for any license, listing, registration, or certification under this~~
13 ~~chapter~~] before:

14 (1) the fifth anniversary of the date on which the
15 revocation takes effect by department or court order or the
16 decision to deny the application is final, if the facility is a
17 residential child-care facility; or

18 (2) the second anniversary of the date on which the
19 revocation takes effect by department or court order or the
20 decision to deny the application is final, if the facility is not a
21 residential child-care facility.

22 (g) Notwithstanding Subsection (c), the department may
23 refuse to issue a license, listing, registration, or certification
24 to:

25 (1) a person whose license or certification for a
26 residential child-care facility was revoked by the department or by
27 court order;

1 (2) a person who was a controlling person of a
2 residential child-care facility at the time conduct occurred that
3 resulted in the revocation of the license or certification of the
4 facility;

5 (3) a person who voluntarily closed a residential
6 child-care facility or relinquished the person's license or
7 certification after:

8 (A) the department took an action under
9 Subsection (a) in relation to the facility or person; or

10 (B) the person received notice that the
11 department intended to take an action under Subsection (a) in
12 relation to the facility or person; or

13 (4) a person who was a controlling person of a
14 residential child-care facility at the time conduct occurred that
15 resulted in the closure of the facility or relinquishment of the
16 license or certification in the manner described by Subdivision
17 (3).

18 SECTION 1.80. Section 42.073(c), Human Resources Code, is
19 amended to read as follows:

20 (c) An order is valid for 10 days after the effective date of
21 the order, except that an order relating to a residential
22 child-care facility is valid for 30 days after the effective date of
23 the order.

24 SECTION 1.81. Section 42.077, Human Resources Code, is
25 amended by adding Subsection (d-1) to read as follows:

26 (d-1) If the department determines that the license of a
27 residential child-care facility should be revoked or suspended, the

1 facility shall mail notification of the action or proposed action
2 by certified mail to a parent of each child served by the facility,
3 if the person's parental rights have not been terminated, and to the
4 child's managing conservator, as appropriate. The residential
5 child-care facility shall mail the notification not later than the
6 fifth day after the date the facility is notified of the
7 department's determination that revocation or suspension of the
8 license is appropriate.

9 SECTION 1.82. (a) Section 42.078, Human Resources Code, is
10 amended by amending Subsections (a)-(i) and (l)-(n) and adding
11 Subsection (a-1) to read as follows:

12 (a) The department may impose an administrative penalty
13 against a facility or family home licensed or registered under this
14 chapter that violates this chapter or a rule or order adopted under
15 this chapter. In addition, the department may impose an
16 administrative penalty against a residential child-care facility
17 or a controlling person of a residential child-care facility if the
18 facility or controlling person:

19 (1) violates a term of a license or registration
20 issued under this chapter;

21 (2) makes a statement about a material fact that the
22 facility or person knows or should know is false:

23 (A) on an application for the issuance or renewal
24 of a license or registration or an attachment to the application; or

25 (B) in response to a matter under investigation;

26 (3) refuses to allow a representative of the
27 department to inspect:

1 (A) a book, record, or file required to be
2 maintained by the facility; or

3 (B) any part of the premises of the facility;

4 (4) purposefully interferes with the work of a
5 representative of the department or the enforcement of this
6 chapter; or

7 (5) fails to pay a penalty assessed under this chapter
8 on or before the date the penalty is due, as determined under this
9 section.

10 (a-1) Nonmonetary, administrative penalties or remedies,
11 including but not limited to corrective action plans, probation,
12 and evaluation periods, shall be imposed when appropriate before
13 monetary penalties.

14 (b) Each day a violation continues or occurs is a separate
15 violation for purposes of imposing a penalty. The penalty for a
16 violation may be in an amount not to exceed the following limits,
17 based on the maximum number of children for whom the facility or
18 family home was authorized to provide care or the number of children
19 under the care of the child-placing agency when the violation
20 occurred [~~receiving care at the facility or family home at the time~~
21 ~~of the violation~~]:

22 (1) for violations that occur in a facility other than
23 a residential child-care facility:

Number of children	Maximum amount of penalty
20 or less	<u>\$50</u> [\$20]
21-40	<u>\$60</u> [\$30]
41-60	<u>\$70</u> [\$40]

1	61-80	<u>\$80</u> [\$50]
2	81-100	<u>\$100</u> [\$75]
3	More than 100	<u>\$150</u> [\$100]

4 (2) for violations that occur in a residential
 5 child-care facility:

6	<u>Number of children</u>	<u>Maximum amount of penalty</u>
7	<u>20 or less</u>	<u>\$100</u>
8	<u>21-40</u>	<u>\$150</u>
9	<u>41-60</u>	<u>\$200</u>
10	<u>61-80</u>	<u>\$250</u>
11	<u>81-100</u>	<u>\$375</u>
12	<u>More than 100</u>	<u>\$500</u>

13 (c) In addition to the number of children, the [~~The~~] amount
 14 of the penalty shall be based on:

15 (1) the seriousness of the violation, including the
 16 nature, circumstances, extent, and gravity of any prohibited acts,
 17 and the hazard or potential hazard created to the health, safety, or
 18 economic welfare of the public;

19 (2) the economic harm to property or the environment
 20 caused by the violation;

21 (3) the history of previous violations;

22 (4) the amount necessary to deter future violations;

23 (5) efforts to correct the violation; and

24 (6) any other matter that justice may require.

25 (d) Monetary penalties shall not be assessed for violations
 26 that are the result of clerical errors [~~or standards which do not~~
 27 ~~clearly apprise the facility or family home of the action required~~

1 ~~by the standard~~].

2 (e) If the department [~~executive director~~] determines that
3 a violation has occurred, the department [~~executive director~~] may
4 issue a recommendation on the imposition of a penalty, including a
5 recommendation on the amount of the penalty.

6 (f) Within 14 days after the date the recommendation is
7 issued, the department [~~executive director~~] shall give written
8 notice of the recommendation to the person owning or operating the
9 facility or family home or to the controlling person, if
10 applicable. The notice may be given by certified mail. The notice
11 must include a brief summary of the alleged violation and a
12 statement of the amount of the recommended penalty and must inform
13 the person that the person has a right to a hearing on the
14 occurrence of the violation, the amount of the penalty, or both the
15 occurrence of the violation and the amount of the penalty.

16 (g) Within 20 days after the date the person receives the
17 notice, the person in writing may accept the determination and
18 recommended penalty of the department [~~executive director~~] or may
19 make a written request for a hearing on the occurrence of the
20 violation, the amount of the penalty, or both the occurrence of the
21 violation and the amount of the penalty.

22 (h) If the person accepts the determination and recommended
23 penalty of the department [~~executive director~~] or fails to respond
24 to the notice in a timely manner, the department [~~executive~~
25 ~~director~~] shall issue an order and impose the recommended penalty.

26 (i) If the person requests a hearing, the department
27 [~~executive director~~] shall set a hearing and give notice of the

1 hearing to the person. The hearing shall be held by an
2 administrative law judge of the State Office of Administrative
3 Hearings. The administrative law judge shall make findings of fact
4 and conclusions of law and issue a final decision finding that a
5 violation has occurred and imposing a penalty or finding that no
6 violation occurred.

7 (1) Within the 30-day period, a person who acts under
8 Subsection (k)(3) may:

9 (1) stay enforcement of the penalty by:

10 (A) paying the amount of the penalty to the court
11 for placement in an escrow account; or

12 (B) giving to the court a supersedeas bond that
13 is approved by the court for the amount of the penalty and that is
14 effective until all judicial review of the order is final; or

15 (2) request the court to stay enforcement of the
16 penalty by:

17 (A) filing with the court a sworn affidavit of
18 the person stating that the person is financially unable to pay the
19 amount of the penalty and is financially unable to give the
20 supersedeas bond; and

21 (B) giving a copy of the affidavit to the
22 department [~~executive director~~] by certified mail.

23 (m) On receipt of a copy of an affidavit under Subsection
24 (1)(2), the department [~~executive director~~] may file with the
25 court, within five days after the date the copy is received, a
26 contest to the affidavit. The court shall hold a hearing on the
27 facts alleged in the affidavit as soon as practicable and shall stay

1 the enforcement of the penalty on finding that the alleged facts are
2 true. The person who files an affidavit has the burden of proving
3 that the person is financially unable to pay the amount of the
4 penalty and to give a supersedeas bond.

5 (n) If the person does not pay the amount of the penalty and
6 the enforcement of the penalty is not stayed, the department
7 [~~executive director~~] may refer the matter to the attorney general
8 for collection of the amount of the penalty.

9 (b) Section 42.078, Human Resources Code, as amended by this
10 section, applies to conduct that occurs on or after the effective
11 date of this section. Conduct that occurs before the effective date
12 of this section is governed by Section 42.078, Human Resources
13 Code, as it existed before amendment by this section, and the former
14 law is continued in effect for that purpose.

15 SECTION 1.83. The heading to Chapter 43, Human Resources
16 Code, is amended to read as follows:

17 CHAPTER 43. REGULATION OF CHILD-CARE AND CHILD-PLACING AGENCY
18 ADMINISTRATORS

19 SECTION 1.84. Section 43.001, Human Resources Code, is
20 amended by amending Subdivision (1) and adding Subdivisions (3) and
21 (4) to read as follows:

22 (1) "Child-care institution" has the meaning assigned
23 by Section 42.002 [~~means a profit or nonprofit children's home,~~
24 ~~orphanage, institution, or other place that receives and provides~~
25 ~~24-hour-a-day care for more than six children who are dependent,~~
26 ~~neglected, handicapped, delinquent, in danger of becoming~~
27 ~~delinquent, or in need of group care].~~

1 (3) "Child-placing agency" has the meaning assigned in
2 Section 42.002.

3 (4) "Child-placing agency administrator" means a
4 person who supervises and exercises direct control over a
5 child-placing agency and who is responsible for the child-placing
6 agency's program and personnel, regardless of whether the person
7 has an ownership interest in the child-placing agency or shares
8 duties with other persons.

9 SECTION 1.85. (a) Section 43.003, Human Resources Code, is
10 amended by adding Subsection (c) to read as follows:

11 (c) A person may not serve as a child-placing agency
12 administrator without a license issued by the department under this
13 chapter.

14 (b) Notwithstanding Section 43.003(c), Human Resources
15 Code, as added by this section, a person is not required to hold a
16 license issued under Chapter 43, Human Resources Code, to act as a
17 child-placing agency administrator until January 1, 2006.

18 SECTION 1.86. (a) Section 43.004, Human Resources Code, is
19 amended to read as follows:

20 Sec. 43.004. QUALIFICATIONS FOR LICENSE. (a) To be
21 eligible for a child-care administrator's license a person must:

22 (1) provide information for the department's use in
23 conducting a criminal history and background check under Subsection
24 (c) [~~present evidence in writing of good moral character, ethical~~
25 ~~commitment, and sound physical and emotional health~~];

26 (2) pass an examination developed [~~devised~~] and
27 administered by the department that demonstrates competence in the

1 field of child-care administration;

2 (3) have one year of full-time experience in
3 management or supervision of child-care personnel and programs; and

4 (4) have one of the following educational and
5 experience qualifications:

6 (A) a master's or doctoral [~~doctor of philosophy~~]
7 degree in social work or other area of study; or

8 (B) a bachelor's degree and two years' full-time
9 experience in child care or a closely related field[~~+~~

10 [~~(C) an associate degree from a junior college~~
11 ~~and four years' experience in child care or a closely related field;~~

12 ~~or~~

13 [~~(D) a high school diploma or its equivalent and~~
14 ~~six years' experience in child care or a closely related field].~~

15 (b) To be eligible for a child-placing agency
16 administrator's license a person must:

17 (1) provide information for the department's use in
18 conducting a criminal history and background check under Subsection
19 (c);

20 (2) pass an examination developed and administered by
21 the department that demonstrates competence in the field of placing
22 children in residential settings or adoptive homes;

23 (3) have one year of full-time experience in
24 management or supervision of child-placing personnel and programs;
25 and

26 (4) have one of the following educational and
27 experience qualifications:

1 (A) a master's or doctoral degree in social work
2 or other area of study; or

3 (B) a bachelor's degree and two years' full-time
4 experience in the field of placing children in residential settings
5 or adoptive homes or a closely related field.

6 (c) Before the department issues a license under this
7 chapter, the department must conduct a criminal history and
8 background check of the applicant using:

9 (1) the information made available by the Department
10 of Public Safety under Section 411.114, Government Code, or by the
11 Federal Bureau of Investigation or other criminal justice agency
12 under Section 411.087, Government Code; and

13 (2) the information in the central registry of
14 reported cases of child abuse or neglect established under Section
15 261.002, Family Code.

16 (b) Section 43.004(a), Human Resources Code, as added by
17 this section, applies only to a person who applies for a license or
18 license renewal on or after the effective date of this section.

19 SECTION 1.87. (a) Section 43.0041, Human Resources Code, is
20 amended by adding Subsection (c) to read as follows:

21 (c) A person who fails an examination three times may not
22 submit a new application for a license until after the first
23 anniversary of the date the person last failed the examination.

24 (b) Section 43.0041(c), Human Resources Code, as added by
25 this section, applies only to an examination taken on or after the
26 effective date of this section. An examination taken before the
27 effective date of this section is not considered in determining

1 whether a person is prohibited from seeking a new license for the
2 period specified by Section 43.0041(c), Human Resources Code, as
3 added by this section.

4 SECTION 1.88. Section 43.0081(a), Human Resources Code, is
5 amended to read as follows:

6 (a) The department may issue a provisional child-care
7 administrator's license to an applicant licensed in another state
8 who applies for a license in this state. An applicant for a
9 provisional license under this section must:

10 (1) be licensed in good standing as a child-care
11 administrator for at least two years in another state, the District
12 of Columbia, a foreign country, or a territory of the United States
13 that has licensing requirements that are substantially equivalent
14 to the requirements of this chapter;

15 (2) have passed a national or other examination
16 recognized by the department that demonstrates competence in the
17 field of child-care administration; and

18 (3) be sponsored by a person licensed by the
19 department under this chapter with whom the provisional license
20 holder may practice under this section.

21 SECTION 1.89. (a) Section 43.009(a), Human Resources Code,
22 is amended to read as follows:

23 (a) To be eligible for license renewal, a license holder
24 shall present evidence to the department of participation in a
25 program of continuing education for 15 [~~approximating 15 actual~~]
26 hours of formal study each year during the two-year period before
27 the renewal.

1 (b) Section 43.009(a), Human Resources Code, as amended by
2 this section, applies to a person who seeks license renewal on or
3 after September 1, 2007. A person who seeks license renewal before
4 September 1, 2007, is governed by the law in effect before amendment
5 by this section, and the former law is continued in effect for that
6 purpose.

7 SECTION 1.90. The heading to Section 43.010, Human
8 Resources Code, is amended to read as follows:

9 Sec. 43.010. LICENSE DENIAL, REVOCATION, SUSPENSION, OR
10 REFUSAL TO RENEW; REPRIMAND OR PROBATION.

11 SECTION 1.91. (a) Sections 43.010(a), (b), and (d), Human
12 Resources Code, are amended to read as follows:

13 (a) The department may deny, [~~shall~~] revoke, suspend, or
14 refuse to renew a license, or place on probation [~~a person whose~~
15 ~~license has been suspended,~~] or reprimand a license holder for:

16 (1) violating [~~a violation by the license holder of~~]
17 this chapter or a rule adopted under this chapter;

18 (2) circumventing or attempting to circumvent the
19 requirements of this chapter or a rule adopted under this chapter;

20 (3) engaging in fraud or deceit related to the
21 requirements of this chapter or a rule adopted under this chapter;

22 (4) providing false or misleading information to the
23 department during the license application or renewal process for
24 any person's license;

25 (5) making a statement about a material fact during
26 the license application or renewal process that the person knows or
27 should know is false;

1 (6) having a criminal history or central registry
2 record that would prohibit a person from working in a child-care
3 facility, as defined by Section 42.002, under rules applicable to
4 that type of facility;

5 (7) using drugs or alcohol in a manner that
6 jeopardizes the person's ability to function as an administrator;
7 or

8 (8) [of the board.]

9 ~~[(b) The department may revoke a license if the license~~
10 ~~holder is:~~

11 ~~[(1) convicted of a felony;~~

12 ~~[(2) convicted of a misdemeanor involving fraud or~~
13 ~~deceit;~~

14 ~~[(3) addicted to a dangerous drug or intemperate in~~
15 ~~the use of alcohol; or~~

16 ~~[(4) grossly negligent in]~~ performing duties as a
17 child-care administrator in a negligent manner.

18 (b) A person whose license is revoked under Subsection (a)
19 is not eligible to apply for another license under this chapter for
20 a period of five years after the date the license was revoked.

21 (d) If a license holder is placed on probation ~~[suspension~~
22 ~~is probated]~~, the department may require the license holder:

23 (1) to report regularly to the department on the
24 conditions of the probation;

25 (2) to limit practice to the areas prescribed by the
26 department; or

27 (3) to continue or renew professional education until

1 the practitioner attains a degree of skill satisfactory to the
2 department in those areas in which improvement is a condition of the
3 probation.

4 (b) Section 43.010(b), Human Resources Code, as amended by
5 this section, applies only to a person whose license is revoked on
6 or after the effective date of this section. A person whose license
7 is revoked before the effective date of this section is governed by
8 the law in effect at the time of the revocation, and the former law
9 is continued in effect for that purpose.

10 SECTION 1.92. Section 43.0105, Human Resources Code, is
11 amended to read as follows:

12 Sec. 43.0105. REVOCATION OF PROBATION. The department may
13 revoke the probation of a license holder [~~whose license is~~
14 ~~suspended~~] if the license holder violates a term of the conditions
15 of probation.

16 SECTION 1.93. Section 43.0106, Human Resources Code, is
17 amended to read as follows:

18 Sec. 43.0106. ADMINISTRATIVE [~~DISCIPLINARY~~] HEARING. (a)
19 If the department denies a license or proposes to suspend, revoke,
20 or refuse to renew a person's license, the person is entitled to a
21 hearing conducted by the State Office of Administrative Hearings.
22 Proceedings for a disciplinary action are governed by the
23 administrative procedure law, Chapter 2001, Government Code. Rules
24 of practice adopted by the executive commissioner [~~board~~] under
25 Section 2001.004, Government Code, applicable to the proceedings
26 for a disciplinary action may not conflict with rules adopted by the
27 State Office of Administrative Hearings.

1 (b) A person may not continue to operate as a licensed
2 child-care administrator or child-placing agency administrator
3 during the appeal process if the department determines that the
4 person is an immediate threat to the health or safety of a child.

5 (c) The department must notify the person and, if
6 applicable, the governing body of the facility that employs the
7 person of the department's determination under Subsection (b).

8 SECTION 1.94. Section 43.012, Human Resources Code, is
9 amended to read as follows:

10 Sec. 43.012. PENALTY. A person who serves as a child-care
11 or child-placing agency administrator without the license required
12 by this chapter commits a Class C misdemeanor.

13 SECTION 1.95. The following provisions of the Human
14 Resources Code are repealed:

- 15 (1) Section 40.001(1);
16 (2) Section 40.028;
17 (3) Section 40.029;
18 (4) Sections 40.0305(b) and (c); and
19 (5) Section 43.010(c).

20 ARTICLE 2. ADULT PROTECTIVE SERVICES

21 SECTION 2.01. Subchapter B, Chapter 40, Human Resources
22 Code, is amended by adding Section 40.0315 to read as follows:

23 Sec. 40.0315. INVESTIGATION UNIT FOR ADULT PROTECTIVE
24 SERVICES. (a) The adult protective services division of the
25 department shall maintain an investigation unit to investigate
26 allegations of abuse, neglect, and exploitation of elderly and
27 disabled persons reported to the division.

1 (b) An investigator in the unit shall determine whether an
2 elderly or disabled person who is the subject of a report made under
3 Section 48.051(a) may have suffered from abuse, neglect, or
4 exploitation as a result of the criminal conduct of another person.
5 If the investigator determines that criminal conduct may have
6 occurred, the investigator shall immediately notify the
7 appropriate law enforcement agency.

8 SECTION 2.02. Subchapter B, Chapter 40, Human Resources
9 Code, is amended by adding Sections 40.0322 and 40.0323 to read as
10 follows:

11 Sec. 40.0322. QUALIFICATIONS FOR ADULT PROTECTIVE SERVICES
12 PERSONNEL; RECRUITMENT. (a) In hiring department employees whose
13 duties include providing services as part of, or relating to, the
14 provision of adult protective services directly to an elderly or
15 disabled person, the commissioner shall ensure that the department
16 hires, as often as possible, persons with professional credentials
17 related to adult protective services, including persons who are
18 licensed master social workers, as defined by Section 505.002,
19 Occupations Code, or licensed professional counselors.

20 (b) Subject to the availability of funds, the executive
21 commissioner by rule shall develop and the department shall
22 implement a recruiting program designed to attract and retain for
23 employment in the adult protective services division persons with
24 professional credentials described by Subsection (a).

25 (c) Subject to the availability of funds, the executive
26 commissioner by rule shall develop and the department shall
27 implement an incentive program to encourage each department

1 employee whose duties include the duties described by Subsection
2 (a) to obtain professional credentials described by that subsection
3 if the employee does not have those credentials.

4 Sec. 40.0323. COORDINATION REGARDING RECRUITMENT FOR AND
5 CURRICULUM OF CERTAIN CERTIFICATE OR DEGREE PROGRAMS. The
6 department and the Texas Higher Education Coordinating Board
7 jointly shall develop strategies to:

8 (1) promote certificate or degree programs in the
9 fields of social work and psychology to individuals enrolled in or
10 admitted to institutions of higher education in this state; and

11 (2) ensure that persons receiving a certificate or
12 degree, including a graduate degree, in social work or psychology
13 from an institution of higher education in this state have the
14 knowledge and skills regarding protective services that are
15 provided directly to elderly or disabled persons and necessary for
16 successful employment by the adult protective services division of
17 the department.

18 SECTION 2.03. Subchapter B, Chapter 40, Human Resources
19 Code, is amended by adding Section 40.035 to read as follows:

20 Sec. 40.035. TRAINING PROGRAM FOR ADULT PROTECTIVE
21 SERVICES; CONTINUING EDUCATION. (a) The department shall develop
22 and implement a training program that each newly hired or assigned
23 department employee must complete before:

24 (1) initiating an investigation of a report of alleged
25 abuse, neglect, or exploitation of an elderly or disabled person
26 under Chapter 48; or

27 (2) providing protective services to elderly or

1 disabled persons under that chapter.

2 (b) The training program must:

3 (1) provide the person with appropriate comprehensive
4 information regarding:

5 (A) the incidence and types of reports of abuse,
6 neglect, and exploitation of elderly or disabled persons that are
7 received by the department, including information concerning false
8 reports; and

9 (B) the use and proper implementation of:

10 (i) the risk assessment criteria developed
11 under Section 48.004;

12 (ii) the criteria used by caseworkers to
13 determine whether elderly or disabled persons lack capacity to
14 consent to receive protective services; and

15 (iii) the legal procedures available under
16 Chapter 48 for the protection of elderly or disabled persons,
17 including the procedures for obtaining a court order for emergency
18 protective services under Section 48.208;

19 (2) include best practices for management of a case
20 from the intake process to the provision of protective services,
21 including criteria that specify the circumstances under which an
22 employee should:

23 (A) consult a supervisor regarding a case; or

24 (B) refer an elderly or disabled person to an
25 appropriate public agency or community service provider for
26 guardianship or other long-term services after the delivery of
27 protective services to that person has been completed;

1 (3) provide appropriate specialized training in any
2 necessary topics, including:

3 (A) investigation of suspected identity theft
4 and other forms of financial exploitation and suspected
5 self-neglect; and

6 (B) establishment and maintenance of working
7 relationships with community organizations and other local
8 providers who provide services to elderly and disabled persons;

9 (4) include on-the-job training, which must require
10 another department caseworker with more experience to accompany and
11 train the caseworker in the field for a three-month period;

12 (5) provide for the development of individualized
13 training plans;

14 (6) include training in working with law enforcement
15 agencies and the court system when legal intervention is sought for
16 investigations or emergency orders; and

17 (7) include testing, progress reports, or other
18 evaluations to assess the performance of trainees.

19 (c) The department at least annually shall provide
20 comprehensive case management training to supervisors of
21 department employees who conduct investigations under Chapter 48.
22 The training must be designed to enable the supervisors to provide
23 guidance on investigations of reports of alleged abuse, neglect, or
24 exploitation that are complex or present unique problems.

25 (d) The department shall develop and implement appropriate
26 continuing education programs for employees of the adult protective
27 services division who have completed initial training under this

1 section. The continuing education programs must be designed to
2 provide an annual update regarding changes in:

3 (1) adult protective services division policies and
4 procedures; and

5 (2) applicable law, including statutory changes
6 affecting the adult protective services division or elderly or
7 disabled persons served by the division.

8 (e) A department employee required to participate in a
9 continuing education program under this section must complete the
10 program at least once each calendar year.

11 (f) The department shall:

12 (1) make curriculum developed for a training or
13 continuing education program under this section readily available
14 to department employees in written form; and

15 (2) periodically revise a training and continuing
16 education program established under this section as necessary to
17 satisfy training needs identified by the department or department
18 employees.

19 SECTION 2.04. (a) Subchapter C, Chapter 40, Human
20 Resources Code, is amended by adding Section 40.0515 to read as
21 follows:

22 Sec. 40.0515. QUALITY ASSURANCE PROGRAM FOR ADULT
23 PROTECTIVE SERVICES; QUARTERLY REPORTS. (a) The department shall
24 develop and implement a quality assurance program for adult
25 protective services provided by or on behalf of the department.

26 (b) In developing the program, the department shall
27 establish:

1 (1) client-centered outcome measures for each of the
2 following functions of the adult protective services program:

3 (A) intake process;

4 (B) investigations;

5 (C) risk assessment determinations; and

6 (D) delivery of protective services;

7 (2) minimum job performance standards for personnel
8 and each work department of the adult protective services division
9 of the department; and

10 (3) procedures for conducting periodic performance
11 reviews to monitor compliance with the standards established under
12 Subdivision (2).

13 (c) The department shall promptly address a person's or work
14 department's failure to meet minimum job performance standards
15 established under Subsection (b)(2):

16 (1) by issuing to the person or work department, as
17 appropriate, a corrective action plan detailing the actions
18 required to comply with the standards; or

19 (2) if necessary, through disciplinary action,
20 including a person's demotion or discharge, for repeated failure to
21 meet the standards.

22 (d) Each employee of the adult protective services division
23 must receive a performance evaluation required by Section 40.032(c)
24 at least annually. The department shall ensure that disciplinary
25 or other corrective action is taken against a supervisor or other
26 managerial employee who is required to conduct a performance
27 evaluation and fails to complete that evaluation in a timely

1 manner.

2 (e) A summary of the findings of outcome measures
3 established and performance reviews conducted under this section
4 must be reported to regional directors and other senior management
5 employees of the adult protective services division.

6 (f) Each fiscal quarter the department shall file with the
7 governor and the presiding officer of each house of the legislature
8 a report that includes:

9 (1) a comprehensive review of the adult protective
10 services division's overall performance during the preceding
11 quarter; and

12 (2) a summary of the adult protective services
13 division's performance during the preceding quarter on each of the
14 outcome measures established under Subsection (b)(1).

15 (b) The Department of Family and Protective Services shall
16 submit the initial report required under Section 40.0515, Human
17 Resources Code, as added by this section, not later than February 1,
18 2006.

19 SECTION 2.05. Subchapter C, Chapter 40, Human Resources
20 Code, is amended by adding Section 40.0527 to read as follows:

21 Sec. 40.0527. PUBLIC AWARENESS. (a) The executive
22 commissioner by rule shall develop and the department shall
23 implement a statewide public awareness campaign designed to educate
24 the public regarding the abuse, neglect, and exploitation of
25 elderly and disabled persons.

26 (b) The department may use mass communications media, the
27 Internet, publications, or other means of public education in

1 conducting the campaign.

2 (c) A public awareness strategy implemented for the program
3 must include:

4 (1) the provision of information on the incidence and
5 types of reports of abuse, neglect, and exploitation of elderly or
6 disabled persons; and

7 (2) practices that can reduce the incidences of abuse,
8 neglect, and exploitation of elderly or disabled persons in this
9 state.

10 (d) The department shall enlist the support and assistance
11 of civic, philanthropic, and public service organizations in the
12 performance of the duties imposed under this section.

13 SECTION 2.06. Subchapter A, Chapter 48, Human Resources
14 Code, is amended by adding Section 48.004 to read as follows:

15 Sec. 48.004. RISK ASSESSMENT. The executive commissioner
16 by rule shall develop and maintain risk assessment criteria for use
17 by department personnel in determining whether an elderly or
18 disabled person is in a state of abuse, neglect, or exploitation and
19 needs protective services. The criteria must provide for a
20 comprehensive assessment of the person's:

21 (1) environmental, physical, medical, mental health,
22 and financial condition; and

23 (2) social interaction and support.

24 SECTION 2.07. Section 48.151, Human Resources Code, is
25 amended by adding Subsection (c-1) to read as follows:

26 (c-1) The department shall develop and implement a system to
27 ensure that, to the greatest extent possible, investigations

1 conducted by the department that involve especially complex issues
2 of abuse, neglect, or exploitation, such as issues associated with
3 identity theft and other forms of financial exploitation, are
4 assigned to personnel who have experience and training in those
5 issues.

6 SECTION 2.08. Sections 48.205(a) and (b), Human Resources
7 Code, are amended to read as follows:

8 (a) Subject to the availability of funds, the ~~[The]~~
9 department shall ~~[may]~~ provide direct protective services or
10 contract with protective services agencies for the provision
11 ~~[provisions]~~ of those services.

12 (b) The department shall use existing resources and
13 services of public and private agencies in providing protective
14 services. If the department does not have existing resources to
15 provide direct protective services to elderly or disabled persons,
16 the department, subject to the availability of funds, shall
17 contract with protective services agencies for the provision of
18 those services, especially to elderly or disabled persons residing
19 in rural or remote areas of this state or not previously served by
20 the department.

21 SECTION 2.09. Section 48.208, Human Resources Code, is
22 amended by amending Subsections (b), (c), and (e) and adding
23 Subsections (c-1), (c-2), and (e-1) to read as follows:

24 (b) If the department determines that an elderly or disabled
25 person is suffering from abuse, neglect, or exploitation presenting
26 a threat to life or physical safety, that the person lacks capacity
27 to consent to receive protective services, and that no consent can

1 be obtained, the department shall [~~may~~] petition the probate or
2 statutory or constitutional county court that has probate
3 jurisdiction in the county in which the elderly or disabled person
4 resides for an emergency order authorizing protective services.

5 (c) The petition shall be verified and shall include:

6 (1) the name, age, and address of the elderly or
7 disabled person who needs protective services;

8 (2) the nature of the abuse, neglect, or exploitation;

9 (3) the services needed; and

10 (4) a [~~medical~~] report signed by a physician,
11 physician assistant, registered nurse, or advanced practice nurse
12 that contains the information required by Subsection (c-1) or a
13 report signed by a psychologist licensed under Chapter 501,
14 Occupations Code, that contains the information required by
15 Subsection (c-2), [~~stating that the person is suffering from abuse,~~
16 ~~neglect, or exploitation presenting a threat to life or physical~~
17 ~~safety and stating that the person is physically or mentally~~
18 ~~incapable of consenting to services] unless the court finds that an
19 immediate danger to the health or safety of the elderly or disabled
20 person exists and there is not sufficient time to obtain the
21 [~~medical~~] report.~~

22 (c-1) A report obtained from a physician, physician
23 assistant, registered nurse, or advanced practice nurse under
24 Subsection (c)(4) must state that the person:

25 (1) is suffering from abuse, neglect, or exploitation
26 presenting a threat to life or physical safety; and

27 (2) is physically or mentally incapable of consenting

1 to services.

2 (c-2) A report obtained from a licensed psychologist under
3 Subsection (c)(4) must state that the person:

4 (1) is suffering from abuse, neglect, or exploitation
5 presenting a threat to life or physical safety; and

6 (2) is mentally incapable of consenting to services.

7 (e) The emergency order expires at the end of 72 hours from
8 the time of the order unless:

9 (1) the 72-hour period ends on a Saturday, Sunday, or
10 legal holiday in which event the order is automatically extended to
11 4 p.m. on the first succeeding business day; or

12 (2) the court extends the order as provided by
13 Subsection (e-1).

14 (e-1) The court may extend an emergency order issued under
15 this section once for an additional period of not more than 30 days
16 if the court receives a medical report signed by a physician stating
17 that the person is physically or mentally incapable of consenting
18 to services and the court, after a hearing, finds that the immediate
19 danger to the health or safety of the elderly or disabled person
20 continues to exist. The medical report must be based on an
21 examination the physician performed not earlier than the date the
22 court granted the initial emergency order. An extension order [may
23 ~~be renewed for not more than 14 additional days. A renewal order]~~
24 that ends on a Saturday, Sunday, or legal holiday is automatically
25 extended to 4 p.m. on the first succeeding business day. The court
26 may shorten the term of [modify] or terminate the emergency order on
27 petition of the department, the elderly or disabled [incapacitated]

1 person, or any person interested in the elderly or disabled
2 person's [his] welfare.

3 SECTION 2.10. Section 531.0162, Government Code, is amended
4 by adding Subsections (c) and (d) to read as follows:

5 (c) Subject to available appropriations, the commission
6 shall use technology whenever possible in connection with the adult
7 protective services program of the Department of Family and
8 Protective Services to:

9 (1) provide for automated collection of information
10 necessary to evaluate program effectiveness using systems that
11 integrate collection of necessary information with other routine
12 duties of caseworkers and other service providers; and

13 (2) consequently reduce the time that caseworkers and
14 other service providers are required to use in gathering and
15 reporting information necessary for program evaluation.

16 (d) The commission shall include representatives of the
17 private sector in the technology planning process used to determine
18 appropriate technology for the adult protective services program of
19 the Department of Family and Protective Services.

20 SECTION 2.11. (a) Section 531.048, Government Code, is
21 amended by adding Subsection (g) to read as follows:

22 (g) The executive commissioner shall develop and, subject
23 to the availability of funds, implement a caseload management
24 reduction plan to reduce, not later than January 1, 2011, caseloads
25 for caseworkers employed by the adult protective services division
26 of the Department of Family and Protective Services to a level that
27 does not exceed professional caseload standards by more than five

1 cases per caseworker. The plan must provide specific annual
2 targets for caseload reduction.

3 (b) Not later than January 1, 2006, the executive
4 commissioner of the Health and Human Services Commission shall
5 adopt rules establishing the caseload management reduction plan as
6 provided by Section 531.048(g), Government Code, as added by this
7 section.

8 (c) Not later than December 31 of each even-numbered year,
9 the executive commissioner of the Health and Human Services
10 Commission shall prepare a report regarding the implementation of
11 the plan provided by Section 531.048(g), Government Code, as added
12 by this section. The report must include an assessment of the
13 effect of the plan on reducing caseloads and the amount of funding
14 necessary to fully implement the plan during the next biennium. The
15 executive commissioner shall submit the report to the governor, the
16 lieutenant governor, the speaker of the house of representatives,
17 and the presiding officer of each house and senate standing
18 committee having jurisdiction over adult protective services.

19 SECTION 2.12. PILOT PROGRAM FOR MONITORING CERTAIN
20 UNLICENSED LONG-TERM CARE FACILITIES. (a) In this section:

21 (1) "Disabled person" has the meaning assigned by
22 Section 48.002, Human Resources Code.

23 (2) "Elderly person" has the meaning assigned by
24 Section 48.002, Human Resources Code.

25 (3) "Long-term care facility" means:

26 (A) a nursing home or related institution;

27 (B) an assisted living facility;

1 (C) an ICF-MR, as defined by Section 531.002,
2 Health and Safety Code;

3 (D) a community home subject to Chapter 123,
4 Human Resources Code; or

5 (E) any other residential arrangement that
6 provides care to four or more adults who are unrelated to the
7 proprietor of the establishment.

8 (b) The executive commissioner of the Health and Human
9 Services Commission by rule shall develop and implement a pilot
10 program in which local task forces composed of health care
11 providers, representatives from governmental entities, and local
12 government officials are created to:

13 (1) identify, through a coordination of efforts and
14 resources, persons establishing or operating:

15 (A) long-term care facilities providing personal
16 care services, health-related services, or other care to elderly or
17 disabled persons without being licensed or providing disclosures as
18 required by state law; or

19 (B) residential facilities or arrangements
20 providing personal care services or other care in violation of
21 state law to three or fewer elderly or disabled persons who are
22 unrelated to the proprietor of the establishment; and

23 (2) take appropriate action necessary to:

24 (A) report the facilities or arrangements
25 described by Subdivision (1) of this subsection to the appropriate
26 state regulatory agencies or local law enforcement agencies;

27 (B) assist, whenever practicable, a long-term

1 care facility described by Subdivision (1)(A) of this subsection in
2 obtaining the appropriate licensure or making the appropriate
3 disclosures on request of the facility; and

4 (C) assist, if it is feasible and practicable, a
5 facility or arrangement described by Subdivision (1)(B) of this
6 subsection in complying with applicable regulatory requirements of
7 state or local law.

8 (c) Not later than January 1, 2006, the executive
9 commissioner of the Health and Human Services Commission shall
10 implement the pilot program in at least one rural area and one urban
11 area of this state.

12 (d) Not later than January 1, 2007, the Health and Human
13 Services Commission shall submit a report on the status and
14 progress of the pilot program to the governor, the lieutenant
15 governor, the speaker of the house of representatives, and the
16 presiding officer of each house and senate standing committee
17 having jurisdiction over adult protective services. The report
18 must include a recommendation regarding the advisability of
19 expanding the pilot program statewide.

20 (e) This section expires September 1, 2007.

21 ARTICLE 3. GUARDIANSHIP AND RELATED SERVICES

22 SECTION 3.01. The heading to Subchapter E, Chapter 48,
23 Human Resources Code, is amended to read as follows:

24 SUBCHAPTER E. PROVISION OF SERVICES; [~~GUARDIANSHIP SERVICES,~~]

25 EMERGENCY PROTECTION

26 SECTION 3.02. Section 48.209, Human Resources Code, is
27 amended to read as follows:

1 Sec. 48.209. REFERRAL FOR GUARDIANSHIP SERVICES

2 [GUARDIANSHIPS]. (a) The department shall refer an individual to
3 the Department of Aging and Disability Services for guardianship
4 services under Subchapter E, Chapter 161, if the individual is:

5 (1) a minor in the conservatorship of the department
6 who:

7 (A) is 16 years of age or older; and

8 (B) the department has reason to believe will,
9 because of a physical or mental condition, be substantially unable
10 to provide for the individual's own food, clothing, or shelter, to
11 care for the individual's own physical health, or to manage the
12 individual's own financial affairs when the individual becomes an
13 adult; or

14 (2) an elderly or disabled person who:

15 (A) has been found by the department to be in a
16 state of abuse, neglect, or exploitation; and

17 (B) the department has reason to believe is an
18 incapacitated person as defined by Section 601(14)(B), Texas
19 Probate Code.

20 (b) Notwithstanding Subsection (a), if a less restrictive
21 alternative to guardianship is appropriate and available for the
22 individual, the department shall pursue that alternative instead of
23 making a referral to the Department of Aging and Disability
24 Services for guardianship services.

25 (c) The department and the Department of Aging and
26 Disability Services shall enter into a memorandum of understanding
27 that sets forth in detail the roles and duties of each agency

1 regarding the referral for guardianship services under Subsection
2 (a) and the provision of guardianship services to individuals under
3 Subchapter E, Chapter 161.

4 (d) Nothing in this section shall prohibit the department
5 from also making a referral of an individual to a court having
6 probate jurisdiction in the county where the individual is
7 domiciled or found, if the court has requested the department to
8 notify the court of any individuals who may be appropriate for a
9 court-initiated guardianship proceeding under Section 683, Texas
10 Probate Code. In making a referral under this subsection and if
11 requested by the court, the department shall, to the extent allowed
12 by law, provide the court with all relevant information in the
13 department's records relating to the individual. The court, as
14 part of this process, may not require the department to:

15 (1) perform the duties of a guardian ad litem or court
16 investigator as prescribed by Section 683, Texas Probate Code; or

17 (2) gather additional information not contained in the
18 department's records.

19 (e) The department may not be appointed to serve as
20 temporary or permanent guardian for any individual. [~~(a) The~~
21 department shall file an application under Section 682 or 875,
22 Texas Probate Code, to be appointed guardian of the person or estate
23 or both of an individual who is a minor, is a conservatee of the
24 department, and, because of a physical or mental condition, will be
25 substantially unable to provide food, clothing, or shelter for
26 himself or herself, to care for the individual's own physical
27 health, or to manage the individual's own financial affairs when

1 ~~the individual becomes an adult. If a less restrictive alternative~~
2 ~~to guardianship is available for an individual, the department~~
3 ~~shall pursue the alternative instead of applying for appointment as~~
4 ~~a guardian.~~

5 ~~[(b) As a last resort, the department may apply to be~~
6 ~~appointed guardian of the person or estate of an elderly or disabled~~
7 ~~person who is found by the department to be in a state of abuse,~~
8 ~~neglect, or exploitation, and who, because of a physical or mental~~
9 ~~condition, will be substantially unable to provide food, clothing,~~
10 ~~or shelter for himself or herself, to care for the individual's own~~
11 ~~physical health, or to manage the individual's own financial~~
12 ~~affairs. A representative of the department shall take the oath~~
13 ~~required by the Texas Probate Code on behalf of the department if~~
14 ~~the department is appointed guardian. If the department knows that~~
15 ~~an individual is willing and able to serve as the guardian, the~~
16 ~~department may inform the court of that individual's willingness~~
17 ~~and ability.~~

18 ~~[(c) If appropriate, the department may contract with a~~
19 ~~political subdivision of this state, a private agency, or another~~
20 ~~state agency for the provision of guardianship services under this~~
21 ~~section. The department or a political subdivision of the state or~~
22 ~~state agency with which the department contracts under this section~~
23 ~~is not required to post a bond or pay any cost or fee otherwise~~
24 ~~required by the Texas Probate Code.~~

25 ~~[(d) If the department is appointed guardian, the~~
26 ~~department is not liable for funding services provided to the~~
27 ~~department's ward, including long-term care or burial expenses.~~

1 ~~[(c) The department may not be required to pay fees~~
2 ~~associated with the appointment of a guardian ad litem or attorney~~
3 ~~ad litem.~~

4 ~~[(f) The department shall file an application with the court~~
5 ~~to name a successor guardian if the department becomes aware of a~~
6 ~~qualified and willing individual or guardianship program serving~~
7 ~~the area in which the ward is located.]~~

8 SECTION 3.03. Section 161.071, Human Resources Code, is
9 amended to read as follows:

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

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

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

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

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

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

5 (A) implementation of the federal Older
6 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its
7 subsequent amendments, including implementation of services and
8 volunteer opportunities under that Act for older residents of this
9 state through area agencies on aging;

10 (B) advocacy for residents of nursing facilities
11 through the office of the state long-term care ombudsman;

12 (C) fostering of the state and community
13 infrastructure and capacity to serve older residents of this state;
14 and

15 (D) availability of a comprehensive resource for
16 state government and the public on trends related to and services
17 and programs for an aging population;

18 (6) performing all licensing and enforcement
19 activities and functions related to long-term care facilities,
20 including licensing and enforcement activities related to
21 convalescent and nursing homes and related institutions under
22 Chapter 242, Health and Safety Code;

23 (7) performing all licensing and enforcement
24 activities related to assisted living facilities under Chapter 247,
25 Health and Safety Code;

26 (8) performing all licensing and enforcement
27 activities related to intermediate care facilities for persons with

1 mental retardation under Chapter 252, Health and Safety Code; ~~and~~

2 (9) performing all licensing and enforcement
3 activities and functions related to home and community support
4 services agencies under Chapter 142, Health and Safety Code; and

5 (10) serving as guardian of the person or estate, or
6 both, for an incapacitated individual as provided by Subchapter E
7 of this chapter and Chapter XIII, Texas Probate Code.

8 SECTION 3.04. Chapter 161, Human Resources Code, is amended
9 by adding Subchapter E to read as follows:

10 SUBCHAPTER E. GUARDIANSHIP SERVICES

11 Sec. 161.101. GUARDIANSHIP SERVICES. (a) The department
12 shall file an application under Section 682 or 875, Texas Probate
13 Code, to be appointed guardian of the person or estate, or both, of
14 a minor referred to the department under Section 48.209(a)(1) for
15 guardianship services if the department determines:

16 (1) that the minor, because of a mental or physical
17 condition, will be substantially unable to provide for the minor's
18 own food, clothing, or shelter, to care for the minor's own physical
19 health, or to manage the individual's own financial affairs when
20 the minor becomes an adult; and

21 (2) that a less restrictive alternative to
22 guardianship is not available for the minor.

23 (b) The department shall conduct a thorough assessment of
24 the conditions and circumstances of an elderly or disabled person
25 referred to the department under Section 48.209(a)(2) for
26 guardianship services to determine whether a guardianship is
27 appropriate for the individual. In determining whether a

1 guardianship is appropriate, the department may consider the
2 resources and funds available to meet the needs of the elderly or
3 disabled person. The executive commissioner shall adopt rules for
4 the administration of this subsection.

5 (c) If after conducting an assessment of an elderly or
6 disabled person under Subsection (b) the department determines that
7 a guardianship is appropriate for the elderly or disabled person,
8 the department shall file an application under Section 682 or 875,
9 Texas Probate Code, to be appointed guardian of the person or
10 estate, or both, of the individual. If after conducting the
11 assessment the department determines that a less restrictive
12 alternative to guardianship is available for the elderly or
13 disabled person, the department shall pursue the less restrictive
14 alternative instead of applying for appointment as the person's
15 guardian.

16 (d) The department may not be required by a court to file an
17 application for guardianship, and the department may not be
18 appointed as permanent guardian for any individual unless the
19 department files an application to serve or otherwise agrees to
20 serve as the individual's guardian of the person or estate, or both.

21 (e) A guardianship created for an individual as a result of
22 an application for guardianship filed under Subsection (a) may not
23 take effect before the individual's 18th birthday.

24 Sec. 161.102. REFERRAL TO GUARDIANSHIP PROGRAM, COURT, OR
25 OTHER PERSON. (a) If the department becomes aware of a
26 guardianship program, private professional guardian, or other
27 person willing and able to provide the guardianship services that

1 would otherwise be provided by the department to an individual
2 referred to the department by the Department of Family and
3 Protective Services under Section 48.209, the department shall
4 refer the individual to that person or program for guardianship
5 services.

6 (b) If requested by a court, the department shall notify the
7 court of any referral made to the department by the Department of
8 Family and Protective Services relating to any individual who is
9 domiciled or found in a county where the requesting court has
10 probate jurisdiction and who may be appropriate for a
11 court-initiated guardianship proceeding under Section 683, Texas
12 Probate Code. In making a referral under this subsection and if
13 requested by the court, the department shall, to the extent allowed
14 by law, provide the court with all relevant information in the
15 department's records relating to the individual. The court, as
16 part of this process, may not require the department to:

17 (1) perform the duties of a guardian ad litem or court
18 investigator as prescribed by Section 683, Texas Probate Code; or

19 (2) gather additional information not contained in the
20 department's records.

21 Sec. 161.103. CONTRACT FOR GUARDIANSHIP SERVICES. If
22 appropriate, the department may contract with a political
23 subdivision of this state, a guardianship program as defined by
24 Section 601, Texas Probate Code, a private agency, or another state
25 agency for the provision of guardianship services under this
26 section.

27 Sec. 161.104. QUALITY ASSURANCE PROGRAM. The department

1 shall develop and implement a quality assurance program for
2 guardianship services provided by or on behalf of the department.
3 If the department enters into a contract with a political
4 subdivision, guardianship program, private agency, or other state
5 agency under Section 161.103, the department shall establish a
6 monitoring system as part of the quality assurance program to
7 ensure the quality of guardianship services for which the
8 department contracts under that section.

9 Sec. 161.105. OATH. A representative of the department
10 shall take the oath required by Section 700, Texas Probate Code, on
11 behalf of the department if the department is appointed guardian.

12 Sec. 161.106. GUARDIANSHIP POWERS AND DUTIES. In serving
13 as guardian of the person or estate, or both, for an incapacitated
14 individual, the department has all the powers granted and duties
15 prescribed to a guardian under Chapter XIII, Texas Probate Code, or
16 any other applicable law.

17 Sec. 161.107. EXEMPTION FROM GUARDIANSHIP BONDS, CERTAIN
18 COSTS, FEES, AND EXPENSES. (a) The department or a political
19 subdivision of this state or state agency with which the department
20 contracts under Section 161.103 is not required to post a bond or
21 pay any cost or fee associated with a bond otherwise required by the
22 Texas Probate Code in guardianship matters.

23 (b) The department is not required to pay any cost or fee
24 otherwise imposed for court proceedings or other services,
25 including:

26 (1) a filing fee or fee for issuance of service of
27 process imposed by Section 51.317, 51.318(b)(2), or 51.319,

1 Government Code;

2 (2) a court reporter fee imposed by Section 51.601,

3 Government Code;

4 (3) a judicial fund fee imposed by Section 51.702,

5 Government Code;

6 (4) a judge's fee imposed by Section 25.0008 or

7 25.0029, Government Code;

8 (5) a cost or security fee imposed by Section 12 or

9 622, Texas Probate Code; or

10 (6) a fee imposed by a county officer under Section

11 118.011 or 118.052, Local Government Code.

12 (c) The department may not be required to pay fees
13 associated with the appointment of a guardian ad litem or attorney
14 ad litem.

15 (d) A political subdivision of this state or state agency
16 with which the department contracts under Section 161.103 is not
17 required to pay any cost or fee otherwise required by the Texas
18 Probate Code.

19 (e) The department is not liable for funding services
20 provided to a ward of the department, including long-term care or
21 burial expenses.

22 Sec. 161.108. APPLICATION FOR SUCCESSOR GUARDIAN. The
23 department shall review each of the department's pending
24 guardianship cases at least annually to determine whether a more
25 suitable person, including a guardianship program or private
26 professional guardian, is willing and able to serve as successor
27 guardian for a ward of the department. If the department becomes

1 aware of any person's willingness and ability to serve as successor
2 guardian, the department shall notify the court in which the
3 guardianship is pending as required by Section 695A, Texas Probate
4 Code.

5 Sec. 161.109. ACCESS TO RECORDS OR DOCUMENTS. (a) The
6 department shall have access to all of the records and documents
7 concerning an individual referred for guardianship services under
8 this subchapter that are necessary to the performance of the
9 department's duties under this subchapter, including
10 client-identifying information and medical, psychological,
11 educational, or residential information.

12 (b) The department is exempt from the payment of a fee
13 otherwise required or authorized by law to obtain a medical record,
14 including a mental health record, from a hospital or health care
15 provider if the request for a record is made in the course of an
16 assessment for guardianship services conducted by the department.

17 (c) If the department cannot obtain access to a record or
18 document that is necessary to properly perform a duty under this
19 subchapter, the department may petition the probate court or the
20 statutory or constitutional court having probate jurisdiction for
21 access to the record or document.

22 (d) The court with probate jurisdiction shall, on good cause
23 shown, order the person or entity who denied access to a record or
24 document to allow the department to have access to the record or
25 document under the terms and conditions prescribed by the court.

26 (e) A person or entity is entitled to notice of and a hearing
27 on the department's petition for access as described by this

1 section.

2 (f) Access to, or disclosure of, a confidential record or
3 other confidential information under this section does not
4 constitute a waiver of confidentiality for other purposes or as to
5 other persons.

6 Sec. 161.110. LEGAL REPRESENTATION OF DEPARTMENT. (a)
7 Except as provided by Subsection (b), (c), or (f), the prosecuting
8 attorney representing the state in criminal cases in the county
9 court shall represent the department in any proceeding under this
10 subchapter unless the representation would be a conflict of
11 interest.

12 (b) If the attorney representing the state in criminal cases
13 in the county court is unable to represent the department in an
14 action under this subchapter because of a conflict of interest, the
15 attorney general shall represent the department in the action.

16 (c) If the attorney general is unable to represent the
17 department in an action under this subchapter, the attorney general
18 shall deputize an attorney who has contracted with the department
19 under Subsection (d) or an attorney employed by the department
20 under Subsection (e) to represent the department in the action.

21 (d) Subject to the approval of the attorney general, the
22 department may contract with a private attorney to represent the
23 department in an action under this subchapter.

24 (e) The department may employ attorneys to represent the
25 department in an action under this subchapter.

26 (f) In a county having a population of more than 2.8
27 million, the prosecuting attorney representing the state in civil

1 cases in the county court shall represent the department in any
2 proceeding under this subchapter unless the representation would be
3 a conflict of interest. If such attorney is unable to represent the
4 department in an action under this subchapter because of a conflict
5 of interest, the attorney general shall represent the department in
6 the action.

7 Sec. 161.111. CONFIDENTIALITY AND DISCLOSURE OF
8 INFORMATION. (a) All files, reports, records, communications, or
9 working papers used or developed by the department in the
10 performance of duties relating to the assessment for or the
11 provision of guardianship services to an individual referred for
12 guardianship services under this subchapter are confidential and
13 not subject to disclosure under Chapter 552, Government Code.

14 (b) Confidential information may be disclosed only for a
15 purpose consistent with this subchapter, as required by other state
16 or federal law, or as necessary to enable the department to exercise
17 its powers and duties as guardian of the person or estate, or both,
18 of an individual.

19 (c) A court may order disclosure of confidential
20 information only if:

21 (1) a motion is filed with the court requesting
22 release of the information and a hearing on that request;

23 (2) notice of the hearing is served on the department
24 and each interested party; and

25 (3) the court determines after the hearing and an in
26 camera review of the information that disclosure is essential to
27 the administration of justice and will not endanger the life or

1 safety of any individual who:

2 (A) is being assessed by the department for
3 guardianship services under this subchapter;

4 (B) is a ward of the department; or

5 (C) provides services to a ward of the
6 department.

7 (d) The department shall establish a policy and procedures
8 for the exchange of information with another state agency or
9 governmental entity, including a court, with a local guardianship
10 program to which an individual is referred for services, or with any
11 other entity who provides services to a ward of the department, as
12 necessary for the department, state agency, governmental entity, or
13 other entity to properly execute its respective duties and
14 responsibilities to provide guardianship services or other needed
15 services to meet the needs of the ward under this subchapter or
16 other law. An exchange of information under this subsection does
17 not constitute a release for purposes of waiving the
18 confidentiality of the information exchanged.

19 Sec. 161.112. INDEMNIFICATION FOR LEGAL EXPENSES. If a
20 present or former employee of the department who was involved in
21 activities related to the provision of guardianship services under
22 this subchapter is criminally prosecuted for conduct related to the
23 person's misfeasance or nonfeasance in the course and scope of the
24 person's employment and is found not guilty after a trial or appeal
25 or if the complaint or indictment is dismissed without a plea of
26 guilty or nolo contendere being entered, the department may
27 indemnify the person or the person's estate for the reasonable

1 attorney's fees incurred in defense of the prosecution up to a
2 maximum of \$10,000.

3 Sec. 161.113. IMMUNITY. (a) In this section, "volunteer"
4 means a person who:

5 (1) renders services for or on behalf of the
6 department under the supervision of a department employee; and

7 (2) does not receive compensation that exceeds the
8 authorized expenses the person incurs in performing those services.

9 (b) A department employee or an authorized volunteer who
10 performs a department duty or responsibility under this subchapter
11 is immune from civil or criminal liability for any act or omission
12 that relates to the duty or responsibility if the person acted in
13 good faith and within the scope of the person's authority.

14 SECTION 3.05. Section 695A, Texas Probate Code, is amended
15 by adding Subsection (a-1) to read as follows:

16 (a-1) If, while serving as a guardian for a ward under this
17 chapter, the Department of Aging and Disability Services becomes
18 aware of a guardianship program or private professional guardian
19 willing and able to serve as the ward's successor guardian and the
20 department is not aware of a family member or friend of the ward or
21 any other interested person who is willing and able to serve as the
22 ward's successor guardian, the department shall notify the court in
23 which the guardianship is pending of the guardianship program's or
24 private professional guardian's willingness and ability to serve.

25 SECTION 3.06. Section 700(b), Texas Probate Code, is
26 amended to read as follows:

27 (b) A representative of the Department of Aging and

1 Disability [~~Protective and Regulatory~~] Services shall take the oath
2 required by Subsection (a) of this section if the department is
3 appointed guardian.

4 SECTION 3.07. Section 875(j), Texas Probate Code, is
5 amended to read as follows:

6 (j) The court may not customarily or ordinarily appoint the
7 Department of Aging and Disability [~~Protective and Regulatory~~]
8 Services as a temporary guardian under this section. The
9 appointment of the department as a temporary guardian under this
10 section should be made only as a last resort.

11 SECTION 3.08. TRANSFERS TO THE DEPARTMENT OF AGING AND
12 DISABILITY SERVICES. (a) On September 1, 2005:

13 (1) all powers, duties, functions, programs, and
14 activities of the Department of Family and Protective Services
15 related to providing guardianship services for incapacitated
16 persons under Chapter 48, Human Resources Code, Chapter XIII, Texas
17 Probate Code, or other law are transferred to the Department of
18 Aging and Disability Services;

19 (2) all employees of the Department of Family and
20 Protective Services who primarily perform duties related to
21 providing guardianship services for incapacitated persons under
22 Chapter 48, Human Resources Code, Chapter XIII, Texas Probate Code,
23 or other law become employees of the Department of Aging and
24 Disability Services;

25 (3) a rule or form adopted by the executive
26 commissioner of the Health and Human Services Commission that
27 relates to the provision of guardianship services by the Department

1 of Family and Protective Services for incapacitated persons under
2 Chapter 48, Human Resources Code, Chapter XIII, Texas Probate Code,
3 or other law, as those laws existed immediately before that date, is
4 a rule or form of the Department of Aging and Disability Services
5 and remains in effect until altered by the executive commissioner;

6 (4) a reference in law to the Department of Family and
7 Protective Services or its predecessor agency, the Department of
8 Protective and Regulatory Services, that relates to providing
9 guardianship services for incapacitated persons under Chapter 48,
10 Human Resources Code, Chapter XIII, Texas Probate Code, or other
11 law means the Department of Aging and Disability Services;

12 (5) a waiver in effect that was issued by the
13 Department of Family and Protective Services Commission relating to
14 the provision of guardianship services for incapacitated persons
15 under Chapter 48, Human Resources Code, Chapter XIII, Texas Probate
16 Code, or other law is continued in effect as a waiver of the
17 Department of Aging and Disability Services;

18 (6) a proceeding involving the Department of Family
19 and Protective Services that is related to providing guardianship
20 services for incapacitated persons under Chapter 48, Human
21 Resources Code, Chapter XIII, Texas Probate Code, or other law is
22 transferred without change in status to the Department of Aging and
23 Disability Services, and the Department of Aging and Disability
24 Services assumes, without a change in status, the position of the
25 Department of Family and Protective Services in a proceeding
26 relating to guardianship matters to which the Department of Family
27 and Protective Services is a party;

1 (7) all money, contracts, rights, and obligations of
2 the Department of Family and Protective Services related to
3 providing guardianship services for incapacitated persons under
4 Chapter 48, Human Resources Code, Chapter XIII, Texas Probate Code,
5 or other law are transferred to the Department of Aging and
6 Disability Services, subject to Subsection (b) of this section;

7 (8) all property and records in the custody of the
8 Department of Family and Protective Services related to providing
9 guardianship services for incapacitated persons under Chapter 48,
10 Human Resources Code, Chapter XIII, Texas Probate Code, or other
11 law shall be transferred to the Department of Aging and Disability
12 Services; and

13 (9) all funds appropriated by the legislature to the
14 Department of Family and Protective Services for purposes related
15 to providing guardianship services for incapacitated persons under
16 Chapter 48, Human Resources Code, Chapter XIII, Texas Probate Code,
17 or other law are transferred to the Department of Aging and
18 Disability Services.

19 (b) The Department of Aging and Disability Services shall
20 administer a contract of the Department of Family and Protective
21 Services transferred under Subsection (a)(7) of this section until
22 the contract expires or is otherwise lawfully terminated.

23 (c) To effectuate a smooth and orderly transfer of existing
24 guardianship status, a court may not require the Department of
25 Family and Protective Services or the Department of Aging and
26 Disability Services to comply with the provisions concerning
27 resignation of a guardian and appointment of a successor guardian

1 under Subpart D, Part 4, Chapter XIII, Texas Probate Code, with
2 respect to guardianship cases of the Department of Family and
3 Protective Services transferred to the Department of Aging and
4 Disability Services under this section and Section 2.09 of this
5 Act.

6 (d) A reference in a legal document, including a letter of
7 guardianship issued under Section 659, Texas Probate Code, to the
8 Department of Family and Protective Services as guardian in an
9 existing guardianship or application for guardianship that is
10 pending on the effective date of this Act is considered to be a
11 reference to the Department of Aging and Disability Services.

12 (e) A public entity, a private entity, or any other person,
13 including a bank, a service provider, law enforcement personnel, or
14 medical personnel, is required to accept the Department of Aging
15 and Disability Services' authority as guardian in the same manner
16 the entity or person would have accepted the Department of Family
17 and Protective Services' authority as guardian of a particular
18 ward.

19 (f) The Department of Aging and Disability Services may not
20 be required to take a new oath of guardianship under Section 700,
21 Texas Probate Code, with respect to a guardianship case transferred
22 to the department from the Department of Family and Protective
23 Services under this section and Section 2.09 of this Act.

24 SECTION 3.09. TRANSITION PLAN. The executive commissioner
25 of the Health and Human Services Commission shall establish a plan
26 for the transfer of guardianship cases of the Department of Family
27 and Protective Services to the Department of Aging and Disability

1 Services on or before the last day of the period prescribed by the
2 executive commissioner.

3 ARTICLE 4. REPORT; EFFECTIVE DATE

4 SECTION 4.01. (a) Not later than the 180th day after the
5 effective date of this Act, and every six months after that date,
6 the Health and Human Services Commission shall provide a detailed
7 progress report on the implementation of the provisions of this Act
8 to:

- 9 (1) the governor;
- 10 (2) the Legislative Budget Board;
- 11 (3) the lieutenant governor;
- 12 (4) the speaker of the house of representatives;
- 13 (5) appropriate oversight committees of the
14 legislature; and
- 15 (6) the state auditor.

16 (b) Each progress report must address:

17 (1) the achievement status of each major element of
18 reform and each of the performance milestones specified in this
19 Act;

20 (2) any significant obstacles encountered by the
21 Health and Human Services Commission, Department of Family and
22 Protective Services, or Department of Aging and Disability Services
23 in implementing the provisions of this Act, and the steps proposed
24 to resolve those obstacles;

25 (3) any provision of this Act the Health and Human
26 Services Commission, Department of Family and Protective Services,
27 or Department of Aging and Disability Services determines that it

1 is unable to fully implement due to insufficient funds;

2 (4) any significant unanticipated fiscal implications
3 associated with the implementation of this Act, and recommendations
4 for addressing the fiscal implications in the most cost-effective
5 manner; and

6 (5) steps taken to enhance internal and external
7 accountability for:

8 (A) achieving favorable outcomes for children
9 needing protective services and adults needing protective services
10 or guardianship services; and

11 (B) the expenditure of public funds.

12 (c) In accordance with Chapter 321, Government Code, the
13 state auditor may conduct financial and compliance audits related
14 to the implementation of this Act as specified in an audit plan.
15 The state auditor shall coordinate an audit performed under this
16 subsection with the Health and Human Services Commission,
17 Department of Family and Protective Services, and Department of
18 Aging and Disability Services internal auditors and the
19 commission's office of inspector general to avoid duplication of
20 effort.

21 (d) Except as provided by this subsection, this section
22 expires September 1, 2010. Subsections (a) and (b) of this section
23 expire September 1, 2009.

24 SECTION 4.02. This Act takes effect September 1, 2005.